



## International Covenant on Civil and Political Rights

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### Human Rights Committee Seventy-first session

#### Summary record of the 1899th meeting

Held at Headquarters, New York, on Monday, 19 March 2001, at 3 p.m.

*Chairperson:* Mr. Bhagwati

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01-29353 (E)

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**

*Third periodic report of Venezuela  
(CCPR/C/VEN/98/3)*

1. *At the invitation of the Chairperson, the delegation of Venezuela took places at the Committee table.*

2. **Mr. Avendaño** (Venezuela), introducing his country's third periodic report (CCPR/C/VEN/98/3), said that his Government appreciated the Committee's acceding to its request to postpone the presentation of the report so that the addendum to it could be prepared. That addendum had been submitted in October 2000. Venezuela had left behind the myths of the liberal State and had embarked on the search for renewal and revolution, seeking the common good through social justice. His country had adopted a new Constitution which incorporated full and unequivocal respect for human rights.

3. The promotion, protection and defence of human rights were among the Government's primary political goals and were accorded the highest priority in its domestic and foreign policy. The provisions of the new Constitution, promulgated on 24 March 2000, were in keeping with the most recent developments in international human rights law and with the international treaties ratified by Venezuela. Those instruments had constitutional ranking and were thus directly applicable by the courts and other governmental bodies.

4. His Government sought to ensure that all citizens felt fully protected in their country and could be certain that any violations of their human rights would be investigated, punished and compensated. For that reason, the possibility had been established for individuals to plead before the competent courts and to be protected in the exercise of their constitutional rights and guarantees, as well as the human rights not expressly provided for in the Constitution. In addition, the Constitution established the civil, criminal and administrative liability of public officials who performed acts which violated or diminished the rights guaranteed by the Constitution, and for their superiors, so that the excuse of having received orders from a

superior inconsistent with respect for the guaranteed rights was not admissible.

5. Individuals were also entitled to seek compensation from the State for damage sustained as a result of judicial error, delays or omissions. With regard to prison policy, acts of violence within penal institutions had declined significantly, as the conditions giving rise to such incidents were being ameliorated. President Chavez, having himself suffered from the long-standing anomalies and deficiencies of the prison system, was especially interested in rapid solutions to those problems. In that connection, corrective measures were being taken with regard to the training of prison staff and an Inspection Division had been created to monitor penal establishments and receive complaints.

6. The new Constitution expanded the definition of certain rights. Thus, the right to physical integrity had been extended to include psychological and moral integrity. The right of all detainees to communicate with their relatives and lawyers had been incorporated into the right of due process, along with the right of family members and lawyers to be informed of where and why the person was being detained and to verify his or her physical and psychological condition. Persons arrested *in flagrante delicto* must be brought before a judge within 48 hours.

7. The authorities were required to maintain a public record of the place, date and circumstances of arrests and the names of public officials who performed arrests. The right to have access to the evidence and adequate time and facilities for the preparation of a defence was guaranteed, as was the right of habeas corpus, even under states of emergency. In that connection, it should be noted that the basic law referred to in the Third Transitional Provision, No. 2, on states of emergency was being debated in the National Assembly and had not yet been promulgated.

8. The Constitution recognized the existence of indigenous groups and communities, their social, political and economic structures, customs, languages, beliefs and traditions, and their right to the land and territories which they traditionally occupied. It also established the State's obligation to promote gradual access by farmers and indigenous persons to individual and collective land ownership and to education, health, housing, social security, credit and technical and entrepreneurial assistance, with a view to raising their

incomes and improving their quality of life. The power of the heads of indigenous groups to exercise functions relating to the administration of justice in accordance with their traditions and customs, provided that they were not contrary to the Constitution and other laws, was also recognized.

9. The incorporation of a gender focus into the Constitution had improved women's legal status. The Law on Equal Opportunities for Women provided for equal rights between women and men in terms of the right to work, pay and social security. His Government had also opposed the adoption of measures which diminished the effectiveness of human rights, such as unilateral and extraterritorial measures, taking the view that they were instruments of political pressure which had adverse effects on broad segments of the population, and were also clearly in violation of the fundamental principles of international law and the Charter of the United Nations.

