

VENEZUELA

CAT A/54/44 (1999)

124. The Committee considered the initial report of Venezuela (CAT/C/16/Add.8) at its 370th, 373rd and 377th meetings, held on 29 and 30 April and 4 May 1999 (CAT/C/SR.370, 373 and 377), and adopted the following conclusions and recommendations.

1. Introduction

125. Venezuela ratified the Convention on 29 June 1991. It made the declarations provided for under articles 21 and 22 on 21 December 1993, and has not formulated any reservations or additional declarations.

126. Venezuela is also a State party to the Inter-American Convention to Prevent and Punish Torture.

127. The initial report was submitted with several years' delay and does not provide sufficient information on the practical application of the Convention. The Committee appreciates the assurance given by the State's representative that these shortcomings will be overcome and that the next report will be submitted on time and in the appropriate form.

128. A large and well-qualified delegation was present for the introduction of the report. The head of delegation updated and elaborated on it in his statement and through documents made available to the members of the Committee; responses were given to members' observations and questions. This procedure facilitated a more detailed examination, a better understanding of the report and a frank and constructive dialogue, for which the Committee is grateful.

2. Positive aspects

129. In a declaration of principle, the head of the delegation expressed his Government's determination to be increasingly strict in the area of human rights.

130. The Code of Penal Procedure, which will enter into force shortly, contains very positive provisions that make good the deficiencies of the existing Code of Criminal Procedure; these deficiencies are identified as being highly conducive to the practice of torture and to shortcomings in its investigation and punishment. The full implementation of the new provisions should contribute to the eradication of torture in Venezuela.

131. The Government intends to submit for approval by the Legislature a bill to prevent and punish torture and cruel, inhuman or degrading treatment or punishment, in order to give effect to the provisions of the Convention in domestic law.

132. The state of emergency in force since 1994 has been terminated in the frontier districts and the

restrictions on constitutional guarantees have accordingly been removed.

133. The Act intended to combat violence against women and the family has entered into force; and the Organizational Act for the Protection of Children and Adolescents has been approved, and will enter into force next year. Both laws are intended to improve the protection of two particularly vulnerable social sectors who frequently fall victim to discrimination, abuse or cruel, inhuman or degrading treatment.

134. Training initiatives have been taken for law enforcement and prison personnel and have been developed with support from foundations and non-governmental organizations; these are described in the part of the report relating to article 10 of the Convention. The Public Prosecutor's Office has taken the initiative of organizing a national programme of workshops to acquaint medical professionals with recent scientific developments in the investigation of torture, in particular torture that leaves no visible or obvious marks.

3. Factors and difficulties impeding the application of the Convention

135. The marked contrast between the extensive legislation on matters addressed by the Convention and the reality observed during the period covered by the report would appear to indicate insufficient concern on the part of the authorities responsible for ensuring the effective observance of the Convention.

4. Subjects of concern

136. The high number of cases of torture and cruel, inhuman or degrading treatment that have occurred since the Convention's entry into force; they have been perpetrated by all the State security bodies.

137. The failure of the competent organs of the State to fulfil their duty to investigate complaints and punish those responsible, who generally enjoy impunity; this encourages repetition of the conduct in question. Not until the report was submitted was the Committee informed of the imposition of administrative penalties, but it has not been informed of any judicial conviction for the offence of torture.

138. The continued existence in the Penal Code, the Armed Forces (Organization) Act and the Code of Military Justice of provisions exempting from criminal responsibility persons who act on the basis of due obedience to a superior; these provisions are incompatible with both article 46 of the Constitution and article 2, paragraph 3, of the Convention.

139. The non-existence of effective procedures for monitoring respect for the physical integrity of detainees in prisons, both civilian and military.

140. The overcrowding in prisons, where capacity is exceeded by over 50 per cent, the lack of segregation of the prison population, the fact that almost two thirds of prisoners are awaiting trial and

the endemic violence rampant in Venezuelan jails mean that prisoners are permanently subjected to forms of inhuman or degrading treatment.

5. Recommendations

141. The prompt consideration, discussion and approval of the Bill relating to torture, whether it takes the form of a separate law or is incorporated in the provisions of the Penal Code.

142. The legislation in question must provide for the hearing and trial in the ordinary courts of any charge of torture, regardless of the body of which the accused is a member.

