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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE 370th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 April 1999, at 10 a.m.

Chairman: Mr. BURNS

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GE.99-41407 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of Venezuela (CAT/C/16/Add.8 and HRI/CORE/1/Add.23)

1. At the invitation of the Chairman, Mr. Simón Jiménez, Mr. Rodríguez Cedeño, Ms. Alguindigue, Mr. Michelena, Ms. Guevara, Mr. Salas and Ms. Mendoza (Venezuela) took places at the Committee table.

2. Mr. SIMÓN JIMÉNEZ (Venezuela) said that Venezuela was firmly committed to human rights. To place the current reform process in context, it should be noted that a new President had assumed office in February 1999 following the general elections held in December 1998. Respect for and the protection of human rights had been a key theme of the election campaign and the new Government intended to keep its promises in that regard. While breaking with its recent past, the country was resuming a long-standing tradition of respect for the dignity of the human person, as evidenced both by its accession to a large number of international human rights treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which had been ratified in July 1991, and by the Constitution of Venezuela. Promulgated in 1961, the Constitution contained many provisions designed to safeguard human dignity and to protect the physical, moral and mental integrity of the individual, as well as provisions that unequivocally condemned any breach of the rights it recognized. The new Government had undertaken to respect and to ensure respect for existing rights and was determined to take further action to obtain unquestioning respect for human rights. It was in that context that a whole set of legislative, judicial and administrative measures were being adopted, some of which constituted a radically new approach.

3. On the legislative front, a bill against torture, ill-treatment and cruel, inhuman or degrading punishment, whose provisions corresponded to those of the Convention, was under consideration. The bill, which created a separate crime of torture, punishable by specific penalties, would very shortly be discussed by the Chamber of Deputies.

4. Another important initiative would be the entry into force, on 1 July 1999, of a new Code of Criminal Procedure, which was well-nigh revolutionary in terms of its departure from previous provisions. The right to bring a criminal action would in future be vested in the Attorney-General, who would be required to institute proceedings in cases of human rights violations by State officials. The inquisitorial system would be replaced by an adversarial system entailing the presumption of innocence. The new Code of Criminal Procedure introduced many other innovations, one of the most important of which was a maximum period of police custody of 48 hours. Once that time limit expired, the suspect had to be brought before a judge and was also entitled from the beginning of the proceedings to have access to a lawyer. In a further move to protect accused persons, the forensic medicine service, which had previously come under the police force, was being placed

under the control of the Attorney-General's Office. Those measures were to be supplemented by the abolition of a privilege conducive to impunity: the official immunity enjoyed by police officers.

5. Transparency would be enhanced by the establishment of juries and the introduction of simpler oral proceedings. Confessions would lose their importance by virtue of the fact that statements other than those made before a judge would be inadmissible. And the establishment of the office of judge for the enforcement of sentences would provide additional protection for the rights of accused persons.

6. All the foregoing measures and others, such as the introduction of new forms of conflict resolution and compensation machinery for victims of ill-treatment, would enhance the State's compliance with its obligations under the Convention.

7. With a view to building up a comprehensive and effective body of legislation, the Government had begun a process of drafting a large number of bills and amending existing laws, such as the law prohibiting violence against women, the bill on the protection of children, the amnesty bill and other instruments relating to alternative penalties and the prison system and regulating the conduct of officials. At the same time, action was being taken to promote awareness among officials at all levels of human rights provisions and the penalties to which they were liable if human rights were violated. When the new Code of Criminal Procedure came into force, it was expected that criminal proceedings would be speeded up and that there would be an increase in the number of actions brought against officials acting in that capacity.

8. Training was assuming greater importance following the establishment of a human rights chair, a separate discipline that would form part of the training course for future police officers. While abuses of authority were still possible, the Government was trying to develop a new human rights culture so that, for example, the use of force became the exception rather than the rule. Prison warders and directors of penitentiary establishments were also being given special training. Civil society and public opinion could play a major role in strengthening the human rights culture, given the large number of non-governmental organizations (NGOs) and the existence of press freedom.

