

VENEZUELA

CCPR A/36/40

45. The Committee considered the initial report (CCPR/C/6/Add.3) submitted by the Government of Venezuela at its 248th, 249th and 252nd meetings on 21 and 23 October 1980 (CCPR/C/SR.248, 249 and 252).

46. The report was introduced by the representative of the State party who assured the Committee of his Government's willingness to co-operate with it in every way and to answer any questions it might wish to ask regarding the report.

47. Members of the Committee expressed their appreciation for the willingness of the Government of Venezuela to co-operate with the Committee and praised the frankness of that Government in acknowledging that some legal provisions still in force were not in conformity with the Covenant. They noted, however, that Venezuela, like many other States parties, had confined its report largely to comparing provisions of the Venezuelan Constitution and legislation with those of the Covenant. That was not enough to give a full picture of the factors and difficulties met in the implementation of the Covenant and of the progress made in the enjoyment of human rights as stipulated under article 40 of the Covenant. It was further pointed out that constitutions everywhere guaranteed many of the rights and freedoms provided for in the Covenant, but that these rights and freedoms only became a reality when implementing laws and administrative measures lent substance to them.

48. In connection with article 1 of the Covenant, information was requested on the policy of Venezuela towards the promotion of the right of self-determination in other Latin America countries, South Africa, the Middle East and Asia.

48a. As regards article 2 of the Covenant, reference was made to the undertaking by States parties to respect and to ensure to all individuals within their territory the rights recognized in the Covenant without distinction of any kind and to certain articles of the Constitution of Venezuela regarding the rights enjoyed by foreigners and by naturalized citizens. Clarification was requested on the provision that foreigners had the same duties and rights as Venezuelans, with the limitations and exceptions established by the Constitution and the laws, and on the distinction embodied in the provision that any naturalized Venezuela citizens who had entered the country at the age of eight or later would not enjoy the same rights as those who had entered the country before they reached the age of seven. More information was also sought on the status of the Covenant in Venezuelan domestic law and on the status of special laws if the Covenant had been incorporated in a special law, on whether the Supreme Court of Justice was empowered to prevent the implementation of laws and acts of any kind which might be contrary to the provisions of the Covenant; and on the proposed reforms that had been submitted to Congress in 1979 with a view to bringing Venezuelan law into line with the provisions of the Covenant. Questions were asked as to the difference between the remedy of habeas corpus and the remedy of amparo, how was it possible, as stated in the report, that the remedy of amparo was available when the provisions governing its exercise were not yet in existence; whether there were any specialized administrative courts that had competence in areas in which individuals might claim to have been injured by arbitrary administrative acts; what action

the Public Prosecutor had taken against the national executive and against the security forces, and on what occasions, to defend human rights in cases of reported abuses of authority, how his independence was ensured and in what circumstances could the Public Prosecutor be removed.

49. Commenting on article 3 of the Covenant, members of the Committee noted that the report recognized that a few discriminatory provisions against women still existed and stressed that the achievement of equality between men and women was not merely a legislative problem. Experience had shown that many States parties encountered difficulties in ensuring real equality between men and women before the law. Information was requested on the steps taken to remedy the legal situation in that respect and on the participation of women in the economic, political and cultural life of the country.

50. In connection with article 4 of the Covenant, a concern was expressed at the fact that, under the Constitution, some guarantees could be suspended under wide conditions than those laid down in the Covenant and with less exceptions than stipulated therein and that, according to the report, the suspension or restriction of guarantees was considered to be one of the most effective means available to the National Executive to protect the institutions, order and peace of the Republic. The representative was asked whether at the present time there was any state of emergency or disorder in Venezuela which would warrant the restriction or suspension of the guarantees provided for in the Constitution.

51. Commenting on article 6 of the Covenant, members of the Committee commended Venezuela for having abolished the death penalty as early as 1864. In order to know how the right to life was guaranteed in practice, it was asked what legal régime governed the use of fire arms by the police forces. It was noted that the report referred only to the prohibition of capital punishment and that the right to life not only required the authorities to refrain from arbitrarily depriving an individual of life but to take positive steps to reduce infant mortality, illiteracy, unemployment and, for example, the risk of falling victim to a political or common law murder. Information was requested on the Government's efforts in those areas.

52. Regarding articles 7 and 10 of the Covenant, it was pointed out that it was not enough to quote the provisions of the Constitution and of the Criminal Code which prohibited torture. The report should indicate whether Venezuela observed the Standard Minimum Rules for the Treatment of Prisoners laid down by the United Nations and whether there were any bodies responsible for verifying the treatment to which prisoners were subjected, what steps were taken to investigate charges of ill-treatment at the hands of the police and security services, whether investigations were instituted promptly and, if so, what their outcome was. It was also asked whether there existed in Venezuela any express legislative provisions prohibiting medical or scientific experiments on people without their full consent; what laws or regulations governed non-voluntary confinement in psychiatric hospitals; and what the purpose was of the classification of detainees referred to in the Prisons Act and Regulations.

53. With reference to article 8 of the Covenant, it was asked whether express provisions existed which would prohibit forced labour and to what extent the "work colonies" referred to in the report could be justified under article 8 of the Covenant.

54. As regards article 9 of the Covenant, one member noted that, according to the Code of Criminal Procedure, an accused was not entitled to have a lawyer until the preliminary investigation had been concluded and he pointed out that that was not only a departure from the guarantees that should be afforded to the accused but was also in conflict with the Constitution of Venezuela which provided that defence was an inviolable right at every stage and level of trial. Questions were asked as to what was the maximum legally-fixed time limit within which an accused person had to be brought before the courts; what laws or regulations governed the conditions and length of detention when a person was held incommunicado; whether any persons were still detained because of their political views or activities and, if so, under what legal provisions they were being kept in detention, how many were they and whether they would be brought to trial; whether the security forces and armed forces always carried out their duties in liaison with the civilian government or whether they acted independently of it; and what moral or pecuniary compensation did criminal or civil law provide in the case of illegal arrest or detention.

55. In connection with article 13 of the Covenant, members of the Committee noted that aliens who were legally on Venezuelan territory were expressly precluded by law from making any appeal against an expulsion order and pointed out that such a provision was not in conformity with the Covenant. The statement in the report to the effect that the rule was in fact implicitly revoked by the provisions of article 13 of the Covenant was unconvincing, for the mere incorporation of the Covenant into the internal legal order was not sufficient in itself to rectify such a situation because there could be no appeal unless there was express provision and an established procedure for appeals. Information was requested on the rights enjoyed by the many foreigners who entered Venezuela to seek asylum or take up work and on the treatment accorded to these foreigners particularly Colombians, by the police and customs officers.

56. Referring to article 14 of the Covenant, members sought information on the laws which ensured the independence of the judiciary particularly with regard to the appointment, removal and suspension of judges on the law which established the powers of the Council of the Judiciary and on the public authorities represented in this Council; on whether members of the Public Prosecutor's Department could be transferred or punished; on the guarantees enjoyed by anyone accused of a criminal charge as stipulated by article 14 of the Covenant; on the cases in which civilians might be tried by military courts and on the reasons for removing them from the jurisdiction of ordinary courts; on whether the procedures of military courts satisfied the requirements of the Covenant and on whether a person convicted by a military court could appeal to a higher tribunal; and on the procedure applicable to minors, on the courts before which they could be brought and on the social rehabilitation measures available to these courts for the benefit of minors.

57. Commenting on article 18 of the Covenant, members asked which religions were practised in Venezuela, whether the State adopted a uniform attitude to them, and whether any one religion received State aid of any kind. Clarification was requested on the statements in the report that religious faith should be subject to the "supreme inspection of the National Executive in conformity with the law" and it was asked what precisely such inspection entailed and on what basis it was carried out. Quoting an article of the Constitution which provided, inter alia, that "since the Republic possesses the right of ecclesiastical patronage, this will be exercised according to law" one member asked how the right was implemented in practice and how it was compatible with the Covenant. Noting that the Constitution provided that military service was compulsory, some

members asked whether conscientious objection was taken into account and whether other forms of service could replace it.