143. During the consideration and discussion of the Bill relating to torture, the Executive and the Legislature should request and bear in mind the opinions of national non-governmental organizations for the defence and promotion of human rights, whose experience in looking after victims of torture and cruel, inhuman or degrading treatment may help to perfect this legal initiative.

144. In the process of drafting a new constitution a provision should be included which grants constitutional status to human rights treaties ratified by the State and their self-executing nature, as has been recognized in the decisions of the Supreme Court of Justice.

145. In addition, the new constitution, through such provisions as may appear appropriate, should strengthen the legal conditions for the protection of personal security and integrity and for the prevention of practices that violate such security and integrity.

146. In connection with article 3 of the Convention, which stipulates that a person may not be expelled, returned or extradited to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, the Committee considers that, for the purposes of the improved consideration of the advisability of applying this provision to a particular case, it would appear appropriate for questions of passive extradition to be considered at two instances, a procedure which characterizes the Venezuelan judicial system.

147. On the same question, it is recommended that the State should regulate procedures for dealing with and deciding on applications for asylum and refugee status which envisage the opportunity for the applicant to attend a formal hearing and to make such submissions as may be relevant to the right which he invokes, including pertinent evidence, with protection of the characteristics of due process of law.

148. Repeal of rules providing for exemption from criminal responsibility on the grounds that the person concerned is acting in due obedience to a superior. Although these rules are contrary to the Constitution, in practice they leave open to judicial interpretation provisions which are incompatible with article 3, paragraph 2, of the Convention.

149. Continue the human rights training initiatives for State law enforcement officials and prison

personnel, and extend them to all police and security forces.

150. Establish a governmental programme aimed at the physical, psychological and social rehabilitation of torture victims.

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71. The Committee considered the second periodic report of Venezuela (CAT/C/33/Add.5) at its 538th, 541st and 545th meetings, held on 18, 19 and 21 November 2002 (CAT/C/SR.538, 541 and 545), and adopted the following conclusions and recommendations.

A. Introduction

72. The Committee welcomes with satisfaction the second periodic report of Venezuela, which should have been submitted in August 1996 but was received in September 2000 and updated in September 2002. This report contains the information which the State party was to have included in its third periodic report, which should have been submitted in August 2000.¹

73. The Committee notes that although the report contains abundant information on the legal provisions which have entered into force since the previous report was submitted, it lacks information on facts relating to the implementation in practice of the Convention. It contains no descriptions of situations or facts which have been examined or considered by the judicial, administrative or other authorities with jurisdiction over the issues dealt with in the Convention.

74. The Committee also had before it additional material supplied by the State party, and a report specially prepared by the Office of the Ombudsman. The information contained in this document and its annexes has been very useful in evaluating compliance with the obligations the Convention places on the State party.

75. The Committee thanks the State party for sending a large and well-qualified delegation of representatives of the Government and the Office of the Ombudsman; its frank and constructive dialogue with them facilitated consideration of the report.

B. Positive aspects

76. The Committee welcomes with satisfaction the entry into force on 30 December 1999 of the new Constitution of the Bolivarian Republic of Venezuela, which demonstrates progress in human rights. In particular, the Committee considers as positive the following aspects of the Constitution:

(a) It gives constitutional status to human rights treaties, covenants and conventions, declares that they take precedence in domestic law, prescribes that they should be immediately and directly applicable and provides that the absence of any law regulating these rights does not impair their exercise;

(b) It recognizes the right of individuals to submit petitions or complaints to the international bodies established for the purpose in order to seek protection for their human rights. This recognition is in accordance with the declaration by the State party in 1994 under article 22 of the Convention;

- (c) It requires the State to investigate and impose penalties for human rights offences, declares that action to punish them is not subject to a statute of limitations and excludes any measure implying impunity, such as an amnesty or a general pardon;
- (d) It requires offences concerning human rights violations and crimes against humanity to be heard in ordinary courts;
- (e) It imposes on the State the obligation to compensate in full victims of human rights violations and recognizes the right to rehabilitation of victims of torture and cruel, inhuman or degrading treatment inflicted or tolerated by agents of the State;
- (f) It regulates custody safeguards appropriately, e.g. a prior court order is required for any arrest or detention, except in flagrante delicto; it establishes a period of 48 hours for bringing a detainee before a judicial authority, as the Code of Criminal Procedure already provides; it regards as the general rule that persons charged should remain at liberty and pre-trial custody as the exception;
- (g) It stipulates a series of safeguards for the detainee, such as access to a lawyer immediately on being detained and a ban on obtaining confessions by torture;
- (h) It makes compulsory the extradition of persons charged with human rights offences and makes provision for a brief, public, oral procedure for trying them.

