

VENEZUELA

Follow-up - State Reporting

i) Action by Treaty Bodies, Including Reports on Missions

CCPR A/58/40 vol. I (2003)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

Overview of the application of the follow-up procedure

265. At its seventy-first session, in March 2001, the Committee began its routine practice of identifying, at the conclusion of each set of concluding observations, a limited number of priority concerns that had arisen in the course of the dialogue with the State party. The Committee has identified such priority concerns in all but one of the reports of States parties examined since the seventy-first session. Accordingly, it requested that State party to provide, within one year, the information sought. At the same time, the Committee provisionally fixed the date for the submission of the next periodic report.

266. As the Committee's mechanism for monitoring follow-up to concluding observations was only set up in July 2002, this chapter describes the results of this procedure from its initiation at the seventy-first session in March 2001 to the close of the seventy-eighth session in August 2003. These are described session by session, but in future reports this overview will limit itself to an annual assessment of the procedure.

<u>State party</u>	<u>Date information due</u>	<u>Date reply received</u>	<u>Further action</u>
<i>Seventy-first session (March 2001)</i>			
...			
Venezuela	6 April 2002	19 September 2002 (partial reply); 7 May 2003 (further partial reply)	Decision on further action to be taken by the Committee at its seventy-ninth session.

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260. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Of the 27 States parties (detailed below) that have been before the Committee under the follow-up procedure over the last year, only one (Republic of Moldova) has failed to provide information at the latest after dispatch of a reminder. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

261. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

<u>State party</u>	<u>Date information due</u>	<u>Date reply received</u>	<u>Further action</u>
...			
<i>Seventy-first session (March 2001) (cont'd)</i>			
Venezuela	6 April 2002	19 September 2002 (partial reply)	A complete response was requested to supplement the partial reply.
		7 May 2003 (further partial reply)	A complete response was requested to supplement the further partial reply.

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233. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the comprehensive table presented below. Since 18 June 2004, 15 States parties (Egypt, Germany, Kenya, Latvia, Lithuania, Morocco, the Netherlands, the Philippines, Portugal, the Russian Federation, Serbia and Montenegro, Slovakia, Sweden, Togo and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only six States parties (Colombia, Israel, Mali, Republic of Moldova, Sri Lanka and Suriname) have failed to supply follow-up information that had fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

224. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

<u>State Party</u>	<u>Date Information Due</u>	<u>Date Reply Received</u>	<u>Further Action</u>
<i>Seventy-first session (March 2001)</i>			
Venezuela	6 April 2002	19 September 2002 (partial reply)	A complete response was requested to supplement the partial reply.
		7 May 2003 (further partial reply)	A complete response was requested to supplement the further partial reply.
		16 April 2004 (further partial reply)	
		24 June 2004	

(further partial
reply)

20 July 2004
(further partial
reply)

A complete response was
requested to supplement the
further partial reply.

Consultations have been
scheduled for the eighty-fifth
session.

CCPR, CCPR/C/SR.2367 (2006)

Human Rights Committee

Eighty-sixth session

Summary record of the 2367th meeting

Held at Headquarters, New York, on Friday, 31 March 2006, at 10 a.m.

Chairperson: Ms. Chanet

Follow-up on concluding observations on State reports

Progress report of the Special Rapporteur for Follow-up on Concluding Observations

1. Mr. Rivas Posada (Special Rapporteur for Follow-up on Concluding Observations) said that a few amendments still needed to be made in the text of the progress report. The name of the Republic of Moldova should be corrected in the French and Spanish versions. He suggested that a standard formula should be used where no further action was recommended. The list contained in the report served to remind Committee members and inform the public that the Committee had requested further information from certain States parties and had received either no response or only a partially satisfactory one.
2. Mr. Lallah pointed out that the date of the eighty-sixth session at the end of the report should be March 2006.
3. The Chairperson requested Mr. Rivas Posada to provide more detail on cases described in the progress report that merited particular attention.
4. Mr. Rivas Posada (Special Rapporteur for Follow-up on Concluding Observations) said that no response had been received for several years from the Bolivarian Republic of Venezuela, for instance, to requests from the Committee for more information on certain aspects of its submission. The Committee had requested him to contact the delegation, which he had done in Geneva in October 2005. The delegation had indicated that it was aware of the problem but had not committed itself to sending more information. Since many of the items in the follow-up report dealt with matters that went back several years, he wished to add more detail on the specific observation in regard to which more information or action had been requested.
5. Sir Nigel Rodley said that the report referenced the concluding observations for the States parties in question, which required Committee members to find those concluding observations, some of which were several years old. It would be more helpful to have the recommendations in the follow-up report refer to the subject of the observation in question. It was also difficult to see from the report whether and how the State party was complying with the observations. It would be helpful if the secretariat would assist the Rapporteur in making the report more descriptive and informative on the nature of the State party's response.
6. Mr. Solari Yrigoyen asked when the overdue Venezuelan report had been due.

7. Mr. Lallah said that the follow-up report would be included as an annex to the Committee's report and served to put pressure on States parties. It needed to be as clear and informative as possible to readers not directly familiar with the Committee's work.

8. Mr. Rivas Posada (Special Rapporteur for Follow-up on Concluding Observations) said he agreed that follow-up reports had tended to be too brief and telegraphic and should perhaps include a summary for each problem referred to. As his report was only a progress report, there was still time to improve it.

9. Mr. Gillibert (Secretary of the Committee), responding to Mr. Solari Yrigoyen's question, said that the Venezuelan fourth report had been due in April 2005.

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CCPR, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE

Eighty-seventh session

SUMMARY RECORD OF THE 2392nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 26 July 2006, at 11 a.m.

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FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS
UNDER THE OPTIONAL PROTOCOL (agenda item 7)

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Report of the Special Rapporteur for follow-up on concluding observations
(CCPR/C/87/CRP.1/Add.7)

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[Mr. RIVAS POSADA, speaking as Special Rapporteur for follow-up on concluding observations]

44. Introducing the current report (CCPR/C/87/CRP.1/Add.7), which was based on the old format, he said that Venezuela had been requested, at the Committee's seventy-first session in March 2001, to provide information on a number of paragraphs of its concluding observations. Some partial replies had been received in the meantime but the State party had not yet responded to the Committee's request in October 2004 for supplementary information on paragraphs 12 to 14. He had discussed the matter during the current session with the Permanent Representative, who had assured him that a reply was being prepared, but none had yet been received. It might well be necessary to send an additional reminder and to schedule a further meeting at the next session.

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CCPR, A/61/40 vol. I (2006)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

234. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/60/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2006.

235. Over the period covered by the present annual report, Mr. Rafael Rivas Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions on a State-by-State basis.

236. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Over the reporting period, since 1 August 2005, 14 States parties (Albania, Belgium, Benin, Colombia, El Salvador, Kenya, Mauritius, Philippines, Poland, Serbia and Montenegro, Sri Lanka, Tajikistan, Togo and Uganda) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 11 States parties (Equatorial Guinea, Greece, Iceland, Israel, Mali, Moldova, Namibia, Suriname, the Gambia, Uzbekistan and Venezuela) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

237. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

State party	Date information due	Date reply received	Further action
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Seventy-first session (March 2001)

Venezuela	6 April 2002	19 September 2002	On 3 January 2003 a complete response was requested to supplement the partial reply.
Third periodic report examined	Paras. 6, 7, 8, 9, 10, 11, 12 to 14	(partial reply with respect to paras. 6, 7, 10, 11, 12 to 14)	
		7 May 2003 (further partial reply with respect to paras. 9, 10, 12 to 14)	On 10 December 2003 a complete response was requested to supplement the further partial reply.
		16 April and 24 June 2004 (further partial reply with respect to paras. 9, 12 to 14)	On 5 October 2004 a complete response was requested to supplement the further partial reply.
		20 July 2004 (further partial reply with respect to paras. 12 to 14)	A reminder was dispatched on 11 October 2005.
			At its eighty-fifth session, the Special Rapporteur held consultations with representatives of the State party, who informed him that a date for submission of the fourth periodic report, overdue, has not yet been scheduled.
			Last reminder was dispatched on 6 July 2006.
			During the eighty-seventh session the Special Rapporteur held consultations with the Permanent Representative of the State party who informed him that the Government was preparing a follow-up reply

which would be submitted to the Committee soon.

Consultations have been scheduled for the eighty-eighth session.

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CHAPTER VII. FOLLOW-UP ON CONCLUDING OBSERVATIONS

220. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/61/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2007.

221. Over the period covered by the present annual report, Mr. Rafael Rivas-Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State. In view of Mr. Rivas-Posada's election to the Chair of the Committee, Sir Nigel Rodley was appointed the new Special Rapporteur for follow-up on concluding observations at the Committee's ninetieth session.

222. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.¹ Over the reporting period, since 1 August 2006, 12 States parties (Albania, Canada, Greece, Iceland, Israel, Italy, Slovenia, Syrian Arab Republic, Thailand, Uganda, Uzbekistan and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 12 States parties (Brazil, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Mali, Moldova, Namibia, Surinam, Paraguay, the Gambia, Surinam and Yemen) and UNMIK have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

223. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided before 1 August 2006 to take no further action prior to the period covered by this report.

Seventy-first session (March 2001) (all States parties have been considered)

State party: Venezuela

Report considered: Third periodic

Information requested:

Para. 6: Forced disappearance (arts. 6, 7 and 9).

Para. 7: Extrajudicial executions (art. 6).

Para. 8: Torture (art. 7).

Para. 9: Conditions in detention, procedural safeguards (arts. 9, 10 and 14).

Para. 10: Duration of pretrial detention (arts. 9 (3) and 14).

Para. 11: Prison conditions (arts. 7 and 10).

Para. 12: Procedural safeguards (art. 14).

Paras. 13 and 14: Independence of the judiciary (arts. 2 (3) and 14).

Date information due: 6 April 2002

Action taken:

3 January 2003 A complete response was requested to supplement the partial reply.

10 December 2003 A complete response was requested to supplement the further partial reply.

5 October 2004 A complete response was requested to supplement the further partial reply.

11 October 2005 A reminder was dispatched.

20 October 2005 The Special Rapporteur met the permanent representative of the State party, who said no date had been set for the submission of the fourth periodic report, which was overdue.

6 July 2006 A reminder was dispatched.

21 July 2006 The Special Rapporteur met the permanent representative of the State party who

said that a follow-up reply was in preparation and would be submitted shortly.

20 September 2006 A reminder was sent.

Date reply received:

19 September 2002 (Partial reply with respect to paras. 6, 7, 9, 10, 11, 12-14.)

7 May 2003 (Additional partial reply with respect to paras. 9, 10, 12-14.)

16 April and 24 June 2004 (Further partial reply with respect to paras. 9, 12-14.)

20 July 2004 (Additional partial reply with respect to paras. 12-14.)

Recommended action: At its eighty-eighth session, the Committee decided no further action needed to be taken in relation to the third periodic report of the State party.

Next report due: 1 April 2005

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Note

1/ The table format was altered at the ninetieth session.

Follow-up - State Reporting
ii) Action by State Party

CCPR CCPR/CO/71/VEN/Add.1 (2002)

Comments by the Government of Venezuela on the concluding observations by the Human Rights Committee

1. The body responsible for taking action to prevent prison violence, as regards the immediate problem of relations between inmates, is the Ministry of the Interior and Justice through the Department of Custody and Prisoner Rehabilitation.
2. Such action is directly related to the general conduct or behaviour displayed at each detention centre, and the size of the inmate population is also relevant, i.e. there are some prisons with high levels of violence and some which are more peaceful. Basically, overcrowding turns out to be one of the principal causes of violence, while it is also a characteristic structural element of the prison system.
3. There is also violence and inhuman treatment of inmates by prison staff and military personnel who do not seem to be deterred by disciplinary measures and at the same time take advantage of the "code of silence" among the prison population, since inmates do not intervene to report or bear witness to such incidents, thus allowing them to go unpunished.
4. Measures such as the following have been taken at prisons:
 - (a) Regular and special searches: these are carried out in detention blocks to unearth industrial and prison-made firearms, drugs and drug-taking paraphernalia, blunt projectiles, industrial and prison-made knives and spikes and other prohibited items which inmates use to attack each other;
 - (b) Searches of family members and visitors: these take place when visitors wish to enter the premises, to prevent the introduction of firearms, projectiles and any other items that could be used to wound or kill, and prevent the entry of drugs;
 - (c) Movements of inmates: occur before, during and after "bloodlettings" take place, checking to see which inmates are involved, as a punitive measure, and with "negative leaders" as a precautionary measure, to maintain order. They are also used to safeguard the lives of inmates who have been attacked;
 - (d) Use of maximum-security detention centres: sentencing courts are asked to have inmates with sentences of over 10 years moved to maximum-security detention centres so as to separate the inmate population between very serious and lesser offences;
 - (e) Action to minimize idleness: a schedule of physical, cultural, educational and sporting activities is operated by the Inmate Treatment Unit, a part of the Ministry of the Interior and Justice.