58. Regarding the freedom of expression provided for in article 19 of the Covenant, clarification was requested of the “statements which constitute offences” mentioned in the Constitution and it was asked how the courts conceived the protection of the national interest in matters relating to freedom of expression and whether there were any administrative measures which enabled all sections of the population to use the mass media such as radio and television.

59. Commenting on article 20 of the Covenant, some members commended the prohibition by the Constitution of propaganda for war in Venezuela, more so as an anti-war legislation was rare in Latin America. It was asked whether any violation of that provision entailed the application of penalties provided for by the Criminal Code and whether there existed a concurrent prohibition of any advocacy of national, racial or religious hatred, in conformity with article 20 of the Covenant.

60. In relation to articles 21 and 22 of the Covenant, questions were asked as to whether the law governing meetings in public places provided for in the Constitution had been promulgated and, if so, what were its provisions, and, in particular, whether any distinction was made between nationals and other persons regarding the enjoyment of the right of assembly and the right of peaceful, unarmed demonstration. The representative was also asked whether the legislation to guarantee the equality of political parties before the law, provided for in the Constitution, actually existed; whether the right to form and join trade unions was subject to restrictions; and whether trade unions had a purely economic role or whether they also had a political role.

61. As regards article 23 of the Covenant, members noted that the legal age for marriage was 14 for males and 12 for females. They wondered whether persons of such age were capable of giving their free and full consent in conformity with the Covenant, whether any consideration had been given to changing the age at which marriage might be validly contracted and in what circumstances consent to marriage was vitiated. They also noted with concern the acknowledgement in the report that in Venezuela there was no equality of rights and responsibilities of spouses as to marriage and wondered what action the Government was proposing to take in order to bring its domestic law into line with the Covenant. Members also asked whether the State paid allowances for large families; what laws governed the property of a married couple given the predominant role of the husband; what attitude was adopted by the administrative authorities and judges in divorce proceedings, particularly in cases involving adultery, and whether that attitude was non-discriminatory in terms of sex or whether the man was treated more indulgently than the woman. Clarification was also requested on the statement in the report that “a petition for divorce or separation may be initiated only by the spouse who had not given grounds therefor” and of its application in practice.

62. Commenting on article 24 of the Covenant, members asked whether child labour was authorized or practised and, if so, to what extent and which provisions regulated it and what were the Government’s plans to eliminate it; whether an illegitimate child could obtain recognition by his father through the courts and whether a distinction was made between legitimate and illegitimate children regarding inheritance.

63. With reference to article 25 in conjunction with article 26 of the Covenant, some members noted

that only citizens born in Venezuela could hold high public office or be deputies or senators. Since the Constitution admitted the possibility of a person becoming a Venezuelan citizen by naturalization, they raised the question whether the provisions governing access to certain offices did not establish a discrimination based on national origin, or birth. Noting also that illiterate citizens were not eligible to hold public office, members inquired that measures were being taken to eliminate illiteracy and thus to promote equality in the enjoyment of the right to public office. The question was asked whether, since voting was compulsory by law, this was compatible with the Covenant; whether the law provided for penalties in the event of failure to comply with this obligation and what those penalties were. The question was also asked whether the provision in the Constitution that the right to vote in municipal elections could be extended to foreigners, subject to certain conditions, was in practice implemented.

64. In connection with article 27 of the Covenant, information was requested on the special measures required for the protection of indigenous communities and their progressive incorporation in the life of the nation, on whether the Indian communities desired such incorporation and participated in the taking of decisions which affect them, on whether the provision for proportional representation of minorities in the Chamber of Deputies affected Indians, on the number of indigenous inhabitants and of the groups they were divided into, on their standard of living and level of education compared with that of the rest of the population, on the protection afforded them under the special measures or otherwise against the seizure of their traditional homelands for the purpose of agricultural or industrial expansion and on the steps taken to guarantee to them the effective enjoyment of their rights under the Covenant. It was also asked how the special protection to be accorded to indigenous peoples was legally reconciled with the concepts of equality before the law and equal protection by the law, whether that contradiction had been examined in the courts and in Congress and, if so, how the question had been settled.

65. Replying to questions raised by members of the Committee, the representative of Venezuela stressed that the replies given by him would be of a preliminary nature and that the official replies of his Government would be forwarded in due course by the competent official organs of his country.

66. In respect of article 1 of the Covenant, he stated that his country supported and voted in favour of self-determination in the various international forums.

67. As regards article 2 of the Covenant, the representative pointed out that, with the exception of political rights, aliens within his country enjoyed the same rights as Venezuelans; that aliens and naturalized Venezuelans had certain political rights in respect of public and municipal office and that it was only logical that a country of immigration like Venezuela should have certain rules to protect the rights of those who were Venezuelans by birth. He pointed out that in Venezuela, special laws were equated, especially in the case of international agreements, with the basic laws which governed such institutions as the Supreme Court, the Public Prosecutor's Department and the Office of the Controller-General. As for the difference between the remedies of habeas corpus and amparo, he stated that the latter protected all the individual rights laid down in the Constitution whereas the former, which was specifically designed to protect personal liberty, provided for a special procedure to ensure that no person could be imprisoned without a legal cause being assigned in the warrant of committal. Although the laws regulating those remedies had not yet been promulgated, it was

perfectly possible to invoke them under the Constitution. The Public Prosecutor's Department was an autonomous body which ensured compliance with the Constitution and the law, was the surest guarantee of the constitutional order and the most effective safeguard of individual rights.

68. Replying to questions raised under article 3 of the Covenant, the representative referred to a Bill introduced by the Executive in 1980 for the partial reform of the Civil Code in matters pertaining to, *inter alia*, the legal situation of women. That measure constituted an important step towards improving the situation in 1979 of a Ministry of State for the Participation of Women in Development, which was headed by a woman. Many women were engaged in the diplomatic service and in the judiciary.

69. Regarding the concern expressed by members of the Committee in connection with the provisions of article 4 of the Covenant, he stated that, in view of the conditions prevailing in Venezuela after long periods of dictatorship, it was not surprising that the legislator had assigned to the President the power necessary to protect democracy. He pointed out that nearly 16 years had elapsed since the last decision had been taken to declare a state of emergency and suspend guarantees. In the event that Venezuela was compelled to adopt a similar measure in the future, it would follow the reporting procedure set out in article 4 of the Covenant. He informed the Committee that the competent authorities in his country would carefully analyse any possible conflict that may exist between the Covenant and the Constitution concerning the suspension of rights guaranteed under the Covenant.

70. In reply to questions raised under articles 7, 9, 10 and 14 of the Covenant, the representative stated that there were legal procedures to enable a person whose rights had been infringed, whether by third parties or by illegal acts of the public authorities, to lodge a complaint. The time-limits prescribed for each stage of the trial proceedings were to be found in the Codes of Criminal and Civil Procedure. The right of a person who did not speak Spanish to be supplied with an interpreter if he had to appear before the courts was embodied in the law. He informed the Committee that, in many cases, juvenile courts were presided over by women and that work was currently in progress on the partial amendment of the Code of Criminal Proceedings with a view to streamlining the criminal justice system and speeding up trials.

71. In respect of the questions put to him under article 13 of the Covenant, he stressed that all the persons who had found in Venezuela a land of asylum had become fully integrated into Venezuelan life and their children were fully-fledged Venezuelans. The problem of Colombians who did not have proper papers was, however, an extremely sensitive one which could best be dealt with by his Government in writing.