10. Venezuela was complying with all of its obligations under the international human rights instruments to which it was a party. His Government had repeatedly stated that it accepted the jurisdiction of both the inter-American system of human rights and that of the United Nations. It had hosted visits by United Nations human rights officials to its territory and had established a mechanism for receiving complaints of human rights violations from individuals and groups. Lastly, his country would continue to participate actively in international forums such as the United Nations Commission on Human Rights, on which it currently fulfilled the functions of Vice-Chairperson.

11. **The Chairperson** said that, as the delegation's written replies to the list of issues prepared by the Committee had been received only at the end of the previous week, it had not been possible to have them translated into the working languages, English and French. Furthermore, the addendum to the report which the State party had submitted at the end of the past year had also not been translated, for reasons unknown. He therefore requested the delegation to provide detailed answers to questions raised by the members of the Committee.

*List of issues (CCPR/C/71/L/VEN)*

*Constitutional and legal framework within which the Covenant and the Optional Protocol are implemented (article 2 of the Covenant)*

12. **The Chairperson** read out the questions relating to article 2: changes in the field of human rights contained in the new Constitution; functioning of the Office of the People's Defender (Ombudsman) and number of complaints received since it had begun to function; relationship between the National Human Rights Commission and the Ombudsman; constitutional or legal restrictions on enabling acts authorizing presidential decrees; means of supervising the exercise of presidential responsibility for issuing such decrees; means of safeguarding the independence of the judiciary; information on procedures for the suspension of judges and their removal from office, including members of the Supreme Court; cases in which the provisions of the Covenant had been directly invoked before State bodies and the courts, referred to in judicial decisions or applied in precedence over national legislation, and ranking of the Covenant in the domestic legal system.

13. **Mr. Avendaño** (Venezuela) said that the constitutional guarantees of human rights to which he had referred earlier also included the guarantee of legal restraint, meaning that they could be amended only by a legally valid act of Congress. Articles 30 and 31 of the Constitution provided that the State had an obligation to investigate and punish human rights violations committed by State authorities and to compensate the victims, including through the payment of damages. Article 31 guaranteed access to international human rights protection bodies.

14. The Constitution included mechanisms for eliminating impunity, preventing and punishing torture and forced disappearances (art. 45 of the new Constitution), training the security forces to respect human rights, giving civilian courts exclusive jurisdiction over crimes involving human rights violations, limiting the scope of military courts and establishing an absolute prohibition on the death penalty. Priority was given to human rights education and information and the need to establish national institutions for the promotion and protection of human rights.

15. Public officials were prohibited from using weapons or toxic substances in order to avert actions that could cause human suffering. The independence of the judiciary and the Supreme Court was guaranteed. Judges had access to careers in the judiciary through public competitive examinations and were selected by panels in a manner prescribed by law. Article 19 of the Constitution established the principle of equality before the law, prohibiting all forms of discrimination based on race, sex, creed, social origin or other grounds. Article 23 of the Constitution provided that the human rights treaties signed and ratified by his Government had constitutional ranking and took precedence over domestic law insofar as they contained provisions more favourable than those established in the Constitution and other laws.

16. Article 46 prohibited any person from being subjected to scientific experiments and medical examinations without his or her consent. Article 54 prohibited slavery, servitude and trafficking in persons. While the Constitution did not specifically prohibit extrajudicial, summary or arbitrary executions, some articles referred to the matter, especially article 43, which stated that the right to life was inviolable and that the death penalty could not be established by law or applied by any authority. Moreover, other articles stated that the enumeration of rights guaranteed in the Constitution was non-exhaustive and should be extended to include all rights inherent in the human person.

17. With regard to children and adolescents, article 78 of the Constitution guaranteed the rights embodied in the United Nations Convention on the Rights of the Child and other international treaties signed and ratified by his Government. Articles 87 and 88 guaranteed the right to work. Article 87 stated that promoting employment was a goal of the State. It guaranteed labour rights for independent workers and required employers to provide workers with safe, hygienic and adequate working conditions. Article 88 provided that women employed in the home were entitled to social security.

18. The Third Transitional Provision of the Constitution required the National Assembly, within the first six months following its inauguration, to adopt a partial reform of the Criminal Code in order to include the crime of forced disappearance. Until that reform was adopted, the Inter-American Convention on the Forced Disappearance of Persons would be applied.

The Fourth Transitional Provision required the National Assembly, within the first year following its inauguration, to adopt legislation penalizing torture, through either a special law or reform of the Criminal Code, and to adopt a basic law on refugees and asylum seekers in accordance with the Constitution and the international treaties on the subject ratified by his Government.