5. Our prison system consists of penitentiaries (housing inmates serving sentence) and judicial detention centres (housing individuals on trial and awaiting sentence). They clearly serve a distorted function, since individuals on trial and convicts live together and practical considerations, not technical criteria, predominate; this irregularity is one of their prime characteristics.

6. This is a structural characteristic of the system; nearly all facilities are jammed.

7. Delays in bringing cases to trial, despite the entry into force of the Code of Criminal Procedure, continue to cause overcrowding.

8. A reduction in the size of the prison population cannot be translated into better living conditions for those in prison.

9. There is a shortage of trained, specialist staff to look after prisoners.

10. The lack of training for guards and wardens ultimately leads to their becoming involved in criminal activities.

11. The lack of specialist staff threatens to produce a system shaped by the actions of military personnel.

12. There is a marked dearth of psycho-social care for prisoners, a lack of nutrition policy, and deteriorating basic services; great efforts have been made to improve the health-care service but it is still inadequate, and working and educational conditions are difficult.

13. It is important to note that although there are measures intended to control and minimize prison violence, they are inadequate and ineffective and need to be reviewed and brought up to date.

14. The lack of trained staff to monitor the situation inside prisons, and the absence of procedural manuals and defined functions for such staff, have a fundamental impact.

15. Delays in bringing cases to trial and serious shortcomings in the registration of individuals undergoing trial and convicts result in failures in the procedures for grouping and separating them.

16. Venezuela has ratified the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture.

17. Article 176 of its Criminal Code states:

"Anyone who, without authority or right, uses threats, violence or other unlawful coercion to compel a person to carry out or tolerate an act he is not obliged to perform by law or prevents him from performing an act that is not prohibited by law shall be punished by between 15 days' and 30 months' imprisonment.

"If such coercion involves an abuse of public authority or is exercised against a family member or

partner or against a public official in connection with his duties, or if it leads to serious harm to the person, health or property of the victim, the penalty shall be 30 months' to 5 years' imprisonment.

"Anyone who, in circumstances other than those indicated above or provided for by law, threatens any person with serious and unjust harm shall, upon a complaint being lodged by the victim, be punished by removal to a Penal Colony for a period of one to 10 months or by 15 days' to 3 months' detention."

18. In the light of the above and by virtue of the powers conferred upon him by the Constitution of the Bolivarian Republic of Venezuela and the Public Prosecutor's Department Act, if it comes to the public prosecutor's attention that torture has been committed he launches an investigation and orders all steps to be taken to ascertain whether indeed torture has been committed, and if it has, he will bring charges against those responsible before the competent court so that the court can sentence them for it.

19. It is important to point out that the Public Prosecutor's Department, as the body leading the criminal investigation, relies on the investigating authorities to gather all the evidence and carry out the relevant forensic tests so as to seek out the truth and proceed accordingly.

20. The Public Prosecutor's Department, recognising the importance of its contribution to such investigations, has in conjunction with the investigating authorities held talks, known as "Torture Prevention Days", to improve the training of the staff who are concerned with the matter at hand.

CCPR CCPR/CO/71/VEN/Add.2 (2003)

Comments of the Government of Venezuela on the Concluding Observations of the Human Rights Committee (CCPR/CO/71/VEN)

DEPARTMENT FOR THE PROTECTION OF FUNDAMENTAL RIGHTS PROMOTION division

Case: Jhonny José Paz

Background

The Director of Multilateral Affairs of the Ministry of Foreign Relations, Ms. Alexandra Paris Parra, requested information from the Department for the Protection of Fundamental Rights concerning the murder of Jhonny Paz. The case in question had been reported by the World Organization against Torture, which circulated a document on the subject to all Latin American and Caribbean delegations in Geneva. This punishable offence took place on 11 February 2002 in Valencia in Carabobo state.

Procurators of the Public Prosecutor's Office assigned to the case

- Mr. Jaime Martínez, procurator No. 5 of Carabobo state;
- Ms. Rossana Marcano, procurator No. 6 of Carabobo state;
- Mr. Jesús Ramírez, national procurator No. 23.

Action

On 14 January 2002, the procurator of the Public Prosecutor's Office of the judicial district of Carabobo state was assigned to case No. 76-148 by the senior procurator of the Public Prosecutor's Office of Carabobo state. The case concerned the victim Jhonny José Paz and is the subject of criminal investigation No. G-062.148, which was being conducted by the Scientific, Criminal and Forensic Investigation Unit of Las Acacias police station.

On 17 January 2002, Mr. Israel Álvarez, in his capacity as Human Rights Ombudsman, met with the aforementioned procurators and requested information on the case in question, at which time he was informed that any request for judicial formalities required by that procurator's office from the Scientific, Criminal and Forensic Investigation Unit of Las Acacias police station had to be submitted in writing, in accordance with the provisions of article 300 of the Code of Criminal Procedure.

On 6 March 2002, procurators No. 5 and No. 6 of Carabobo state, Mr. Jaime Martínez and Ms. Rossana Marcano, went to the headquarters of the Scientific, Criminal and Forensic Investigation Unit of Las Acacias police station to determine what action had been taken in criminal investigation No. G-062.148. The chief of police of Las Acacias police station, Mr. Jhon Carreño, was ordered to issue instructions to expedite the investigation of the case.

Subsequently, on 2 August 2002, national procurator No. 23, Mr. Jesús Ramírez, was assigned, along with aforementioned procurators No. 5 and No. 6 of Carabobo state, to the case. Mr. Ramírez accepted the assignment and went to that procurator's office to join the investigation.

The number of the file relating to the case in question in the office of procurator No. 5 of Carabobo state was 76-148; according to the file, no one had been charged and the case was being investigated by officials of the local office of Carabobo state, on instructions from the Public Prosecutor's Office.

On 21 August 2002, national procurator No. 23 went to the city of Valencia to attend the preliminary hearing scheduled for that date, concerning the indictment of Mr. Mauricio Escamilla as an accessory to the crime of homicide. The hearing was not held because the assigned procurators were on a course at which their attendance was mandatory.

Outcome or current status

The case is in the investigation stage.

DEPARTMENT FOR THE PROTECTION OF FUNDAMENTAL RIGHTS PROMOTION division

Case: José Luis Nieves

Background

Extrajudicial killing of citizen José Luis Nieves, presumably by police officers of Carabobo state. The incident took place on 29 July 2001 and was brought to the attention of international organizations, which requested that measures should be taken to determine who was responsible.

Procurator of the Public Prosecutor's Office assigned to the case

- Mr. Jaime Martínez, procurator No. 5 of Carabobo state.