9. At the administrative level, numerous measures had been taken or would shortly be introduced. In the area of prison administration, a computerized system for the registration and supervision of detainees had just been installed and could be consulted at any time. Efforts were being made to deal with the problem of prison overcrowding: prison capacity had been increased by 4,972 places in 1998 and a further expansion of 1,600 places was expected in 1999. Another important decision concerned the segregation of accused persons from convicted persons. The introduction of alternative penalties for some categories of prisoners should also lead to a reduction in the prison population. In addition, some services (refectories, laundries, etc.) were being privatized with a view to improving prison living conditions. It had also been decided to merge the ministries of internal relations and of justice.

10. With regard to the police force, two trends were taking shape. The first was a kind of filtering process, illustrated by the instructions issued to the National Guard, which was no longer authorized to take part in ordinary police operations. As a military force, it had been found responsible for many abuses of authority when it carried out police duties. The second related to the new demands being made on the police forces, which were being given better training in return and enjoyed better material conditions. The new rigorous approach was reflected in the number of actions brought against police officers and the number of penalties that had been imposed. For example, out of 600 legal proceedings brought against metropolitan police officers, 539 had resulted in penalties and 169 had gone to court. In 1998, 402 officials employed by the prison services had been subjected to disciplinary or other measures.

11. In conclusion, he said his Government was firmly resolved not to compromise on the fundamental question of human rights. Election promises aside, its aim was to ensure respect for the rule of law, to broaden minds, to proscribe arbitrary conduct and to thwart impunity. Although traces of the previous regime and culture inevitably survived, the Government firmly intended to punish the guilty and do its utmost to put an end to human rights violations. It was in that perspective that Venezuela had embarked unwaveringly on the path of respect for human rights, both nationally and internationally.

12. The CHAIRMAN thanked the head of the Venezuelan delegation for introducing his report and observed that many of the reforms carried out were consistent with fundamental human rights standards.

13. Mr. GONZÁLEZ POBLETE (Country Rapporteur) said that he shared the Chairman's view, specifically with regard to conformity with the provisions of the Convention. He noted that the State party had ratified the Convention in 1991, had made the declarations under articles 21 and 22 and had not formulated reservations. However, it should have submitted its second periodic report in August 1996 and the core document (HRI/CORE/1/Add.3) needed to be updated.

14. The determination expressed by the delegation to promote the prevention of torture and other cruel, inhuman or degrading treatment or punishment was highly commendable.

15. Venezuela had only partially respected the Committee's guidelines for the submission of reports. The report contained no information concerning cases investigated by the judicial authorities during the period under review, i.e. from 1991, the date of submission of the core document, to 1998, the date of submission of the initial report. It also failed to describe the real situation with respect to the practical implementation of the Convention. Furthermore, the requisite statistical data on implementation had not been included.

16. He welcomed the entry into force of the new Code of Criminal Procedure in July 1999. Some provisions of the Code still in force, which complicated the procedure for filing complaints against members of the police force, would disappear. Other favourable developments included: the reduction in the

length of pre-trial detention from eight to four days in accordance with the recommendations of the Special Rapporteur on torture, Mr. Nigel Rodley; the inadmissibility of statements other than those made in the presence of a judge or defence counsel; and the decision to switch from inquisitorial criminal proceedings, in which confessions were given more weight, to accusatorial and adversarial proceedings. While those provisions, would, if implemented, certainly help to reduce the number of cases in which detainees in police custody were subjected to ill-treatment and torture to extract a confession, they would not be enough to ensure the eradication of such vile practices. It would also be necessary to train members of the security and police forces in respect for human rights.

17. In the light of paragraphs 99 and 100 of the core document (HRI/CORE/1/Add.3), he wished to know whether the new trend in favour of the principle of making international instruments self-executing had affected any other treaties ratified since the submission of the report.