72. Responding to questions raised under article 18 of the Covenant, he pointed out that Venezuela tolerated all kinds of religion as well as various organizations and colonies of people belonging to sundry sects and having varied practices. The law did not provide for conscientious objection. Under a new law, however, there were several grounds on which a person could be excused from military service.

73. In connection with article 19 of the Covenant, he stated that the law on the press, which was designed to prevent abuses, had still not been promulgated. Various problems had arisen because

there were certain persons in control of newspaper corporations who conducted campaigns that were not conducive to the public good and might even undermine international relations.

74. As regards articles 21 and 22 of the Covenant, he stated that certain municipal by-laws had been enacted concerning the right of assembly but that there was normally complete freedom in the matter. Free trade unions were permitted and there were many organizations active in political life. Other types of organizations were also permitted but were regulated by law.

75. Replying to questions raised under articles 23 and 24 of the Covenant, the representative pointed out that the age at which marriage could be contracted had been determined by reference to the age at which it was possible to procreate or conceive. However, by law, a woman under the age of 18 and a man under the age of 21 had to obtain their parents' permission to marry. He conceded, however, that the whole position required reconsideration. Matters pertaining to the family and the administration of the joint estate of husband and wife were included in a Bill introduced by the Executive in 1980 for the partial reform of the Civil Code. As matters stood, an illegitimate child could inherit only half as much as a legitimate child. A Bill was before Congress to make legitimate and illegitimate children equal in all respects, particularly with regard to succession. A Council for the Child existed in Venezuela to deal with all matters concerning Children and their problems in the family. Minors could institute proceedings to establish recognition of paternity.

76. Responding to questions put to him under article 27 of the Covenant, the representative stated that the Indian population of Venezuela occupied large tracts of sparsely populated land along the border with Columbia and in the federal territories. They had their own languages and the Government was carrying out a study of their communities. Any moves to integrate them into the national life were made solely for their own benefit.

77. The representative reiterated his earlier statement that the Government would be pleased to reply more fully in writing to the questions raised.

CCPR A/40/40

147. The Committee considered the supplementary report of Venezuela (CCPR/C/6/Add.8) at its 556th and 557th meetings, on 30 October 1984 (CCPR/C/SR.556 and 557). 15/

148. The report contained a brief introduction to seven main issues which were then discussed in more detail.

149. The Chairman invited the representative of Venezuela to introduce the supplementary report and to respond to questions which had been asked in connection with the initial report.

150. Turning first to the question of the status of the Covenant under Venezuelan law, the representative of the State party noted that under article 128 of the Constitution of Venezuela treaties required approval under a special law in order to have the force of domestic law. After approval by Congress, promulgation by the President, publication in the official gazette and registration with the United Nations, a treaty was applicable both internally and externally and had a status second only to the Constitution. As such, once a treaty had been incorporated into domestic law Parliament had no power to revoke or modify any treaty provisions unilaterally. He also confirmed that, since the list of rights and guarantees set forth in the Constitution was not exhaustive, Venezuelan legislative organs were completely at liberty to supplement such rights by making use of elements in the Covenant.

151. Since human rights were recognized in the Venezuelan Constitution, citizens could challenge before the Supreme Court of Justice the constitutionality or legality of any act of the State such as laws, decrees or administrative acts that they deemed prejudicial to the exercise of such rights. Under article 206 of the Constitution compensation could be sought by individuals for any loss or damage they might have suffered from such acts.

152. Citizens could also have recourse to the Executive in seeking administrative remedies by exercising their right of petition, which was enshrined in article 67 of the Constitution. Mindful of the need to improve the practical implementation of human rights provisions set forth in the Constitution and the Covenant, an Administrative Procedures Act had been adopted by the Government in June 1981, which provided, inter alia, that public authorities must act upon petitions within 20 days of their submission, failing which the applicant would be free to apply to the next higher instance for an appropriate remedy.

153. In connection with questions that had been raised concerning the right of amparo, referred to in article 49 of the Constitution, the representative pointed out that, although no act had been passed to enforce that right, citizens could none the less exercise it, since article 50 of the Constitution specifically provided that the absence of legislation regulating rights set forth in the Constitution should not restrict the exercise of such rights.

15/ The initial report of Venezuela (CCPR/C/6/Add.3) was considered by the Committee at its 248th, 249th and 252nd meetings on 21 and 23 October 1980 (CCPR/C/SR.248, 249 and 252).

154. Addressing questions raised concerning article 4 of the Covenant, the representative stated that the Venezuelan Constitution and legislation were fully in conformity with and perhaps even more liberal in safeguarding against derogations from obligations during public emergencies than article 4 of the Covenant itself. In that connection he referred in particular to article 241 of the Constitution which prohibited the suspension or restriction of fundamental rights guaranteed under various constitutional or legal provisions, such as the right to life and the rights not to be subjected to torture, slavery or ex post facto criminal legislation. He noted further that the rights and guarantees set forth in the Constitution had not been suspended during the past 21 years and that the President's power to suspend or restrict such rights was carefully circumscribed, with the functioning and prerogatives of the organs of national power - namely, the judiciary and the legislature - being unaffected by any measures the President might be prompted to take in a public emergency.

155. Regarding the question of publicity in Venezuela for human rights, the representative referred to a Presidential decree proclaiming 10 December Human Rights Day and stipulating the widespread distribution of the Universal Declaration of Human Rights as well as the holding of public meetings on the scope and significance of human rights. Most importantly, it had also been decided in 1983 that human rights would henceforth be included in school curricula.

156. Turning to questions relating to article 9 of the Covenant, the representative of the State party stressed that, while the President could, under article 244 of the Constitution, order the arrest or detention of suspects so as to prevent imminent disturbances of public order, such measures were subject to review by Congress within the maximum of 10 days and could be immediately countermanded if Congress considered them unjustified. In any event, such detention was limited to a maximum of 90 days and detainees could resort both to the right to amparo and to habeas corpus. Furthermore, under article 46 of the Constitution, public officials incurred criminal, civil and administrative liability for ordering or executing acts that violated or restricted constitutionally guaranteed rights, and under article 1196 of the Civil Code victims could be awarded compensation for such infringements of rights.

157. Referring to questions concerning the role of the Public Prosecutor's Department, the representative noted that the Department's general responsibilities were defined in article 220 of the Constitution. The Department had constitutional rank, was autonomous and independent of other organs of power, and was entitled to co-operation from other public authorities. The Prosecutor General was appointed by Parliament for a five-year term of service, corresponding to that of the legislature. The Department, which was responsible for initiating "necessary proceedings in order to render effective the civil, criminal, administrative or disciplinary liability incurred by public officials as a result of the performance of their duties", was clearly empowered to take action against an act of the Executive. It also had certain supervisory responsibilities vis-à-vis the police and could investigate cases of arbitrary detention. Under the Code of Criminal Procedure, the Prosecutor General also had well defined obligatory procedural responsibilities, including those relating to the testimony of witnesses, rejection of evidence, supervision of the lawfulness of procedure and the notification of irregularities. The criminal police were obliged to notify the Department immediately after the arrest of a suspect and police interrogations were to be conducted in the presence of a prosecutor.

158. In his final comment concerning article 9 of the Covenant, the representative referred to the

procedures in use in cases of pre-trial detention and to the duration of such detention as set out in the sixth transitional provision of the Constitution. Only those police authorities that were recognized under the law be auxiliaries in the administration of justice, namely, the judicial police, the gendarmerie, the highway police, the frontier police, and officials of the Customs and the Aliens Departments, were authorized to order pre-trial detention. The cases of detainees must be placed before a competent court within a maximum of eight days from the time of arrest and courts were obliged, in turn, to complete consideration of such cases within 96 hours - or at most eight days if they were serious and complex. Pre-trial detention beyond those time-limits was unlawful and the right of habeas corpus could be invoked.