77. The Committee considers of particular importance the establishment under the Constitution of the Office of the Ombudsman as an independent body responsible for the promotion, protection and monitoring of the rights and safeguards established in the Constitution and in the international human rights instruments ratified by Venezuela.

78. The Committee takes note with satisfaction of the adoption of various legislative provisions and the establishment of units in various sectors of the State administration as an indication of the importance assigned to better protection and promotion of human rights. Important instances of such provisions are the basic laws on states of emergency, on refugees and asylum-seekers, on the Public Prosecutor's Office and on the protection of children and young people. Among the units established, mention should be made of the Human Rights Department of the Ministry of the Interior and Justice.

79. It also welcomes with satisfaction the ratification of the Rome Statute of the International Criminal Court in December 2000.

C. Subjects of concern

80. The Committee expresses its concern at the following:

- (a) The failure, despite the extensive legal reforms undertaken by the State party, to classify torture as a specific offence in Venezuelan legislation in accordance with the definition in article 1 of the

Convention;

- (b) The numerous complaints of torture, cruel, inhuman and degrading treatment, abuse of authority and arbitrary acts committed by agents of State security bodies which render the protective provisions of the Constitution and the Code of Criminal Procedure inoperative;
- (c) Complaints of abuse of power and improper use of force as a means of control, particularly during demonstrations and protests;
- (d) Complaints of threats and attacks against sexual minorities and transgender activists, particularly in the State of Carabobo;
- (e) Information on threats to and harassment of persons who bring complaints of ill-treatment against police officers and the lack of adequate protection for witnesses and victims;
- (f) The absence of prompt and impartial investigations of complaints of torture and cruel, inhuman and degrading treatment, and the lack of an accessible, institutionalized procedure in order to ensure the right of victims of acts of torture to obtain redress and fair and adequate compensation, as article 14 of the Convention provides;
- (g) The numerous instances in prisons of prisoner-on-prisoner violence and violence against prisoners by prison officers, which have led to serious injuries and in some cases to death. The precarious material conditions in prisons are also a matter for concern;
- (h) The lack of information, including statistical data, on torture and cruel, inhuman or degrading treatment or punishment, broken down by nationality, gender, ethnic group, geographical location and type and place of detention.

D. Recommendations

81. The Committee recommends that the State party should:

- (a) Adopt legislation making torture a punishable offence. Pursuant to the fourth transitional provision of the new Constitution, this requires a special act or the reform of the Penal Code within a year of the establishment of the National Assembly; this period has long expired;
- (b) Adopt all necessary measures to ensure immediate and impartial investigation of all cases of complaints of torture and cruel, inhuman or degrading treatment. The officials concerned should be suspended from their duties during these investigations;
- (c) Adopt measures to regulate and institutionalize the right of victims of torture to fair and adequate compensation and draw up programmes for their physical and psychological rehabilitation to the fullest extent possible, as the Committee has already recommended in its previous conclusions and

recommendations;

(d) Continue its activities of education in and promotion of human rights, particularly the prohibition of acts of torture, for law enforcement and medical personnel;

(e) Adopt measures to improve material conditions of detention in prisons and prevent both prisoner-on-prisoner violence and violence against prisoners by prison personnel. It is also recommended that the State party strengthen independent prison inspection procedures.

82. The Committee requests that the State party include statistical data in its next periodic report, broken down, inter alia, by nationality, age and gender of the victims, and an indication of the services to which the persons accused belong, with regard to cases under the Convention coming before domestic bodies; it should also include the results of the investigations carried out and the consequences for the victims in terms of redress and compensation.

83. The Committee invites the State party to submit its fourth periodic report at the latest by 20 August 2004 and to disseminate widely the Committee's conclusions and recommendations.

i/ The Committee therefore decided to consider document CAT/C/33/Add.5 as the second and third periodic reports of Venezuela.