18. He wished to know where treaties really stood in Venezuela in the order of rank of legal provisions. According to paragraph 5 of the initial report, international human rights instruments had constitutional status, but paragraph 97 of the core document stated that international treaties took precedence over Venezuelan laws, except the Constitution.

19. With regard to article 2, paragraph 1, of the Convention, paragraph 30 of the initial report stated that the prohibition of torture was absolute in Venezuela, even in areas where a state of emergency had been declared, as stipulated in articles 60 and 141 of the Constitution. Administrative and statutory provisions had been adopted on the basis of that constitutional principle, some of which were mentioned in paragraphs 2 to 22 of the initial report, and supplemented by other instruments such as organizational acts. Despite the existence of such an array of instruments purporting to prevent and punish torture and ill-treatment, however, such practices were still common, as evidenced by the many cases reported, inter alia, by Mr. Nigel Rodley or Amnesty International.

20. Information from a variety of sources indicated that the main perpetrators of such acts were law enforcement officials, particularly the members of the Technical Corps of the judicial police and of the Departmental Directorate of the Intelligence and Prevention Services, two institutions under the control of the Ministry of Justice and the Ministry of the Interior, respectively. To make matters worse, the former body was responsible for investigating crimes of torture and the latter for investigating complaints of torture. The system was thus basically flawed, a fact that could account for the small number of complaints of torture, given that individuals would hesitate to take action for fear of reprisals against themselves or members of their families. It should further be noted that many cases characterized as ill-treatment were in fact cases of torture.

21. In addition to police stations, penitentiary establishments were also places where the provisions of the Convention were breached. Poor conditions of detention were partly due to prison overcrowding, which was in turn ascribable to the fact that many detainees were persons awaiting trial. Out of a total of 24,929 detainees, only 8,478 had already been convicted and were

serving their prison sentence. The overcrowding in turn generated violence; according to a Human Rights Watch report, 500 persons died each year in prison as a result of acts of violence among inmates. Lack of supervision was another contributory factor. The State party's plans to improve the prison infrastructure were therefore welcome news.

22. The Venezuelan Government should also, as a matter of urgency, establish a system for the supervision of law enforcement institutions and, in particular, take disciplinary action against officials who violated the provisions of the Convention. He noted in that connection that the Special Rapporteur had been unable to obtain relevant information about the number of cases in which disciplinary action had been taken. Again, the new Code of Criminal Procedure seemed to make no provision for unannounced visits to police stations where persons were held in pre-trial detention. It was a measure that should be considered, together with the following: an improvement in conditions of detention, including health and food conditions; the introduction of a system of surveillance of all places where persons might be subjected to torture, particularly prisons or police stations; and the training of personnel in charge of detainees and, in particular, the dissemination of human rights principles.

23. While torture in Venezuela was not systematic and automatic, it was still wrong to assert, as had been done in the initial report, that cases of torture were isolated or infrequent. In fact, the Special Rapporteur on torture had drawn attention to the dichotomy between the legislative provisions in force and the actual situation. It was therefore important not to rely solely on laws and regulations, but to ensure that they were implemented, particularly by adopting the above-mentioned measures.

24. Article 2, paragraph 2, of the Convention stated that no exceptional circumstance whatsoever could justify torture and that provision was guaranteed in principle by article 60 of the Venezuelan Constitution. But public freedoms had been suspended in the areas bordering Colombia for long periods, during which many cases of arbitrary detention extending well beyond eight days and numerous cases of torture by the armed forces had been reported. With regard to article 2, paragraph 3, it was acknowledged in paragraphs 32 and 33 of the report that, although obedience could not be invoked under the Constitution as an excuse for acts of torture, two legal provisions ran counter to the Constitution in that regard. In particular, the Armed Forces (Organization) Act stipulated that the criminal responsibility of the perpetrator of an offence was limited if he was merely obeying orders. He hoped that the text of the new law on torture would expressly rule out the possibility of invoking those provisions to justify acts of torture.