159. As to the questions raised by members concerning article 14 of the Covenant, the representative explained that the independence of the judiciary had been clearly established since 1947, was affirmed explicitly in article 205 of the Constitution and had been reaffirmed in article 1 of the Organic Law of Venezuela. Even if constitutional guarantees were to be suspended, the Supreme Court would have precedence over organs of political power. The appointment of judges was dealt with under article 207 of the Constitution and appropriate implementation legislation - the Judges Act - had been adopted on 30 December 1980. Under article 217 of the Constitution, a Council on the Judiciary had been established to ensure the independence, efficiency, discipline and dignity of the courts. Five of the nine members of that Council were appointed by the Supreme Court, with two each being appointed by Parliament and the Executive, respectively.

160. Regarding the respective jurisdictions of military and civilian courts, he pointed out that civilians were subject to military jurisdiction only in cases covered by the Military Code or when employed in military establishments or during war-time. Under a Supreme Court ruling, where an offence was punishable under both the Penal Code and the Military Code, the former took precedence. In that connection, reference was made to the case of a journalist charged with publishing classified information, which had first been considered by a military court and then been transferred by the Supreme Court to the civil courts.

161. As to questions relating to defence rights in criminal cases, the representative said that no one could be held incommunicado in view of the right to immediate access to a defence, that persons must be informed of the reasons for their detention on the day of arrest, with a hearing taking place within 30 days and that the accused had the right to respond in open court after the reading of the indictment as well as the right to cross-examine witnesses.

162. Before replying to questions that had been raised concerning article 23 in connection with article 3 of the Covenant, the representative commented briefly on the general subject of the enjoyment of civil and political rights by women in Venezuela. He pointed out that women had had the right to vote and to be elected to public office since 1946, that several women had become Cabinet ministers and that they constituted the majority of judges, that women accounted for nearly half the student body and about 40 per cent of the teaching staff at the higher levels of education and that women in fact already enjoyed a wide measure of equality with men. By establishing in 1979 a Ministry of State for the Participation of Women in Development, the Government had given further impetus to efforts to enhance the status of women through practical as well as legal measures.

163. The revised Civil Code, promulgated in 1982, contained provisions that had significantly

enhanced the rights of married women. Articles 137 to 140 of the 1982 Code provided, for example, that both spouses had the same rights and duties in marriage and that decisions about married life, including the place of residence, were to be taken by mutual agreement. Civil Code provisions relating to joint property had also been altered, with both spouses being granted equal rights in administering such property and having an equal voice in its disposal. Another important provision (art. 185) removed the earlier bias against women in the treatment of adultery and made it a ground for divorce without qualification for either partner.

164. With reference to article 24 of the Covenant, the new Code had also made important improvements in the rights of illegitimate children, particularly by providing for their legal recognition by the father or the establishment of paternity (arts. 209 and 210) and by extending the right of inheritance even to those born out of wedlock, provided that the relationship between parents and descendants had been legally ascertained. The minimum age for marriage, about which members of the Committee had also inquired, had been raised from 14 to 16 for males and from 12 to 14 for females.

165. Referring to questions raised concerning freedom of religion in Venezuela, the representative of the State party stressed that everyone in the country had the right to profess his faith and practice his religion in private or in public, provided that it was not contrary to public order and morals. Any legislative limitations on that right could be applied by the National Executive in keeping with the requirements of the Constitution.

166. Regarding article 19 of the Covenant, the representative stated that the principle of freedom of expression was upheld without discrimination in all the mass media. The Government had no intention of restricting press freedom by resorting arbitrarily to constitutional powers that were only to be used in case of danger to State security.

167. Replying to questions concerning self-determination, the representative of the State party referred to the preamble to the Constitution of Venezuela, which specifically called for co-operation with all nations in ensuring the self-determination of peoples and the rights of individuals as well as the repudiation of war and conquest as instruments of international policy. He noted that Venezuela had participated in the International Conference in Solidarity with the Struggle of the People of Namibia in 1978, wholeheartedly supported the independence of the Namibian people, was resolutely opposed to apartheid and had severed all forms of relations with the racist régime of South Africa. His Government also believed that a just solution in the Middle East could only be achieved by respecting the rights of the Palestinian people, including their right to self-determination.

168. In connection with article 3, the representative noted that men and women in Venezuela enjoyed equal opportunities under the law, that his country had ratified the Convention on the Political Rights of Women, that the principle of equal pay for equal work without discrimination had been established in article 81 of the Constitution, and that the Venezuelan law prohibiting activity in commerce by women had been rescinded.

169. Regarding article 22, the representative noted that Venezuela had ratified the ILO conventions on forced labour, freedom of association, trade union rights and the equal treatment of migrant

workers. Migrant workers enjoyed all the rights of other workers, including rights stemming from collective agreements. No discrimination was permitted in the employment of migrant workers on grounds of race, colour, sex etc. Under the Andean Agreement on Migrant Labour, even workers engaged in activities on their own account without the necessary papers were considered to have the right to work in Venezuela.

170. As to the situation of the indigenous population in Venezuela, it was noted that it formed only 0.8 per cent of the total population. The general policy being pursued was to provide instruction in Spanish while ensuring that the indigenous communities preserved their own language and characteristics.

171. Responding to questions regarding health care activities in Venezuela, the representative of the State party noted that the Ministry of Health received the largest proportion of the national budget, with the Ministry of Education coming second. The hospital and health centre network in the country had expanded considerably during the past 10 years and currently met the needs of 80 per cent of the population. State-provided medical services covered hospital care, preventive medicine and medical treatment, which were available to both Venezuelan nationals and foreigners free of charge without discrimination in respect of financial status. Social security institutions also provided community health services. On a related matter, the representative stated that drug addiction was a subject of great concern to the President of Venezuela, who had spoken of it at length in his statement before the General Assembly. Venezuela had enacted new legislation on drug abuse in 1983.

172. As to the question of granting recognition of the right of conscientious objection, the representative responded that, under article 53 of the Venezuelan Constitution, military service was compulsory, irrespective of class.

173. Responding to other questions that had been raised by members of the Committee, the representative stated that since 1958 considerable financial and personnel resources had been devoted to improving literacy and the current illiteracy rate was 15 per cent, that under article 63 of the Constitution private correspondence could not be seized except on judicial order and that the right of peaceful assembly, guaranteed by article 71 of the Constitution, was not limited to citizens of Venezuela but applied to foreigners as well.

174. Finally, the representative of the State party assured the Committee that there were no political detainees in Venezuela although detained persons occasionally claimed to have acted for political motives.

175. The Chairman of the Committee noted with satisfaction that much of the new legislation in the country had been influenced by the discussions in the Committee. He expressed regret that, due to lack of time, a number of questions had remained unanswered, but suggested that Venezuela might answer them in its second periodic report which was due to be submitted to the Committee in 1985.

CCPR A/48/40

271. The Committee considered the second periodic report of Venezuela (CCPR/C/37/Add.14) at its 1197th to 1199th meetings, on 2 and 3 November 1992 (see CCPR/C/SR.1197-1199). (For the composition of the delegation, see annex XI.)

272. The report was introduced by the representative of the State party who emphasized the progress made in the legislative field since the consideration of the initial report of his country. A number of provisions of the Civil Code incompatible with the Covenant, particularly those relating to the equality of husband and wife within marriage, had been amended. The Organic Law on the Protection of Constitutional Rights and Guarantees had been adopted in January 1988. It had introduced important improvements as far as the exercise of the remedy of amparo was concerned. Amendments had also been made to the Organic Labour Law to expand and strengthen the human rights of workers. As a demonstration of the strength of its democratic institutions, Venezuela was planning to hold elections for the posts of governors, mayors and councillors in December 1992. The Government had adopted a policy of informing, training and sensitizing the sectors concerned with the protection of human rights and was determined to punish those found guilty of violations of fundamental rights.