19. The Office of the People's Defender formed part of the Civic Power (*poder ciudadano*), together with the Public Prosecutor's Department and the Office of the Comptroller-General. The transitional regime of the organs of Civic Power had ended with the appointment of the Ombudsman by the National Assembly and the presentation of the draft basic law on the Office of the People's Defender. The powers of the People's Defender, as set forth in article 281 of the Constitution, included monitoring respect for human rights, investigating complaints, monitoring the functioning of the public administration, protecting individual rights and interests against the arbitrary misuse of power, filing writs of unconstitutionality, *amparo* and habeas corpus, urging the Attorney General to institute proceedings against public officials responsible for human rights violations, defending the rights of consumers, submitting draft legislation on the progressive protection of human rights to local and national legislative bodies and developing ongoing liaison mechanisms with public and private human rights bodies at the national and international levels.

20. The Office of the People's Defender sought to fulfil its mandate through alternative conflict resolution methods, namely, mediation and conciliation. Its basic functions were to receive, process and investigate complaints, institute judicial proceedings and supervise the administration of justice. During the first few months following its establishment the Office had focused on setting up local units for processing complaints.

21. A draft law provided for the establishment of the office of regional People's Defenders in order to fully decentralize judicial and extrajudicial actions on complaints and so that the national People's Defender could concentrate on the coordination of general and specific policies and mediation before the public authorities and institutional leaders. The Office of the People's Defender (Ombudsman) was a complementary and independent organ of the civic power, at the service of the population, together with the Public

Prosecutor's Department and the Office of the Comptroller-General; and its functions related to persuasion, mediation and conciliation.

22. The National Human Rights Commission was established by decree No. 1034 of 24 January 1996, based on human rights commitments ratified by Venezuela and in compliance with the obligation of the executive branch to draw up plans and programmes that promoted and protected human rights and monitored and evaluated their exercise. It was composed of representatives of the Public Prosecutor's Department, the Ministries of the Interior and Justice, Foreign Affairs, Defence, Education, Labour, the principal city council, the National Border Council, and non-governmental organizations.

23. Although the purpose of both institutions was to defend human rights, the Commission was a governmental organ subject to its guidelines, while the Office of the People's Defender (Ombudsman) was an autonomous body, independent of the Government's political interests. It should also be noted that when the National Human Rights Commission had been established, the Office of the People's Defender had not existed in the Venezuelan legal system and that, although the Commission was still in existence, it had no legal status, owing to an invalidating clause in the Constitution.

24. Under the Constitution, the President could issue decrees subject to authorization by an enabling act. In order to be valid, such acts must be in conformity with the provisions of the Constitution. The authority to administer justice emanated from the people, and justice was provided in the name of the Republic, in the terms established by the law. The Constitution guaranteed the full independence of the judiciary, and included provisions governing the functioning of the Supreme Court of Justice.

25. Article 23 of the Constitution established that the human rights treaties, covenants and conventions signed and ratified by Venezuela had constitutional rank and took precedence over domestic legislation when they contained more favourable rules on the enjoyment and exercise of human rights than those laid down in the Constitution or national laws. They could be implemented directly and immediately by the courts and other government bodies.

*State of emergency (article 4 of the Covenant)*

26. **The Chairperson** read out the question relating to article 4: promulgation of the basic law on states of emergency; and legal norms governing states of emergency in Venezuela.

27. **Mr. Avendaño** (Venezuela) said that the legal norms governing states of emergency which could lead to situations seriously affecting national security and which merited the adoption of political and constitutional measures were defined in the Constitution.

*Right to life, liberty and security of person, and to a fair trial with due safeguards (articles 6, 7, 9 and 14 of the Covenant)*

28. **The Chairperson** read out the questions relating to articles 6, 7, 9 and 14 of the Covenant: promulgation of the basic law on torture; measures to investigate and provide compensation in cases of excessive use of force by the police or the armed forces; details of investigations and their outcomes, trial proceedings, sentences passed and compensation awarded; information on the practice of torture, investigations into cases of torture, and steps to combat and eliminate torture; measures to reduce the prison population; and jurisdictional competence of the military courts and competence to judge civilians.

29. **Mr. Avendaño** (Venezuela) said that, although no law on torture had been promulgated during the first year of the current National Assembly, a legal vacuum did not exist because the crime of torture was regulated in the Constitution, the Criminal Code and the act for the protection of children and adolescents.