Action

On 2 August 2000, procurator No. 5 of the Public Prosecutor's Office of the judicial district of Carabobo state was assigned the case through the normal procedure. He immediately ordered the Technical Unit of the Judicial Police (now the Scientific, Criminal and Forensic Investigation Unit) of Las Acacias police station to investigate the murder of José Luis Nieves, in which the presumed guilty parties are officers Mauricio Alberto Escamilla and Daniel Alfonso Guillén, attached to General Police Headquarters of Carabobo state.

On 19 October 2000, the aforementioned procurator received information concerning the action taken in investigation No. F-702.084 from the Technical Unit of the Judicial Police of Las Acacias police station. Once the necessary steps had been taken to clarify the criminal investigation

conducted by procurator No. 5 of the Public Prosecutor's Office of Carabobo state, the procedural judge was requested to order the pre-trial detention of the accused Daniel Alfonso Guillén and alternative preventive measures for the accused Mauricio Escamilla.

On 27 January 2001, the accused Daniel Alfonso Guillén was formally indicted for qualified homicide, an act punishable under article 408, paragraph 1, of the Criminal Code, by procedural judge No. 3 of that criminal circuit court (case No. C3-6603-00).

On 6 May 2002, the preliminary hearing of case No. C3-6603-00 against the accused Daniel Alfonso Guillén was held. Subsequently, the indictment and the procurator's evidence were admitted.

On 2 August 2002, the Department for the Protection of Fundamental Rights of the Public Prosecutor's Office assigned national procurator No. 23, Mr. Jesús Ramírez, to work with the previously assigned procurators.

On 21 August 2002, national procurator No. 23 went to Valencia to attend the preliminary hearing scheduled for that date. The hearing could not be held because the assigned procurators of that judicial district were on a course at which their attendance was mandatory.

On 7 October 2002, national procurator No. 23 again went to attend the preliminary hearing scheduled by the first procedural court of that judicial circuit, at which Mauricio Escamilla was to appear as the accused and where representatives of the Public Prosecutor's Office were to take a decision on detention. The hearing was postponed because Mr. Escamilla's counsel challenged one of the procurators on the grounds of manifest enmity.

On 10 October 2002, procurator No. 23 was informed that the hearing scheduled for that date had been postponed because of a mass demonstration (march of civil society) in the city.

Outcome or current status

The case is in the investigation stage.

Case: Maury Oviedo

Procurators assigned to the case

- Mr. Jaime Martínez, procurator No. 5 of Carabobo state;
- Ms. Rossana Marcano, procurator No. 6 of Carabobo state.

Action

On 5 September 2002, the Department for the Protection of Fundamental Rights of the Public Prosecutor's Office received an official letter signed by Ms. Alexandra Paris Parra, Director of Multilateral Affairs of the Ministry of Foreign Relations, stating that the World Organization against

Torture had expressed concern at the alleged arbitrary detention of the transsexual Maury Oviedo, President of the organization Respeto a la Personalidad, by police officers of Carabobo state.

In fact, on 5 August 2002, the Department for the Protection of Fundamental Rights of the Public Prosecutor's Office had already assigned Mr. Jaime Martínez and Ms. Rossana Marcano, procurators No. 5 and No. 6 of the judicial district of Carabobo state, as well as Mr. Jesús Ramírez, national procurator No. 23, to investigate the incident with a view to establishing responsibility.

On 26 September 2002, the Department of Multilateral Affairs of the Ministry of Foreign Relations was notified of the assignment of the procurators and of the commencement of proceedings in the case. On 17 October 2002, the relevant information was submitted to Mr. Alcides Rondón, Vice-Minister of Public Safety of the Ministry of the Interior and Justice, who had asked to be kept informed of the steps taken by the Public Prosecutor's Office in the case in question.

On 4 September 2002, the assigned assistant procurator of the office of procurator No. 6, the lawyer Milagros Romero (assigned for this purpose) went to police headquarters in El Trigal in the company of assistant procurator No. 23 with full competence at the national level, and officers attached to the Scientific, Criminal and Forensic Investigation Unit of Las Acacias police station in order to ascertain whether that police station had detained Maury Oviedo, Vicky Martínez, Paola Sánchez, Kevin Capote and others. They found that the police station's logbook reflected only the number of persons detained in police operations, without specifying their identities.

It should be noted that the victims failed to cooperate, since they did not respond to the procurators' requests for information to help move the investigation forward.

Procurator No. 6, together with procurator No. 5 of the Public Prosecutor's Office of that judicial district and the scientific investigation unit, is currently taking steps to gather information with a view to elucidating the reported incidents and to determine the whereabouts of Maury Oviedo.

On 19 November 2002, in a report submitted to the Department for the Protection of Fundamental Rights, procurator No. 6 stated that:

On 13 November 2002, the lawyers Rossana Marcano and Milagros Romero, the chief and assistant procurators of procurator's office No. 6 of the Public Prosecutor's Office of the judicial district of Carabobo state went to the Scientific, Criminal and Forensic Investigation Unit of Las Acacias police station in order to examine case No. G-216730 relating to Maury Oviedo, where they requested that Mr. Israel Álvarez de Armas, in his capacity as representative of the Office of the Ombudsman for Human Rights, should be summoned to make a statement with a view to providing information for the present investigation (...) as well as the identification and whereabouts of Maury Oviedo; the procurators also took a statement from Mr. Jorge Eliécer Felipe, holder of identity card No. V-7.306.679, in his capacity as President of FUNDAPROMI, a non-governmental human rights organization, with a view to including the statement in the investigation. In his statement, Mr. Felipe said, inter alia: 'I am aware that she resides in Toronto, Canada, but I never had any personal contact with her since, according to Israel de Armas she lives in Canada, so they presumably

communicate by e-mail. I also request an investigation of Israel de Armas and Dinorath Guerrero for acting as alleged human rights defenders ...'. The procurator requested the investigating body to notify ONIDEX and INTERPOL in order to obtain information on the movements of Ms. Maury Oviedo, and requested that all the necessary steps be taken for a complete clarification of the facts, under the supervision of the Public Prosecutor's Office.

“On 18 November 2002, at 11 a.m., the undersigned was taken to the Scientific, Criminal and Forensic Investigation Unit of Las Acacias police station, where the investigation was reviewed. She was informed by officer Oliveros, who is attached to the police station, that today they would subpoena Mr. Israel de Armas to make a statement on the case and provide information that might elucidate the facts. On the other hand, it should be noted that, in connection with this incident, we do not yet have any evidence that would enable us to press charges against any individual.”

Outcome or current status

The case is currently in the investigation stage.

Case: Rafael Ramón Milano Bastidas

Procurator assigned to the case

- Mr. Alejandro Nicolás, procurator No. 4 of Carabobo state.