273. Referring to the factors and difficulties which had affected the implementation of the Covenant in Venezuela during the reporting period, the representative explained that, in February 1989, as a result of a series of economic measures taken by the Government, there had been a social explosion in the country which had had serious effects in the human rights field. There had been unprecedented outbursts of public violence or arbitrary behavior on the part of law enforcement officials. On 4 February 1992, an attempted military coup had endangered the stability of the country's democratic system and made it necessary to suspend guarantees but they were restored on 23 April 1992.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes and protection of the family and children

274. With regard to those issues, the Committee wished to receive further information on the status of the Covenant within the Venezuelan legal system; on the possibility for individuals to invoke the provisions of the Covenant directly before the courts; on the impact of the entry into force of the Organic Law on Protection of Constitutional Rights and Guarantees on the implementation of human rights contained in the Covenant; on the conformity with article 4 of the Covenant of the reasons for declaring a state of emergency, referred to in paragraphs 52 to 56 of the report; on remedies available to individuals during the period of emergency; on measures taken to investigate cases of disappearances, extrajudicial executions and other excesses committed during the state of emergency, to punish those found guilty, and to compensate the victims; on measures taken to prevent the recurrence of such acts; on the progress achieved since the adoption of amendments to the Civil Code and the Labour Code and of other reforms with a view to eliminating inequalities between men and women; on the law and practice relating to the employment of minors; and on the light work which minors under the age of 14 might be authorized to perform by the administrative authorities.

275. In addition, members wished to know whether the remedies of amparo and habeas corpus continued to be applicable during a state of emergency and whether representatives of the Public Prosecutor's Department remained available to detainees in such circumstances; what measures had been taken to disseminate information on the rights recognized in the Covenant and on the Optional Protocol; whether human rights were taught to police officers and members of the armed forces; how contradictions between domestic legislation and the Covenant, if any, were resolved; and whether there was any provision providing for prohibition of discrimination based on color, language, national origin or political opinion, which had been omitted in article 61 of the Constitution.

276. In his reply, the representative of the State party explained that the Covenant took priority over laws adopted under the Constitution and that individuals could invoke its provisions before the courts. A constitutional reform bill which intended to place the Covenant above the Organic and other laws was currently under consideration by the Congress. Although officials of the Public Prosecutor's Department often referred to the rights set forth in international human rights instruments, the courts were not accustomed to citing such instruments because they tended to assume that all human rights were adequately covered in the Constitution. Efforts had been made to disseminate information on the rights recognized in the Covenant through lectures and seminars given to lawyers and judges as well as security and police officers.

277. The declaration of a state of emergency in February 1989 had been in conformity with article 4 of the Covenant. The rights set forth in articles 6, 7, 8, 11, 15, 16 and 18 of the Covenant had not been suspended during that period and people had continued to exercise the right of amparo. The Commander of the National Guard had been urged to be vigilant to prevent excesses and human rights abuses and public officials had been instructed to keep within the limits set by the Constitution. The Public Prosecutor's Department had carried out many inspections at the headquarters of the military police and investigatory services. All complaints about disappearances, arbitrary detention and other human rights violations had been processed and handed over to the competent courts for further investigation. The Attorney-General of the Republic had met with representatives of non-governmental organizations and, subsequently, weekly meetings among the parties had been convened to give effective follow-up to all complaints of human rights violations. Eighteen complaints of disappearances had been registered, but only two had been confirmed through investigation. Although every effort had been made to carry out thorough inquiries, in many cases there was not enough proof to permit responsibility to be attributed to a particular individual, which was a prerequisite for prosecution. However, when well-founded indications of responsibility on the part of public officials had been uncovered, investigations had been requested and some cases had subsequently been brought to court.

278. During the suspension of rights and guarantees following the events of 4 February 1992, the Supreme Court had granted a request for amparo without undertaking a prior investigation of its admissibility. It had thus established a precedent for handling an application for amparo during a state of emergency and the obligation of the courts to decide on the substance of the matter had, subsequently, been made part of the jurisprudence of Venezuela.

279. Responding to other questions, the representative said that the adoption of amendments to the Civil Code and the Labour Code had already led to considerable progress and had improved the situation of married women. The Public Prosecutor's Office enjoyed widespread support in its

efforts to promote the rights of women in accordance with the Convention on the Elimination of All Forms of Discrimination against Women. There were five women members of the Government, 5 senators and 19 deputies. However, while there were many women in official positions, much remained to be done to achieve equality. There were no problems of discrimination based on race or religion or national origin in Venezuela.

280. Venezuela had ratified the Minimum Wage Convention, 1973 (No. 138) of the International Labour Organization and other international instruments specifically designed to protect children, including the Convention on the Rights of the Child. The National Institute for Minors was responsible for the protection of children and the Organic Labour Law, which entered into force on 1 May 1991, contained a chapter devoted to child labour whose purpose was to prohibit work by children under the age of 14, except for light work by those over the age of 12.

Right to life, treatment of prisoners and other detainees, liberty and security of person and right to a fair trial

281. With reference to those issues, the Committee wished to know what measures had been taken to prevent and punish the trafficking in organs; whether the Police Organization Bill mentioned in paragraph 125 of the report had been adopted; what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; what the status, functions and activities were of the new security units referred to in paragraph 69 of the report; what concrete measures had been taken by the authorities to ensure that all courts give due attention to cases of ill-treatment at the hands of the police and security forces and to ensure that such cases were investigated; what legal provisions guaranteed that no one was subjected to medical and scientific experimentation; what specific measures were envisaged to address the problems affecting the supervision of places of detention and the procedures for receiving and investigating complaints; whether the provisions of the Vagrancy Act relating to the custody of vagrants and malefactors in re-education centres, farming-settlements or work-camps were compatible with articles 8 and 14 of the Covenant; whether that Act had as yet been repealed; what concrete measures had been taken by the Public Prosecutor's Department to ensure strict adherence by the police and security forces to rules relating to the liberty and security of the person as enshrined in article 9 of the Covenant, and whether such initiatives had led to any progress to date; and whether the Legal Defense Bill referred to in paragraph 251 of the report had been adopted by Congress.

282. In addition, clarification was requested concerning measures taken by the authorities with regard to the numerous allegations of impunity enjoyed by members of the armed forces responsible for torture, maltreatment and disappearance; the steps undertaken to provide victims with effective remedies against such acts; of the position of the Government regarding the discovery of more than 60 bodies in common graves and, in particular, as to whether it intended to conduct an appropriate investigation into the atrocities committed; the alleged transfer of detainees to inaccessible rehabilitation centres, where they were deprived of their right to prepare their defense with their lawyers; and the lack of resources and expertise to determine whether an individual had been subjected to torture that left no external traces. Members also asked whether military courts could handle cases involving civilian victims; how soon after arrest a person could contact a lawyer and inform his family; and whether environmental questions were taken into account in connection with

the right to life.

283. In his reply, the representative of the State party explained that under article 46 of the Venezuelan Constitution, any act by the public authorities which infringed or restricted the rights guaranteed by the Constitution was null and void, and the officials who had ordered or carried it out bore criminal, civil or administrative liability. Article 1196 of the Civil Code provided that a judge could grant compensation to the victim in the event of bodily injury, damage to the honor and reputation of the victim or his family or violation of his rights. The Human Rights Division of the Public Prosecutor's Department had, during 1991, deemed it necessary in 2,500 cases to investigate the conduct of certain officials belonging to the police or prison services; 800 of those cases had been found to justify the formulation of charges against government officials. Referring to instances of impunity following the events of February 1989, the representative said that the courts had been urged to order corpses to be exhumed with a view to acquiring evidence in response to the concerns expressed by the relatives of victims. Due to difficulties in assigning individual responsibility, insufficient information on the location of the common graves, and other technical problems, no results had been achieved as yet.