30. **Mr. Saltrón** (Venezuela) said that the Constitution stipulated that any person could request that a legal situation which had been impaired by a miscarriage of justice, or an unjustified delay or omission should be remedied. However, to date, Venezuelan legislation had not dealt with the rehabilitation of victims of torture or cruel, inhuman and degrading treatment. The new constitutional text included a guarantee by the State for providing special attention to the victims of such treatment and pertinent training for health professionals. Venezuela had enacted a law adopting the Inter-American Convention on the Forced Disappearance of Persons and a series of domestic laws specifically designed to provide

reparation for violations of the victims' rights. With regard to the forced disappearance of persons that had occurred during events in Caracas in February and March 1989 and in the state of Vargas in December 1999, the corresponding investigations were being conducted by the Public Prosecutor's Department in order to clarify the facts and determine who was responsible.

31. Venezuela was a State party to the Inter-American Convention on Human Rights and its legal system had automatically incorporated article 63 of the Convention on the jurisdiction and functions of the Inter-American Court of Human Rights. It had also signed and ratified the Statute of the International Criminal Court.

32. The new Constitution established torture as a crime for the first time, thereby meeting the international human rights commitments assumed by Venezuela. It stipulated punishments for the perpetrators of such crimes as well as their accomplices. Public officials involved in cases of torture could no longer allege that they were acting on orders from their superiors. They were obliged to disobey such orders and lodge the corresponding complaints. Therefore, torture was absolutely prohibited in Venezuela. The People's Defender (Ombudsman) was authorized to receive such complaints and to urge the authorities to take legal and administrative measures to correct the situation and punish those responsible. However, the criminal investigation agencies had insufficient personnel to investigate the large number of complaints.

33. The new Code of Criminal Procedure had radically changed the procedural system, abandoning the written and inquisitive procedure in favour of the oral and accusatorial system. With regard to imprisonment, the period of detention for a person arrested *in flagrante delicto* had been reduced, and the new code attempted to decrease the investigative period and differentiate between serious crimes and minor offences in order to simplify and streamline the administration of criminal justice. Under the new accusatorial process, the freedom of the defendant was the rule and pre-trial detention was the exception; consequently, the number of those detained had been substantially decreased.

34. The Constitution enshrined the right to a fair trial, which was defined as a series of guarantees that protected citizens subjected to any proceeding. The

jurisdictional competence of the military courts was restricted to crimes of a military nature. Ordinary crimes, human rights violations and crimes against humanity had to be tried by the civil courts.

*Treatment of persons deprived of liberty (article 10)*

35. **The Chairperson** read out the questions relating to article 10: extent of improvement of the poor conditions of imprisonment, as regards health and violence; steps taken to ensure respect for the Standard Minimum Rules for the Treatment of Prisoners; effectiveness of measures to deal with violent prison riots and ensure reporting of ill-treatment in prison and the conduct of the appropriate investigations; effectiveness of human rights training programmes for prison staff; and measures to take account of the age of minors and the desirability of promoting their rehabilitation.

36. **Mr. Avendaño** (Venezuela) said that the overcrowding in Venezuelan prisons was one of the most serious human rights situations that the new Government had found and was being tackled from several angles with the help of various international institutions. Six new prison centres were being constructed, through concession to the private sector; there was also a proposal to restructure all the country's prisons, classifying prisoners according to the level of risk that they posed and setting up wings for young offenders from 18 to 21 years of age. There was a special school for training prison guards, and it was hoped that there would be 800 graduates in 2001. A new course to train prison officers had also been inaugurated.

37. A decrease in prison violence had been observed in the final quarter of 2000 and the first quarter of 2001, which was attributed to various factors. Complaints had been directly dealt with, and solutions had been found. A national association of family members of prisoners had been formed to carry out activities aimed at bringing peace to the prisons and supporting complaints of human rights violations. The percentage of pre-trial detainees had been reduced; and some prisoners could work during the day under the rehabilitation policy. With regard to minors, the basic act for the protection of children and adolescents had entered into force on 1 April 2000. It developed the principles contained in the Convention on the Rights of the Child, which Venezuela had signed in 1990,

including provisions on the prison system for adolescents.