Action

On 22 May 2002, the Department for the Protection of Fundamental Rights of the Public Prosecutor's Office received a written report signed by Ms. Alexandra Paris Parra, Director of Multilateral Affairs of the Ministry of Foreign Relations.

On 4 September 2002, the assistant procurator of the office of procurator No. 6, lawyer Milagros Romero (assigned for this purpose) went to police headquarters in El Trigal in the company of assistant procurator No. 23 with full competence at the national level, and officers attached to the Scientific, Criminal and Forensic Investigation Unit of Las Acacias police station in order to ascertain whether that police station had detained Maury Oviedo, Vicky Martínez, Paola Sánchez, Kevin Capote and others. They found that the police station's logbook reflected only the number of persons detained in police operations, without specifying their identity.

Systematized information as at 31 March 2003 on steps taken to investigate cases involving extermination groups in Venezuela

States in which investigations of murder cases are in progress	No. of cases	Persons arrested and/or charged	Arrest warrants pending	Final action taken
Portuguesa	112	1. Case No. F-769.803 Charged: Segundo Doboduto, Alvis Leal and Guinson Freire Guerrero	1. Case No. F-769.803 Charged: Segundo Doboduto, Alvis Leal and Guinson Freire Guerrero	Case No. F-769.803 Indictment, based in the Caracas metropolitan area
		2. Case No. F-769.796 Charged: José Paredes	2. Case No. F-769.796 Charged: José Paredes	Case No. F-769.796 Being handled by court No. 4 of the Caracas metropolitan area, for a related offence
		3. Case No. F-849.376 Charged: Segundo Doboduto, Alvis Leal, Guinson Freire Guerrero, José Paredes and Jesús Aguilar	3. Case No. F-849.376 Charged: Segundo Doboduto, Alvis Leal, Guinson Freire Guerrero, José Paredes and Jesús Aguilar	Case No. F-849.376 Being handled by court No. 4 of the Caracas metropolitan area
		4. Case No. F-805.375 Charged: Alvis Leal, Guinson Freire Guerrero, Arturo Azuaje and Eddgar Mendoza	4. Case No. F-805.375 Charged: Alvis Leal, Guinson Freire Guerrero, Arturo Azuaje and Eddgar Mendoza	Case No. F-805.375 Being handled by court No. 4 of the Caracas metropolitan area
		5. Case No. 784.462 Charged: Joel Castillo, Alvis Leal, Régulo Salazar, Félix Rojas, José Fernández and Obiu Fernández	5. Case No. 784.462 Charged: Joel Castillo, Alvis Leal, Régulo Salazar, Félix Rojas, José Fernández and Obiu Fernández	Case No. 784.462 Being handled by court No. 4 of the Caracas metropolitan area

States in which investigations of murder cases are in progress	No. of cases	Persons arrested and/or charged	Arrest warrants pending	Final action taken
		6. Case No. F-836.946 Charged: Andrés Escalona and Rafael Blanco	6. Case No. F-836.946 Charged: Andrés Escalona and Rafael Blanco	Case No. F-836.946 Being handled by court No. 4 of the Caracas metropolitan area
		7. Case No. F-593.380 Charged: Julio González, Antonio Romero and Segundo Doboduto	7. Case No. F-593.380 Charged: Julio González, Antonio Romero and Segundo Doboduto	Case No. F-593.380 Being handled by court No. 4 of the Caracas metropolitan area
		8. Case No. F-593.469 Charged: Omar Romero, Julio González, Segundo Doboduto and Manuel Ramos	8. Case No. F-593.469 Charged: Omar Romero, Julio González, Segundo Doboduto and Manuel Ramos	Case No. F-593.469 Being handled by court No. 4 of the Caracas metropolitan area
		9. Case No. F-769.725 Charged: Coufax Madrid, Jaime Quevedo and Darwin Pérez	9. Case No. F-769.725 Charged: Coufax Madrid, Jaime Quevedo and Darwin Pérez	Case No. 769.725 Indictment; the procurator was disqualified for having expressed an opinion. Being handled in Portuguesa state
		10. Case No. F-805.508 Charged: Omar Romero, Segundo Doboduto and Alvis Leal	10. Case No. F-805.508 Charged: Omar Romero, Segundo Doboduto and Alvis Leal	Case No. 805.508 Being handled by court No. 4 of the Caracas metropolitan area

States in which investigations of murder cases are in progress	No. of cases	Persons arrested and/or charged	Arrest warrants pending	Final action taken
Yaracuy	22	1. Case No. F-640.147 La Morita case Charged: Alexander Parra, Luis Gámez, Gustavo Mújica, Pedro Campos, Domingo Parra, Miguel Quiroga and Juvenal Acosta	1. Case No. F-640.147 La Morita case Charged: Alexander Parra, Luis Gámez, Gustavo Mújica, Pedro Campos, Domingo Parra, Miguel Quiroga and Juvenal Acosta	1. Case No. F-640.147 Indictment, based in Táchira state
		2. Case No. F-507.728 Charged: Favio Pérez, Oscar Pérez, Julián Villegas, José Mata, Esry Rivero, Arelis Ochoa, Rossy García, Abel Alvarado, Luis Azuaje and José Peralta	2. Case No. F-507.728 Charged: Favio Pérez, Oscar Pérez, Julián Villegas, José Mata, Esry Rivero, Arelis Ochoa, Rossy García, Abel Alvarado, Luis Azuaje and José Peralta	2. Case No. F-507.728 Indictment, based in Monagas state
		3. Case No. G-073.552 Charged: Officers of the police urban patrol squad of San Felipe in Yaracuy state.	3. Case No. G-073.552 Charged: Officers of the police urban patrol squad of San Felipe in Yaracuy state.	3. Case No. G-073.552 In the investigation stage
Anzoátegui	164	None	None	None
Táchira	30	Case No. G-255248 Charged: Álvaro Estava Blanco	Álvaro Estava Blanco	None
Zulia	111	None	None	None
Falcón	81	None	None	None

States in which investigations of murder cases are in progress	No. of cases	Persons arrested and/or charged	Arrest warrants pending	Final action taken
Aragua	125	C-82 Charged: CSOP officers of Aragua state (San Carlos police station) Jesús Padrón, Erica Milano	None	None
		F-681.684 Charged: CSOP officers of Aragua state, Joel Tablante	None	None
		Case No. 539.00 Charged: CSOP officers of Aragua state (Las Acacias police station), Ramón González Aldana and Jhonny García Tovar	None	None
		F-974.768 Charged: CSOP of Aragua state (Las Acacias police station), Deputy Chief José Piñango and officers César Olivo, Jhonny Aguilera and Iván Aguilar	None	None

Note: While no extermination groups are active in Zulia state, the number of investigations into alleged clashes involving police officers of that state is alarming.