284. The Police Organization Bill mentioned in the report had not yet been adopted. The use of firearms by the police and security forces was governed by the Penal Code and article 24 of the Law on Weapons and Explosives. The arbitrary or abusive use of force or firearms by law enforcement officials was considered to be an offence.

285. According to the Supreme Court, military jurisdiction was to be viewed as the exception and cases should generally be handled in the civilian courts. However, after the events of February 1989, the police investigatory bodies had collected evidence on civilian deaths and had reported thereon to the military courts. The Public Prosecutor's Department had informed them that such conduct was inappropriate and had reminded them that they were auxiliary bodies of the regular system for criminal justice and not of the military courts.

286. The Public Prosecutor's Department was responsible for ensuring against arbitrary or incommunicado detention and that the accused could communicate with a lawyer. Surprise visits to police pre-trial detention centres had been made at night by representatives of the Public Prosecutor's Department in the Caracas metropolitan area. A comparison of the results of that operation with a similar one carried out in 1990 had revealed that the number of arbitrary detentions had declined. In 1991, representatives of the Public Prosecutor's Department had inspected a total of 10,428 pre-trial detention establishments of various kinds. The Public Prosecutor's Department was entitled to visit places of detention in military units but it was rarely possible to organize such visits on a surprise basis and, under a state of emergency, access to military detention centres became even harder. The length of pre-trial detention was much too long and was likely to open the door to abuses and arbitrary action. Steps were being taken to reform the entire judicial system and to introduce a new court consisting of justices of the peace to relieve the judges of courts of first instance of their enormous workload. The Judicature Council had also appointed itinerant judges to try cases in courts where magistrates were overwhelmed with work.

287. Trafficking in organs was covered by the Organ Transplants and Anatomical Material of Human Origin Act. Under that Act, human organs could be removed and used for therapeutic

purposes only at institutes and hospital centres authorized to do so. Persons who, for profit, acted as intermediaries in obtaining organs were punishable by four to eight years' imprisonment. Since traffic in organs was obviously connected with the sale of children, Venezuela had insisted on the inclusion, in the Convention on the Rights of the Child, of article 35 which obliged States parties to take all appropriate measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form. Under the Medical Deontological Code, the consent of a person had to be obtained to perform medical experimentation.

288. The Vagrancy Act of 1956 had been promulgated before the adoption of the democratic Constitution in 1961 and violated the rights of individuals, particularly the right to legal counsel. The authorities agreed that the Act should be abolished and a new system for dealing with vagrants put into place. A draft law designed to achieve that end was being discussed in Parliament. A special office within the Public Prosecutor's Department sought to minimize the arbitrary application of the law and to have administrative acts revoked where they covered cases involving irregularities.

289. Responding to other questions, the representative of the State party said the Legal Defense Bill referred to in the report had not yet been adopted by Congress. If an accused did not have the means to pay a lawyer of his choice, he was provided with legal defense services from the moment he was charged. The Asociación nacional de clínica jurídica also provided legal defense services free of charge, mainly in low-income areas. Three public prosecutors were qualified to act in environmental matters and an Organic Law on the Environment had been adopted.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association and right to participate in the conduct of public affairs

290. In connection with those issues, the Committee wished to receive further information on the penalty of banishment, as provided for by articles 53 to 56 of the Criminal Code and the Act on the Commutation of Sentences by Pardon or Banishment from the National Territory of 15 December 1964, and on the compatibility of those provisions with article 12 of the Covenant; on the content of the Protection of Privacy Bill, referred to in paragraph 309 of the report; and on whether the Demonstrations, Marches and Other Peaceful Protest Activities Act and the Crowd Control Act had been adopted and, if so, whether they have been successful in fighting excesses committed by security forces against peaceful gatherings.

291. Members of the Committee also inquired about the grounds for deprivation of a person's right to vote; whether a conscientious objector could bring an action of amparo in order to protect his freedom of thought and conscience; and about the implementation of article 20 of the Covenant.

292. In his reply, the representative of the State party said that the penalty of banishment was ordered by the courts only when requested by the citizen himself and involved the commutation of a sentence already handed down by the competent judicial authorities. It was considered to be a benefit in that it offered the citizen freedom of movement as long as he remained outside the national territory and was, therefore, fully compatible with the Covenant. The purpose of the Protection of Privacy Bill was to protect the privacy, confidentiality, inviolability and secrecy of communications between individuals. It provided for penalties in connection with the recording or hampering of such communications. The Bill had, however, not yet been endorsed by the Congress as a whole. The

Demonstrations, Marches and Other Peaceful Protest Activities Act and the Crowd Control Act were still being considered in Congress. Steps had, however, already been taken to avert excesses by the security forces during peaceful demonstrations, such as the creation of special units among the ranks of the demonstrators themselves to prevent violence.

293. In response to other questions, the representative of the State party said that there was no history of conscientious objection in Venezuela. The Government was, however, studying the possibility of changing the law to provide an alternative to military service. There were numerous categories of persons who were exempt from military service, such as students, persons with dependant parents and Jehovah's Witnesses. Only prisoners incarcerated under the category of presidio (rigorous imprisonment) lost their right to vote.

Rights of persons belonging to minorities

294. With regard to that issue, the Committee wished to know what factors and difficulties affected the implementation of article 27 of the Covenant, particularly with regard to the treatment of indigenous peoples as individuals and groups; whether the Draft Act on the Organization of Indigenous Communities, Peoples and Cultures had been adopted by Congress; whether the delegation to Catholic missions of the task of "subduing and civilizing indigenous persons" was compatible with the rights of Indian communities as envisaged in the Draft Act as well as with article 27 of the Covenant; and whether article 77 of the Constitution had been reformulated to include specific recognition of the land, traditions, religions and languages of Indian communities in Venezuela, pursuant to the advice given by the Bicameral Commission referred to in paragraph 470 of the report.

295. In addition, members of the Committee wished to know how the State ensured that the indigenous populations were able to exercise their political rights and seek representation; whether any indigenous person had ever held one of the high public offices mentioned in paragraph 450 of the report; and, in general, how equitable access of members of indigenous groups to public service was ensured.

296. In his reply, the representative of the State party explained that a special office had been created at the national level to deal with indigenous matters. The Draft Act on the Organization of Indigenous Communities, Peoples and Cultures had not yet been adopted. The word "subduing" (reducir) used in the report referred to a system by which the Indians were exempt from complying with some of the elements of the administrative and judicial system in Venezuela. The purpose of those exceptions was to enable the Indians to live in conformity with the aspects of their culture that did not coincide with the cultural patterns of other inhabitants of Venezuela. In the Missions Act of 1915, the State of Venezuela had delegated to the Catholic Church the task of "civilizing" the Indians and persuading them to live in established settlements. A bill was, however, under consideration in Congress designed to amend article 77 of the Constitution with regard to the incorporation of indigenous populations into the life of the nation. It purported to modify the integrationist philosophy underlying that article by providing for a pluralist and multicultural vision based on respect for their languages and beliefs. A biosphere zone in the Amazons, covering an area of 3.9 million hectares, had been established to ensure the physical and cultural survival of the indigenous people.

Concluding observations by individual members

297. Members of the Committee thanked the representative of the State party for his cooperation in presenting the report and for responding to the various questions. The report contained detailed information on laws and regulations, but fuller information could have been provided on the practices relating to the implementation of the Covenant. They noted with appreciation that the report highlighted factors and difficulties which had impeded the implementation of the Covenant in Venezuela during the period under review. Members welcomed the fact that democracy was thriving in Venezuela and that a great many laws and regulations dealing with human rights had been adopted or submitted to Parliament in recent years.

298. At the same time, it was noted that some of the Committee's concerns had not been fully allayed. Members expressed concern, in particular, at the serious human rights violations such as disappearances, torture, extrajudicial executions and arbitrary arrests that had been committed during the states of emergency in February 1989 and early 1992. They were further disturbed by the failure to take sufficient steps to punish those found guilty of such violations. Additionally, concern was expressed in respect of the excessively long periods of pre-trial detention; the application of article 35 of the Aliens Act; the conditions of detention in prisons; the trial of civilians by military courts; and over the Government's desire to integrate indigenous groups, which might conflict with their right under article 27 of the Covenant to enjoy their own culture.