38. **Mr. Solari Yrigoyen** said that the Committee recognized Venezuela's commitment to human rights and was aware of the many constitutional reform in favour of such rights; however, it appeared that many of the commitments embodied in the new Constitution had not yet been put into practice. For example, article 19 of the Constitution stated that all persons were guaranteed the enjoyment and exercise of their human rights. It would be useful if the delegation would explain the significance of the fact that the guarantee was granted in accordance with the principle of progressivity.

39. The new Constitution was one of the most advanced in the hemisphere with regard to many aspects of human rights; for example, inclusion of the crime of forced disappearance of persons, precedence given to international human rights law over domestic law, limitation of the use of force by the police, establishment of the Office of the People's Defender (Ombudsman), and abolition of capital punishment. However, the Constitution did not prohibit the armed forces from participating in politics, although it did reserve the jurisdiction of the military justice system for military crimes and, according to article 261, human rights violations and crimes against humanity must be tried by the civilian courts.

40. Nevertheless, it appeared that this rule was not respected by the armed forces. On 7 January 2001, Pablo Aure Sanchez had been arrested by Military Intelligence for criticizing the armed forces in the newspapers and was accused of libelling the armed forces under the Code of Military Justice. He would like to know whether Mr. Aure Sanchez had been transferred to the civilian system, as the judges had ordered, and whether there were any plans to amend the Military Code to avoid similar situations in the future. With regard to military activities in the civil area, he requested information on the civilian-military cooperation programme, Bolivar 2000, and asked to what extent it granted extraordinary powers to the armed forces.

41. The National Assembly had issued a decree on the reorganization of the judiciary and, to that end, declared the judiciary in an emergency situation, annulling the tenure of judges. It would be useful to know how many judges had been affected by that

measure, how many had been relieved of their functions, how many remained in office, how many new judges had been appointed, and how many of the new judges had been placed in the recent positions, during their year of probation.

42. He asked how the widely criticized article 256, paragraph 2, of the Constitution, which denied judges the right of association, could be reconciled with article 58 of that same Constitution granting them that right, and with article 22 of the Covenant. Also, despite the recognized right of workers to form trade unions (Constitution, art. 95) and the precedence given to international treaties by the Constitution (art. 23), the Government, in violation of International Labour Organization (ILO) Convention No. 87 to which Venezuela was a party, had in late 2000 held a referendum, later upheld by the Supreme Court, calling for replacement of all current trade union leaders.

43. Despite the constitutional condemnation of extrajudicial executions and impunity for the security or armed forces involved, many such executions and forced disappearances had occurred in the past three years. It would be useful to have information on exactly how many instances there had been, how many national guardsmen or security police had been tried for the crimes and how many convicted; and what steps the Government was taking to prevent such crimes and the related ones referred to by the delegation, such as a December 1999 incident jointly perpetrated by an armed forces regiment and the political police, in which, according to the Ombudsman, 60 extrajudicial executions and four forced disappearances had occurred.

44. The absolute prohibition against torture in the Constitution was at odds with the absence in the Penal Code of any definition of torture as a crime. He wondered what plans there were to revise the Penal Code in that regard. The Government had acknowledged the appalling prison conditions in the country and adopted a plan to reduce the violence; despite which more than 300 had died and almost 1,500 had been wounded inside its prisons in the past year. What urgent steps was the Government now taking to remedy the situation? Lastly, the recent revision of the Code of Criminal Procedure had been criticized for its lack of regard for due process and presumption of innocence, and he asked if the Government could assure the Committee that those rights would in fact be respected.

45. **Mr. Amor** asked for details on any summary or extrajudicial executions that had actually occurred in the country in the past three years, including statistics on executions by the National Guard, enforced disappearances, official investigations conducted and their outcome, and information on the kinds of preventive measures in place. He inquired if Venezuela intended to incorporate the Covenant's definition of torture into its own legal provisions. Regarding prison conditions, he would appreciate more details on practical steps being taken to halt violence by prison guards.

46. He noted that the awarding of damages to victims of human rights violations on terms agreed to by the victims and the perpetrators could ultimately lead to the application of a type of relative justice and a kind of impunity. Aware that, in the past, Venezuelans had been banished from their own country, he wondered if there had been any such occurrences in the last three years. Commendably, civil servants now had the right to disobey illegal orders, but it was not clear if the previous immunity from prosecution in such cases had been abolished, both legally as well as in practice.