No. DPDF-16-705-03
2003

Caracas, 25 February

Ms. María Auxiliadora Belisario
Vice-Minister of Public Safety (E)
Ministry of the Interior and Justice

I have the honour to acknowledge receipt of your communication No. 000021 dated 7 January 2003 in which you request information on the cases involving citizens Luis Alberto Aponte Moreno, Antonio José Blanco Gómez, Juan Adolfo García Zabala, Roberto Javier Hernández Paz, Yolanda Landino, Marco Antonio Monasterio Pérez, David Rigoberto Mora Inojosa, José Francisco Rivas Fernández and Óscar José Blanco Romero, which will shortly be considered by the United Nations Working Group on Enforced or Involuntary Disappearances.

In this regard, I should like to point out that the relevant reports were requested from the competent procurators of the Public Prosecutor's Office in each of the judicial districts in which the reported incidents allegedly occurred. The following information was received:

1. With regard to the victims Óscar José Blanco Romero and Marco Monasterio Pérez, on 14 September 2001 procurators No. 45 and No. 74 of the Caracas metropolitan area and national procurator No. 30 filed criminal charges with the fifth court of first instance overseeing the judicial district of Vargas state, against Mr. José Yáñez Casimiro, an active officer of the Intelligence and Prevention Services Directorate (DISIP), and Justiniano de Jesús Martínez Carreño, for the crime of enforced disappearance. Mr. Yáñez Casimiro was indicted as the principal, while Mr. Martínez Carreño was indicted for concealment. The preliminary hearing was held on 6 September 2002, at which time the court dismissed the charges brought by the Public Prosecutor's Office and terminated the proceedings against the accused. On 12 September 2002, the aforementioned procurators appealed the decision to the criminal circuit court of appeal of Vargas state, maintaining that the decision was based on a false assumption and was unfounded and illogical, violated due process and restricted the actions of both the victim and his legal representative.

On 17 October 2002, the aforementioned court of appeal issued a decision declaring the appeal lodged by the procurators inadmissible, revoking a decision of the fifth court declaring null and void the identification of the individuals mentioned on pages 91, 106 and 109 of the respective case file and admitted, in part, the appeal lodged in the case.

The procurators of the Public Prosecutor's Office have decided to apply for a constitutional motion (*amparo*) against the decision issued by the court of appeal. The text of the motion is currently being drafted.

2. With regard to the victim José Francisco Rivas Fernández, proceedings were begun on 22 January 2000 pursuant to a complaint lodged by Ms. Nérida Josefina Fernández Pelicie. Procurators No. 45 and No. 74 of the Caracas metropolitan area and national procurator No. 30 have been assigned to the case.

The following measures were taken to elucidate the incident: statements, verbal descriptions, identification from photograph albums, and requests for information from various bodies. Such

measures have made it possible to gain a better idea of the circumstances surrounding the criminal offence. However, to date the procurators assigned to the case are of the opinion that there is not enough evidence for establishing the responsibility of the perpetrators of, or the accessories to, the offence. There is also no information concerning the whereabouts of Mr. Rivas Fernández. The case is therefore still in the preparatory stage.

3. With regard to the victim Roberto Javier Hernández Paz, proceedings were begun on 21 January 2000 pursuant to a complaint lodged by Mr. Carlos Paz, who stated that, on 24 December 1999, a number of individuals - presumably from the Intelligence and Prevention Services Directorate - dressed in black and wearing balaclavas that concealed their faces, entered his residence, an unnumbered house on Rada street opposite La Gallera, in Tarigua district, Caraballeda sector, in Vargas state, looking for his nephew, Roberto Javier Hernández Paz. He also stated that he heard his nephew conversing with the aforementioned persons. He also heard a shot and his nephew Roberto Javier Hernández Paz cry out "You've killed me, man". He subsequently heard another shot; however, he was unable to see what was happening because his vision is impaired by cataracts.

The following measures were taken to elucidate the incident: data and information were gathered, principally in the form of individual statements made by relatives and neighbours, as well as requests for information from various bodies. To date, however, the procurators assigned to the case are of the opinion that there is not enough evidence for establishing the responsibility of the perpetrators of, or the accessories to, the offence, particularly because the individuals who committed the offence were dressed in black and wore balaclavas that concealed their faces, which makes it difficult to describe and/or identify the persons involved in the disappearance of Mr. Roberto Javier Hernández Paz. There is also no information on the whereabouts Mr. Fernández Paz. This case is therefore still in the preparatory stage.

4. With regard to the victims Antonio José Blanco Gómez, Juan Antonio García Zabala, David Rigoberto Mora Inojosa, pursuant to information dated 19 September 2002, reported by the first assistant procurator of the Public Prosecutor's Office of the judicial district of the second circuit of Sucre state, case No. D-312772 containing the inquiry into the disappearance of the aforementioned persons, who have not reappeared, was transmitted by official letter No. 2891 dated 31 October 2000 to the second transitional court of Sucre state.

On 12 September 2002, the senior procurator of Sucre state said that the case records could not be found, although he has computerized records of all the cases dealt with by this circuit. He entrusted the matter to a procurator of the circuit.

5. With regard to the case of Mr. Luis Alberto Aponte Moreno, it should be pointed out that, on 14 March 1991, Ms. Nereyda Roberto de Aponte reported to the Human Rights Department of the Office of the Attorney-General, which is now called the Department for the Promotion of Fundamental Rights, that her husband, Luis Alberto Aponte Moreno, had disappeared in Valencia, Carabobo state, on 28 February 1991. On 19 March 1991, the aforementioned Department assigned procurator No. 4 of the Public Prosecutor's Office of the judicial district of Carabobo state to investigate the incident. According to information recently released by the procurator assigned to the case (the assignment has been concluded), the vehicle that Luis Alberto Aponte Moreno, accompanied by Fermín José Díaz, was driving was later found by the uniformed police of Aragua state in the town of La Victoria; at that time, instructions were issued at the national level to ascertain the whereabouts of the disappeared persons. The fact that Luis Alberto Aponte Moreno had previously complained to the police about harassment by certain police officers leads

one to presume that those police officers could have been involved in the disappearance. To date, the destination of the disappeared persons remains unknown and no progress has been made in the case since, in the opinion of the aforementioned procurator, there are no means of taking further measures with a view to obtaining concrete results.

On 29 November 2002, Mireya Sanchez, head of court cases of the Carabobo Scientific, Criminal and Forensic Investigation Unit assigned the case to a procurator of the Public Prosecutor's Office who is competent in cases of provisional criminal regime, since this regime is applicable to the case.