299. The representative of the State party assured members of the Committee that their comments would be transmitted to his Government, particularly in so far as the need to carry out further investigations into the events of February 1989 was concerned.

300. In concluding the consideration of the second periodic report of Venezuela, the Chairman expressed his sincere appreciation to the delegation for its frank and cordial dialogue with the Committee and for the excellent report, which had followed the Committee's guidelines. He expressed the hope that the competent authorities would take action that would enable further progress to be reported in the third periodic report.

Comments of the Committee

301. At its 1203rd meeting (forty-sixth session), held on 5 November 1992, the Committee adopted the following comments.

Introduction

302. The Committee commends the State party on its report, drawn up in accordance with the Committee's guidelines (CCPR/C/20/Rev.1). The report contains detailed information on the law, although fuller information could have been provided on practice relating to the implementation of the Covenant. Furthermore, it highlights factors and difficulties which impeded the implementation of the Covenant in Venezuela during the period covered by the report. The Committee, does, however, regret that the report was submitted more than seven years behind schedule.

303. The Committee also thanks the State party for the core document (HRI/CORE/1/Add.3), drawn

up in accordance with the consolidated guidelines for the initial part of States party reports to be submitted under the various international human rights instruments (HRI/1991/1).

304. The Committee pays tribute to the competence of the delegation from the State party, which endeavoured to reply frankly and fully to the many questions raised by Committee members.

Positive aspects

305. The Committee welcomes the fact that democracy is thriving in Venezuela and notes with satisfaction the adoption by or submission to Parliament in recent years of a great many laws and regulations dealing with human rights. These include important texts dealing with, for example, the protection of indigenous peoples and equality between men and women. The Committee takes note of provisions granting international human rights instruments precedence over Venezuelan domestic law.

Factors and difficulties impeding the implementation of the Covenant

306. The Committee notes that a number of states of emergency, resulting from riots caused by economic reforms, have been declared in the past in Venezuela, the most recent extending from 4 February to 30 April 1992. Emergency measures notified to the Secretary-General have suspended a number of the safeguards called for in the Covenant, and impeded the full implementation of the Covenant during those periods. The Committee also notes that outdated legislation which is still in force despite being severely criticized in Venezuela is one of the factors impeding the full and complete implementation of the Covenant.

Principal subjects of concern

307. The Committee expresses concern at the serious human rights violations, such as enforced and involuntary disappearances, torture and extrajudicial executions, that were committed during the attempted *coup d'état* in 1989 and early 1992. It is disturbed by the failure to take sufficient steps to punish those guilty of such violations, and concerned that members of the police force and the security services and military personnel are likely to go unpunished as a result. It notes that judicial investigations into such cases have clearly been too slow, especially where members of the armed forces are concerned.

308. The Committee is also concerned that custody can last as long as 16 days and emphasizes that it is precisely during such periods that accused persons are most vulnerable, in particular to acts of torture or ill-treatment. The possibility that civilians may be tried by military courts is likewise a matter of concern to the Committee.

309. The Committee also expresses its concern over the application of article 35 of the Aliens Act, which does not provide for any possibility of appeal, and over conditions of detention in places of imprisonment.

Suggestions and recommendations

310. The Committee recommends the State party to take whatever steps are necessary to combat all human rights violations, in particular those that may have been committed during the various states of emergency. The State party should see to it that all members of the armed forces of the police who have committed violations of the rights guaranteed by the Covenant are tried and punished by civilian courts. The duration of custody should be reviewed, and an accused person should be allowed to undergo a medical examination upon request and to have access to his lawyer from the time of arrest. Steps should also be taken to make the remedy of amparo effective, and to improve conditions in places of detention substantially. The list of rights that cannot be derogated from, even during states of emergency, should be extended to include all the rights covered by article 4, paragraph 2, of the Covenant. Further measures should be taken pursuant to article 27 of the Covenant, in order to guarantee indigenous peoples their own cultural life and the use of their own language. Lastly, a special effort should be made to support the activities of the Human Rights Office. The Committee also recommends that training courses should be organized for members of the police, the armed forces and the security forces as well as for other law enforcement officials, so as to better acquaint them with basic human rights principles and norms.

CCPR A/56/40

77. Venezuela

(1) The Committee considered the third periodic report of Venezuela (CCPR/C/VEN/98/3 and Addendum) at its 1899th and 1900th meetings, held on 19 and 20 March 2001, and adopted the following concluding observations at its 1918th meeting, held on 2 April 2001.

Introduction

(2) The Committee welcomes the State party's third periodic report and the opportunity to be able to continue its review of the human rights situation in Venezuela with a delegation that included officials from various Government bodies. However, it regrets the delay in submission of the report and the lack of information on the de facto human rights situation in both the report and the addendum, which greatly hindered it in determining whether human rights are fully and effectively exercised and enjoyed in Venezuela.

Positive aspects

(3) The Committee expresses its satisfaction at the fact that the Constitution gives international human rights instruments a status equal to that of the Constitution itself.

(4) The Committee also notes with satisfaction the numerous provisions of the Constitution which are designed to recognize and guarantee various human rights, including the establishment of an Office of the Ombudsman.

Subjects of concern and recommendations

(5) The Committee is concerned to discover that article 19 of the Constitution guarantees citizens their rights "in accordance with the principle of progressiveness", a principle that has not been satisfactorily explained.

(6) The Committee is gravely concerned at the reports of disappearances, despite the fact that such acts have been defined as crimes under the new legislation. It is also concerned at the lack of action by the State to deal with disappearances that occurred in 1989. The delegation's statement that investigations of the disappearances are being pursued is unsatisfactory.

Taking into account the provisions of articles 6, 7 and 9 of the Covenant, the State party should give special priority to rapid and effective investigations designed to determine the whereabouts of the disappeared persons and those responsible for disappearances. The State party should also take all necessary measures to prevent disappearances, including adoption of the legislation described in article 45 of the Constitution.

(7) The Committee is also gravely concerned at the many reports of extrajudicial executions and the failure of the State party to react to them.

The State party should conduct investigations to identify those responsible for extrajudicial executions and bring them to justice. It should also take the necessary measures to prevent the occurrence of such violations of article 6 of the Covenant.

(8) The Committee is deeply concerned at the reports of torture and excessive use of force by the police and other security forces in breach of article 7 of the Covenant; the State party's apparent delay in responding to such occurrences; and the absence of independent mechanisms to investigate the reports in question. The right of recourse to the courts is not a substitute for such mechanisms.

The State party should establish an independent body empowered to receive and investigate all reports of excessive use of force and other abuses of authority by the police and other security forces, to be followed, where appropriate, by prosecution of those who appear to be responsible for them. The Committee also urges the State party to pass laws giving effect to the prohibition of torture and cruel, inhuman and degrading treatment laid down in article 7 of the Covenant and article 46 of the Constitution, and strengthen the human rights education programmes for all State officials whose functions are related to the treatment of detainees.

(9) The Committee regrets the lack of detailed information on detention by the police. It is also concerned at the lack of clarity on the status and powers of the Sectoral Department of Intelligence and Presentation Services (DISIP), especially given the large number of complaints about the treatment of detainees.

To enable the Committee to evaluate its compliance with articles 9, 10 and 14 of the Covenant, the State party needs to tell it whether detained persons are brought before a judge or an official with judicial authority without delay; whether a lawyer may be present during their interrogation by the police; whether they are automatically given medical check-ups on entering and after being released from police custody; what regulations govern the holding of detained persons incommunicado; whether appropriate legislation has been enacted to implement all the provisions of the Constitution with respect to detention; and the status and powers of DISIP.