25. With reference to article 3 of the Convention, paragraph 35 et seq. of the report indicated that Venezuela could not extradite a person to a country where he or she was in danger of being tortured because such action would be contrary to the international treaties signed by the State party, which were automatically applicable in domestic law. That statement had been given the lie by two reports that had reached the Committee, one from five Venezuelan non-governmental organizations and the other from Amnesty International. The organizations in question had reported the case of an individual who had been extradited although she risked being tortured in the country to which she had

been returned. The case had actually been referred to the Committee under the confidential procedure provided for in article 22 of the Convention and it had taken a decision on the matter that had been duly communicated to the State party.

26. The report also stated that, in Venezuela, decisions on extradition were taken by the Supreme Court as the sole and final authority. The new Code of Criminal Procedure confirmed that provision, so that there was no possibility of appeal in cases of extradition or even of amparo proceedings. That situation seemed entirely inconsistent with the principle of two-tier proceedings on which the Venezuelan legal system was based and the provisions in question should be reviewed. It should further be noted that article 3 of the Convention also referred to measures of expulsion and refoulement. The Committee would welcome information on such measures, especially the administrative procedures in force in relation to requests for asylum.

27. He would not dwell on the implementation of article 4 of the Convention, since a law on torture was being drafted. He would simply note that the legislation contained no definition of torture, referring only to situations constituting acts of torture, which did not include all the acts covered by the Convention. Moreover, the penalties imposed for such offences were not commensurate with the seriousness of the acts committed. He noted, however, that the forthcoming bill provided for an appropriate increase in the severity of penalties and set a 15-year time-limit for prosecution, which was a considerable improvement on the existing provisions.

28. Article 4 of the Penal Code broadly fulfilled the requirements of article 5 of the Convention, except, of course, for the fact that Venezuelan criminal legislation contained no definition of torture. That omission created problems for the implementation of articles 6 to 8 of the Convention. Venezuelan law, like the Inter-American Convention on Extradition and most bilateral agreements concluded by Venezuela, established the principle of double criminality for both the requesting State and the State granting extradition; the lack of a definition of torture in Venezuelan legislation could be an obstacle in practice to the extradition of a person guilty of torture; in Venezuela, as in many other countries, a criminal offence must be characterized as such in the Penal Code in order to be recognized. It was therefore to be hoped that the new law on torture, containing a definition of the offence of torture, would be promulgated speedily so that articles 6 to 8 of the Convention would not prove to be inapplicable in Venezuela.

29. Mr. HENRIQUES GASPAR (Alternate Country Rapporteur) commended the State party on its frank admission of the difficulties it faced in implementing the Convention and its firm political intention to overcome them.

30. Education and training for law enforcement officials were a key aspect of the Convention. In that connection, the report described the authorities' praiseworthy efforts on a number of fronts to implement the provisions of article 10; special mention should be made of the establishment of an Institute of Prison Studies to provide theoretical and practical training courses for senior prison officers and of the courses for doctors. But those efforts still fell far short of what was needed and the report failed to mention training courses for police officers, although that was where the

shortfall was most worrying: brief initial training, provided largely by NGOs, and with no refresher courses. He would appreciate additional information about the training of police officers in preventive measures and human rights awareness, the content of curricula, the length of training periods and the rank of the officers trained. The limited amount of training provided at junior grades was, in his view, a major flaw and a full-scale re-education effort was necessary at that level.

31. The material on article 11 of the Convention contained in paragraph 81 of the report was insufficient. The Committee would appreciate detailed information about specific plans to remedy a situation that had been recognized as worrying, particularly through training courses for police personnel. Compliance with the provisions of article 12 had apparently been mediocre and, according to the information compiled by the Special Rapporteur on torture, the situation was characterized by negligence and a lack of transparency; cases of concealment of facts had been reported during investigations. It would be useful to know in that regard whether, under the new Code of Criminal Procedure, the Office of the Public Prosecutor or some other competent body would be authorized to conduct impartial inquiries into police violence, independently or in collaboration with reliable specialized services. In that connection, he welcomed the change in the status of the Institute of Forensic Medicine, which would enjoy greater autonomy.