6. With regard to the case of Yolanda Landino, the Department for the Protection of Fundamental Rights requested information from procurator No. 16 of the Public Prosecutor's Office of the judicial district of Zulia state, with headquarters in Santa Bárbara, who in a letter dated 14 February stated that:

“with regard to the alleged disappearance of Ms. Yolanda Landino, on 27 March 1993, we were informed that Ms. Betty Espinoza and Ms. Vilma Blanca, the secretary and clerk of this office, having conducted a detailed search in the files and spoken with Mr. Ángel Parra, a retired official of this office, reported that this office is not dealing with the case of the minor Yolanda Landino but with that of her brother, Henry Landino Contreras, in case file No. 65, which was received by this office on 12 February 1996; the file currently cannot be found.”

Procurator No. 16 also stated that, on 14 April 1994, Mr. Carlos Lugo Quiva, the special alternate procurator, granted a hearing to Mr. Mario Landino Corona in connection with the arrest of his son, Henry Landino Contreras, for kidnapping, since Mr. Landino Corona alleged that his son was innocent. The procurator went to criminal court of first instance No. 16, where he examined cases Nos. 02339 and 02340, in anticipation of the completion of formalities for the joinder of the cases in order to transmit them with criminal charges. Since the files were incomplete, the hearing did not take place.

For the Attorney-General

(Signed): Magally García Malpica
Director of the Department for the
Protection of Fundamental Rights

CCPR CCPR/CO/71/VEN/Add.3 (2004)

Comments of the Government of Venezuela on the Concluding Observations of the Human Rights Committee (CCPR/CO/71/VEN)

[24 June 2004]

1. I have the honour to refer to communication No. 0020 dated 13 January 2004, requesting comments on the concluding observations of the Human Rights Committee of the United Nations, concerning specifically detention by the police and detention while awaiting judgement, and on the situation of the judiciary.
2. At the outset we wish to make it clear that our comments will be confined to matters that fall within the competence of the Public Prosecutor's Office. Consequently, no statement will be made regarding the judiciary.
3. After having read and considered the above-mentioned communication and the document containing the Committee's concluding observations, the Department for the Protection of Fundamental Rights would like to describe the procedure followed in cases of detention in accordance with the provisions of the Code of Criminal Procedure.
4. As provided under article 248 of the Code of Criminal Procedure, all authorities have a duty to apprehend any person caught in flagrante delicto, always provided that the offence is one that is liable to a custodial sentence. In fact, in such cases, any individual at all may apprehend a suspect and shall hand him or her over to the nearest authority; that authority must bring the suspect before the prosecutor within a maximum of 12 hours from the time of arrest.
5. In the light of the above, the Public Prosecutor's Office, as the guarantor of legality, scrutinizes police reports very closely to check that the relevant time limits have been observed. It also makes sure that citizens caught in flagrante delicto have been informed of their rights: this should be noted in a report that criminal investigation police are required to draw up specially, in accordance with article 117, paragraph 6, of the Code of Criminal Procedure. In addition, a prosecutor who learns that any person detained under such circumstances has been subjected to torture or cruel or inhuman treatment has a duty to request an inquiry into the matter and to order an immediate forensic medical examination in order to make a reliable determination of the extent of the injuries.
6. In all cases, the prosecutor shall produce the detainee before the supervising magistrate within 36 hours and explain the circumstances of the arrest, and, depending on the case, shall also request, in accordance with article 373 of the Code of Criminal Procedure, that ordinary or abbreviated proceedings be instituted and a detention order issued, or that the apprehended person be released.
7. Supervising magistrates may, if so requested by the Public Prosecutor's Office, order the accused to be placed in preventive detention, provided the conditions set forth in article 250 of the Code of Criminal Procedure are met. In all cases, supervising magistrates shall give a ruling on such requests within 24 hours of their submission by the Public Prosecutor's Office. In order to give effect to the ruling, the judge shall issue a warrant for the arrest of the accused in respect of whom the detention order was requested. The accused shall be brought before the court within

48 hours of his or her arrest and, in the presence of the parties and any victims, the judge shall decide either to maintain the order or replace it with a less severe measure. In cases such as these, which relate to preventive detention orders, the Code itself imposes a number of strict time limits on those involved in the proceedings; in this regard, prosecutors always take great care to complete all required tasks within the time allowed by the law.

8. At the request of the Public Prosecutor's Office, judicial preventive detention may also be ordered by a trial judge where there are grounds for believing that the accused will not comply with procedural requirements.

9. In exceptionally compelling and urgent circumstances, and provided the conditions set forth in article 250 of the Code of Criminal Procedure are met, the supervising magistrate, at the request of the Public Prosecutor's Office, shall authorize by any means appropriate the arrest of the person who is the subject of the investigation. Such authorization shall be confirmed in a court order issued within 12 hours of the arrest.

10. In the light of the above, the Department for the Protection of Fundamental Rights wishes to commend the public prosecutors for the effective manner in which they carry out their tasks as guarantors of legality and due process, and guardians and defenders of human rights.

CCPR, CCPR/CO/71/VEN/Add.5 (2007)

Comments by the Government of Venezuela on the concluding observations of the Human Rights Committee

[19 January 2007]

Concluding observations of the Human Rights Committee on the third periodic report of Venezuela under the International Covenant on Civil and Political Rights

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.

It is clear that the text of the aforementioned Code of Criminal Procedure has incorporated reforms with regard to the matters of concern to the Committee, namely: (a) equality of persons before the law, laws and tribunals; (b) the outcome of the courts and/or tribunals, that is, the judgements, will be not only public but also mandatory (except as regards publicity with a view to protecting minors and young persons); (c) the presumption of innocence is not only provided for in the present Code, but has also always been established in previous criminal codes; (d) the guarantees of the accused are those enumerated in article 4 of the Covenant; (e) the Venezuelan State will seek to implement policies aimed at the reintegration of minors involved in crime and young offenders; (f) once sentence has been passed, the person sentenced may, in accordance with the criminal laws in force, have recourse to higher courts, and appeal to the Supreme Court, Criminal Division, where other remedies have been exhausted; (g) persons who have not had a fair trial, either as to the form or as to the substance, shall receive reparation and compensation in accordance with the national legislation in force.

It can thus clearly be seen that the Code of Criminal Procedure complies with article 14 of the Covenant, both of which instruments uphold and provide for the principle of due process.

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 process of reforming the judiciary, which was carried out by the Commission on Reorganization of the Judiciary, culminated some years ago when that Commission ceased its functions. The concept of independence of the judiciary entails the capacity of the judge to take decisions without being subject to external or internal pressures. We do not associate it with personal attributes, since there is no such thing as absolute independence of opinions and persons form opinions regarding a wide range of environmental, economic, political and other matters in a variety of ways.