(10) The Committee regrets the lack of information on the average time spent in detention awaiting judgement. The length of such detention may raise issues of compatibility with article 9, paragraph 3, and article 14 of the Covenant.

The State party should speed up trials and abide strictly by article 9, paragraph 3, of the Covenant in order to bring the situation into line with the requirements of the Covenant.

(11) The Committee is concerned at conditions in Venezuelan prisons and places of detention, since the delegation itself acknowledged that most human rights violations in Venezuela occur in such places. The overcrowding and failure to segregate detainees awaiting judgement from convicts are incompatible with the Covenant.

The recently established institutional mechanisms (supervising prosecutors and prison-supervising judges) for supervising conditions in prisons and investigating the complaints of prisoners should be strengthened with a view to the implementation of articles 7 and 10 of the Covenant.

(12) While the Committee in principle welcomes the reform of the Code of Criminal Procedure, it is concerned at the lack of information on the provisions of the Code offering guarantees of a fair trial as called for by article 14 of the Covenant.

The State party should provide such information as soon as possible.

(13) The Committee is particularly concerned at the situation of the judiciary in Venezuela, which is still undergoing reform. An extended reform process threatens the independence of the judiciary, given the possibility that judges could be removed as a result of the performance of their duties, thus infringing article 2, paragraph 3, and article 14 of the Covenant. Another cause for concern is the lack of information on the effects of the reform process to date and the absence of a date for that process to come to an end.

The reform of the judiciary must not continue. The State party should furnish information on the number of judges removed during the process, the reasons for their removal, and the procedure followed.

(14) The Committee's concern about the independence of the judiciary extends to the information, delivered by the delegation, that article 275 of the Constitution empowers the National Ethics Council (Consejo Moral Republicano) comprising the Ombudsman, the Attorney-General and the Comptroller-General to issue warnings to judges, even those of the Supreme Court, and impose sanctions if those warnings are not heeded.

The State party should carry out a careful review of the enabling bill for article 275 of the Constitution in order to safeguard the independence of the judiciary in accordance with article 2, paragraph 3, and article 14 of the Covenant.

(15) The Committee is greatly concerned at the treatment of persons seeking asylum or refuge in Venezuela, especially those entering the country from Colombia, chiefly because of the lack of national legislation establishing selection criteria for asylum-seekers even though there are bilateral arrangements between Colombia and Venezuela on such matters. The Committee is also concerned about the possible breach of the principle of non-refoulement.

The State party should ensure compliance with articles 7 and 13 of the Covenant and with the norms of general international law, adhere to or implement the relevant international conventions, provide access to the relevant specialized agencies in the areas concerned, and seek the assistance, if necessary, of the international bodies dealing with the matter.

(16) The Committee is deeply concerned by the information on trafficking in women to Venezuela, especially from neighbouring countries, and by the lack of information from the delegation on the extent of the problem and action to combat it.

Preventive measures should be taken to eliminate the trafficking in women in order to comply with the provisions of articles 7 and 8 of the Covenant and set up rehabilitation programmes for the victims. The laws and policies of the State party should provide protection and support for the victims.

(17) The Committee is concerned about the level of violence against women, including the many reported cases of kidnapping and murder that have not resulted in arrests or prosecution of those responsible. It is also concerned at the many allegations of rape or torture of women in custody by members of the security forces, offences such women do not dare to report. All the foregoing gives rise to serious concerns in the light of articles 6 and 7 of the Covenant.

The State party should take effective measures to guarantee women's safety, ensure that no pressure is put on them to dissuade them from reporting such violations, that all allegations of abuses are investigated and that those committing such acts are brought to justice.

(18) The minimum marriageable age, 14 for girls and 16 for boys, and the fact that such age may be lowered without any limits for girls in case of pregnancy or childbirth, raises problems with respect to the fulfilment by the State party of its obligation under article 24, paragraph 1, to protect minors. Marriage at such an early age does not appear to be compatible with article 23 of the Covenant, which requires the free and full consent of the intending spouses. The Committee is also concerned at the early age of sexual consent (12) for girls.

The State party should amend the relevant law to bring it into line with articles 23, 24 and 3 of the Covenant.

(19) The criminalization of all non-therapeutic abortion poses serious problems, particularly in the light of unchallenged reports that many women are undergoing life-threatening illegal abortions. The legal duty imposed on health workers to report cases where women have undergone abortions may deter women from seeking medical treatment, thereby endangering their lives.

The State party must adopt the necessary measures to guarantee the right to life (art. 6) for pregnant women who decide to terminate their pregnancies, including amending the law to create exceptions to the general prohibition of all non-therapeutic abortion. The State party should protect the confidential nature of medical information.

(20) The Committee is concerned about the continued existence of a legal provision exempting a rapist from any penalty if he marries the victim.

The State party should immediately repeal this legislation, which is incompatible with articles 3, 7, 23, 26, 2 (3) and 24 of the Covenant, particularly taking into account the early age at which girls can enter into marriage.

(21) The Committee is concerned about the insufficient participation of women in political life, the judiciary, and other sectors.

In order to comply with articles 3 and 25, the State party should take the appropriate measures to improve participation by women, through affirmative action programmes if necessary.

(22) With a view to complying with its obligations arising from articles 2, 3 and 26 of the Covenant, the Committee urges the State party to amend all laws that still discriminate against women, including those relating to adultery and the ban on marriage for 10 months following the dissolution

of a previous marriage.

(23) The Committee is concerned at the lack of a wide-ranging law prohibiting discrimination in private-sector areas such as employment and housing. Pursuant to article 2, paragraph 3, and article 26 of the Covenant, the State party has a duty to protect persons against such discrimination.

The State party should promulgate a law prohibiting all discrimination and providing effective recourse for all persons against violations of their right to non-discrimination.

(24) The Committee deplores the continually worsening situation of street children. Those children are at high risk of sexual violence and are vulnerable to sexual trafficking.

The State party should take effective measures for the protection and rehabilitation of street children, pursuant to article 24 of the Covenant, including measures to end sexual exploitation and child pornography.

(25) The Committee notes the privileged status of the Roman Catholic Church and is concerned about the possible adverse effects of this on other religions.

The State party should guarantee that no religious community in Venezuela will suffer discrimination.

(26) The Committee notes that there is no provision in Venezuelan law for conscientious objection to military service, which is legitimate pursuant to article 18 of the Covenant.

The State party should see to it that individuals required to perform military service can plead conscientious objection and perform alternative service without discrimination.

(27) The Committee is very concerned about interference by the authorities in trade-union activities including the free election of union leaders.

The State party should, pursuant to article 22 of the Covenant, guarantee that unions are free to conduct their business and choose their business without official interference.

(28) The Committee commends the State party for its constitutional provisions relating to indigenous populations, particularly articles 120 and 123 requiring indigenous communities to be notified and consulted beforehand if the State wished to exploit natural resources in areas they inhabited and enshrining the right of indigenous peoples to pursue and promote their own economic practices. It regrets, however, the lack of any information regarding the practical implementation of those constitutional provisions.

The State party should provide information to the Committee on the implementation of those constitutional provisions with a view to complying with article 27.

(29) The State party should widely publicize the text of its third periodic report, the addendum and these concluding observations.

(30) The State party should, pursuant to article 70, paragraph 5, of the Committee's rules of procedure, furnish within one year information on any action it takes in the light of the Committee's recommendations on enforced or involuntary disappearances (paras. (6) and (7) above), torture and the excessive use of force by the police and other security forces (para. (8)), police detention and detention while awaiting judgement (paras. (9) and (10)), prisons (para. (11)) and the status of the judiciary and due process (paras. (12)-(14)). The Committee requests the incorporation of information on the remainder of its recommendations in the fourth periodic report, due for submission by 1 April 2005.