32. The special procedure based on "información de nudo hecho" (an information) mentioned in paragraph 89 of the report seemed to be contrary to article 13. Fortunately, the new Code of Criminal Procedure was likely to revoke that procedure and it was to be hoped that all complaints of torture or ill-treatment would in future be investigated because the principle of discretionary prosecution was absolutely incompatible with the obligations imposed by the Convention. But he noted that the principle was still applied to acts committed by members of the armed forces. Still on the subject of article 13 of the Convention, the major disparity between the number of cases of torture reported and acknowledged by the authorities and the number of criminal penalties or disciplinary measures imposed on the police officers involved was surprising. He would appreciate recent figures on such cases.

33. Lastly, the fact that evidence obtained by torture would be deemed inadmissible under article 214 of the draft new Code of Criminal Procedure, as required by article 15 of the Convention, was a welcome development. However, it should be stressed, in the light of paragraph 102 of the report, that a mere change in the legislation was not enough: a major effort of training, education and awareness-building would still be necessary.

34. Mr. SØRENSEN welcomed Venezuela's adoption of a new law on the protection of children, which was of interest not only to the Committee on the Rights of the Child because the torture of children was unfortunately not a rare occurrence. As the law would enter into force only in the year 2000, it was too soon to ask questions about it. With regard to article 10 of the Convention, covered in paragraphs 64 to 75 of the report, Mr. Henriques Gaspar had already mentioned the progress made in forensic medicine, but it should be stressed that article 10 related to training not only for forensic doctors,

but for all categories of medical personnel. He would therefore appreciate information about the content of courses on the prevention of torture at different levels of medical studies.

35. Victims of acts of torture were entitled to redress, compensation and rehabilitation, in accordance with article 14 of the Convention. The new law on torture would guarantee that right, but there were also other means of offering redress to victims, such as observation of the United Nations International Day in Support of Victims of Torture. Venezuela's contribution to the United Nations Voluntary Fund for Victims of Torture was also a gesture of recognition and respect which he hoped would be renewed in 1999.

36. According to paragraph 96, Venezuela had no rehabilitation programme for victims of torture. But he knew of two centres who looked after torture victims in Venezuela and would pass on information concerning them because they were continually in need of money and were constantly in fear of being closed down: it would be a very important step for them to secure State recognition.

37. Mr. CAMARA said that renewed emphasis should be placed on the key issue of exemption from liability for offenders who had obeyed orders. As acknowledged in the report, two provisions were in flagrant breach of article 46 of the Venezuelan Constitution and yet there seemed to be no plans to remedy a situation that seriously impaired the consistency of Venezuelan legislation. According to paragraph 82 of the core document on Venezuela (HRI/CORE/1/Add.3), however, the Attorney-General of the Republic could request the Supreme Court to declare null and void any legislation or administrative measures that he considered unconstitutional. In such a flagrant case of incompatibility, it could be asked what prevented the Attorney-General of the Republic from exercising his authority and whether he might be roused from his inertia.

38. Mr. YAKOVLEV said that he was concerned about the military courts, which apparently had jurisdiction over ordinary offences committed by members of the armed forces, so that they might have to hear cases of torture. The military courts had been known to admit reduced responsibility in the case of offences committed by order of a superior officer. He wished to know whether there were specific provisions governing acts of torture committed by members of the armed forces. Although the military justice system had been reformed in 1998, cases continued to be referred to it solely on the initiative of the President of the Republic, the commander-in-chief of the armed forces and certain other authorities. If the latter were disinclined to institute proceedings, a risk of impunity existed and steps should be taken as soon as possible to remedy the situation.

39. The CHAIRMAN said that he particularly welcomed the reform of the Penal Code and the Code of Criminal Procedure set in motion by the Venezuelan Government. However, he asked the delegation to let the secretariat know when the reforms were adopted and became an integral part of Venezuelan legislation because there had been cases in which the Parliament of a Latin American country had rejected a planned reform.