Accordingly, independence is more a form of conduct than an ontological manifestation. Thus, for the judge, it is a means of proceeding independently at the moment of taking a decision

and passing sentence. We should add that it is for the State to organize the justice system in such a way as to promote independent action on the part of judges. In Venezuela we have facilitated this by means of the following measures:

(a) Selection

Candidates are chosen by the Judicial Committee (a technical auxiliary body of the Plenary Chamber of the Supreme Court comprising five judges) on the basis of a combination of academic, democratic and moral values. Candidates selected will sit provisionally as temporary judges for one year, and their performance will be rigorously scrutinized. They may be removed simply by higher order.

(b) Stability of tenure

After one year, provisional judges are evaluated in order to assess their competence and suitability for the task (number of cases heard, judgements, etc.), and undergo psychological and medical tests, before going on to take a preparatory course, after which they sit a competitive examination involving written, oral and practical tests on general legal matters and their own area of jurisdictional expertise. Judges who pass the evaluation and the competitive examination receive tenure, and with it stability for life. Thereafter they can be removed only for breaches of professional discipline as established by law and following a process in which their constitutional right to a defence and due process is respected.

It should be noted that on 1 June 2005 the Chamber of the Supreme Court approved the Standards for Evaluation and Competitive Examinations for Entry and Promotion in the Judiciary, announcing public examinations that have been held since that date.

(c) The National School of the Judiciary

This is an academic body that trains and evaluates judges for entry to the judicial profession and promotes vertical mobility from the lower to higher courts. This year the school will be transformed into a Post-Graduate University Institute, following an agreement already signed with the Ministry of Higher Education.

(d) The Judges' Code of Ethics

We are currently governed by a series of separate enactments contained in various legal texts predating our Constitution of 1999. However, these standards have been brought together in a single legal instrument, the Judges' Code of Ethics, which is currently before the National Assembly and will shortly become a Law of the Republic. One part of the Code consists of a dogmatic enumeration of principles outlining judges' moral conduct, while the other sets forth the disciplinary structure applicable to judges.

(e) The National Inspectorate of Courts

This body inspects the courts and draws up reports. It is on the basis of its conclusions that disciplinary proceedings against judges are instigated.

(f) Social Security for judges and auxiliary judicial staff

In addition to being adequately remunerated, judges and administrative staff enjoy the benefits of an extensive social security system, covering medical care and hospitalization for themselves and their close relations (parents, spouse and children), together with other benefits such as crèche facilities, schools with transportation provided, social benefits paid into a bank account annually, and funeral insurance.

(g) Economic independence of the Judiciary

It must receive a guaranteed minimum proportion of the national budget. Under our Constitution that proportion cannot be lower than 2 per cent of the national budget.

(h) Current situation regarding tenured judges in Venezuela

The situation in 2000 was the same as had prevailed over the last 50 years: fewer than 18 per cent of judges had tenure. Last year the evaluations were carried out and a competitive examination held, resulting in 60 per cent of judges becoming tenured.

The lists of judges sitting the examinations to be held and timetables for those examinations were published in the media and can also be found on the web page of the National School of the Judiciary <http://enm.tsj.gov.ve/formacion/formacionDocentes.asp>:

1. Official announcement of public competition for non-tenured judges category A, press announcement dated 6 October 2005;
2. Official announcement of public competition for non-tenured judges categories B and C, press announcement dated 10 November 2005;
3. Final list of judges categories B and C to sit the public competitions from 21 to 23 November 2005, published on Friday, 18 November 2005;
4. Official announcement of public competition for non-tenured judges categories B and C II. Press announcement dated 26 November 2005;
5. New timetable for public competitions category A (administrative, tax, land and maritime proceedings) dated 2 December 2005;
6. New timetable for public competitions categories A, B and C to be held from 6 to 15 December 2005, announcement dated 2 December 2005;
7. Final list of judges categories A, B and C to sit the public competitions from 6 to 15 December 2005, announcement dated 5 December 2005.

As of the present date, we have sworn in 200 judges and are continuing to hold competitive examinations, with a view to securing tenure for 95 per cent of the total of 1,860 trial judges by the end of the year. Of the original roster of judges, that is, those who were performing their duties in 2000, only 400 have been removed, and those as a result of the evaluation and competitive examination process.

(i) The Supreme Court

This is the highest body called upon to review the law in our judicial system, and the organ dealing with judicial review in Venezuela. In addition, however, it directs the judicial government department, running the judiciary, appointing judges and promoting/demoting them within the hierarchy, and dealing with auxiliary staff, the buildings from which justice is administered, the Legal Aid Department, the Inspectorate General of Courts, the National School of the Judiciary, the Judicial Commission and the disciplinary system. Of the 32 judges, 9 occupy posts in judicial government: the Executive Directorate of the Judiciary, the National Inspectorate of Courts, the Legal Aid Department, the Directorate of the National School of the Judiciary and the 5 members of the Judicial Commission. This was the basic reason why the number of judges increased from 20 to 32, on the occasion of the adoption of the Organic Act on the Supreme Court in 2004. The Legal Aid Department is the natural provider, for citizens on low incomes, of lawyers to act as advisors or counsel for the defence in criminal matters or as assistant advocates to act in any other court. The Judicial Commission is a technical body that advises and proposes the appointment of the provisional or temporary judges, or their suspension, to the Plenary Chamber, which is the body responsible for their appointment and removal. As already explained, the procedure for the appointment of tenured judges is completely different.

(j) The appointment of Supreme Court judges

The Constitution of the Bolivarian Republic of Venezuela provides for a procedure whereby the National Assembly appoints a Judicial Nominations Committee, which receives proposals from civil society organizations and universities, and from the candidates *proprio motu*, to consider the candidates and their academic and professional credentials, and to ensure that they comply with the requirements for the post as indicated in the Constitution. It draws up a list of candidates' names and their proposers, and publishes it in the national press, together with a deadline for objections and complaints, following which it conducts individual interviews and makes an initial selection which is transmitted to the Republican Ethics Branch, our fifth branch (the other is the Electoral Branch, besides the three traditional branches). The Republican Ethics Branch, which consists of the Attorney-General, the Comptroller-General and the Ombudsman, conducts a second selection which is submitted to the National Assembly, the body that takes the final decision. Judges serve a non-renewable term of 12 years in office.

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 independence and autonomy of the judiciary are clearly established in article 256 et seq. of the Constitution of the Bolivarian Republic of Venezuela. The warnings referred to in article 275 of the Constitution relate to officials in the public administration, that is, officials of the Executive Branch.