40. The case mentioned by Mr. González Poblete concerning the extradition of Cecilia Rosanna Núñez was no longer confidential because it had been made public by Amnesty International. It was only the third time that a Government had failed to respond to a request for interim measures, a step taken by the Committee when it saw an urgent need to protect an individual's safety. While noting that conditions had been attached to the extradition, in accordance with the speciality rule, he urgently requested the Venezuelan delegation to inform the Ministry of the Committee's disappointment about the case.

41. With regard to the cases mentioned in paragraphs 768 and 779 of the report of the Special Rapporteur on torture (E/CN.4/1999/61), both of which concerned women, he wished to know whether an inquiry had been conducted, whether there had been legal proceedings and, if so, what the outcome had been. One of the women had allegedly been beaten by the police and blackmailed to confess to a theft and was reportedly still in custody. The other had allegedly been raped by an official and had been unable to bring legal proceedings because the police had falsified the evidence. He wished to know what category of official had been involved. The fact that the rape had been committed by a State official added to the seriousness of the crime. He found the use of the word “irregularity” to describe it in the report surprising to say the least.

42. The delegation of Venezuela withdrew.

The meeting was suspended at 12.05 p.m. and resumed at 12.30 p.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FIFTY-THIRD SESSION (agenda item 9) (continued)

43. The CHAIRMAN announced that, in resolution 53/139 of 1 March 1999, the General Assembly had authorized the Secretary-General to extend the Committee's spring sessions by a week. He welcomed Denmark's tenacity, thanks to which the additional week had been secured.

44. A number of issues had been raised at the tenth Meeting of Chairpersons of Human Rights Treaty Bodies, including that of the interchangeability of meeting venues. Holding sessions in New York would impose an additional financial burden on the Committee and it had been principally on that ground that the Committee had rejected the proposal three years previously. If he heard no objection, he would take it that the Committee wished to continue holding its sessions in Geneva.

45. The proposal was adopted without objection.

46. With regard to media coverage of the activities of treaty bodies, another issue raised at the tenth Meeting, he asked the members to think about ways of drawing the attention of the media to aspects of the Committee's work in which they showed little interest, but which the Committee considered important, and invited them to make proposals to that effect during the session.

47. The following suggestions had been made at the Meeting with a view to dealing with the backlog in communications: extending sessions by one week,

increasing the number of members and setting up small working groups. The Committee against Torture already had an extra week and the system of country rappporteurs was equivalent to the working group system. However, in order to be prepared for future developments, he encouraged the members of the Committee to make suggestions for improvements in the working methods, particularly with regard to the consideration of communications.

48. Mr. SØRENSEN noted that the Committee's decision at the beginning of the session to revert to its former practice of considering several reports under article 19 on the same day would save a considerable amount of time and bring the Committee up to date in its consideration of reports.

49. The CHAIRMAN said that the Meeting had also addressed the question of reservations to human rights treaties and that he had sent its observations on that subject to the International Law Commission.

50. Lastly, he considered that the Committee had already met the requirement for committees to take gender-specific issues into consideration in their work since it had appointed a rapporteur on women's issues and the country rapporteurs and alternate country rapporteurs also took that aspect into account. He invited members to make further suggestions for implementing United Nations policy on the matter.

51. Mr. GONZÁLEZ POBLETE asked whether members could receive all the information contained in reports by other committees, especially the Human Rights Committee, which the Committee against Torture might find useful, especially in connection with the independence of the judiciary. Such information need not necessarily relate to countries whose reports were being considered by the Committee, because it was conceivable, for example, that the Committee would use Human Rights Committee recommendations to a particular country as a criterion for preparing its own, even where a different country was involved.

52. The CHAIRMAN said it would certainly be possible to provide members with the annual report of the Human Rights Committee and the reports of the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers and of the Special Rapporteur on torture.

The meeting rose at 12.50 p.m.