47. **Mr. Yalden**, noting the monitoring mechanisms and the very advanced 1999 constitutional provisions enacted, said that he was impressed by the enormous number of complaints received by the Ombudsman, whose mandate presumably extended to ministries and officials in the public sector. It was not clear, however, whether his jurisdiction covered the activities of the military, or possible violations in the private sector as well, or whether prisoners could bring complaints to him. It would be interesting to learn about any rulings that had been made in the 42 court actions which, according to the delegation, the Ombudsman had brought and about the line of jurisprudence that was developing. He would, lastly, like to know why the Ombudsman had already been replaced, before the end of his seven-year term.

48. **Mr. Scheinin**, expressing the hope that Venezuela would in future submit its periodic reports without such long delays, which made it impossible for the Committee to assess the situation in the country, commended it on its new Constitution. The Constitution afforded extensive protection of fundamental rights, developed an elaborate doctrine of types of rights that went well beyond the international human rights instruments, and laudably gave

precedence to international instruments over national legislation.

49. Some gaps nonetheless remained: while article 69 of the Constitution recognized the right of asylum, the Constitution nowhere referred to the right of *non-refoulement*. He wondered how Venezuela would deal with a person who risked death or torture as a result of deportation, and whether the border police were given adequate training in human rights standards. There were troubling reports about Venezuela's compliance with the principle of *non-refoulement*, and article 7 of the Covenant should be applied directly in the absence of constitutional safeguards.

50. The discussion of states of emergency in paragraph 36 of the report suggested that Venezuela might be using the power to declare them more broadly than allowed by article 4 of the Covenant; indeed, some of the types of states of emergency listed in article 338 of the Constitution appeared to be less serious than required by the Covenant. The specific reference to the Covenant in article 339 of the Constitution, on the other hand, would presumably restrict the measures permissible under the notion of emergency, and require all derogations from rights to be in compliance with the Covenant. He would like clarification as to whether the new Constitution in fact limited the power to declare states of emergency and the consequent derogations from certain rights, so that Venezuela's notification of states of emergency under article 4 of the Covenant would explain specifically why a state of emergency was justified, to what extent, and how it was in keeping with the Covenant.

51. **Mr. Ando**, noting with regret that the report had been submitted five years late, asked whether, when the constitutionality of enabling legislation authorizing a presidential decree was in doubt, the matter could be brought before the courts. According to reliable outside information, there had been seven cases recently of *refoulement* of Colombians by Venezuela. He would appreciate further information in that regard from the delegation and would like to know if Venezuela, which professed in paragraph 202 of the report to espouse the principle of *non-refoulement*, had any extradition agreement with Colombia and if such an agreement was in line with the international instruments to which Venezuela was a party. He also wondered if there had ever been any on-site visits by observers at the border in cases of extradition.



52. He shared Mr. Solari Yrigoyen's concerns regarding the recent national referendum on trade unions, and asked how the referendum could be justified in the light of the principles of trade union freedom outlined in the report (para. 324) and of article 9 of the Covenant. Lastly, he would appreciate more information on the action taken after the Supreme Court had declared unconstitutional several proceedings before the military courts (report, para. 209), and on the jurisdictional links that existed between the ordinary courts and the Supreme Court.

53. **Mr. Klein** observed that, while the report was frank about some serious failures to implement the Covenant, it failed to give any plans to remedy them. That seemed to imply an attitude of resignation in the face of serious violations by the police and others, which he hoped had changed with the adoption of the admirable new Constitution. He singled out article 45 regarding forced disappearances for commendation as a very modern norm and a very necessary one in the region.

54. He asked if there were any acts of State bodies — such as the military or the Presidency — that were immune to court review. The delegation had stated that the provisions of the Covenant could be directly invoked before State bodies and took precedence over contrary national legislation, but had not indicated whether that had ever been done in practice. The reporting State should clarify that point.

55. He then referred to article 9 of the Covenant in connection with paragraph 122 of the report of Venezuela. The police had been interpreting the maximum limit of pre-trial detention to mean that they could detain a person for the entire eight-day period. Although the situation had changed since the 1999 report, it was difficult to understand why the police were not obliged to obey the law, which gave cause for concern. As well, the reporting State should explain when individuals might contact their lawyer, family, or doctor. With respect to article 19 of the Covenant concerning freedom of expression, he felt that the wording of article 58 of the new Venezuelan Constitution, particularly the phrase “to receive impartial, true and timely information”, could be dangerous with respect to journalists and opposition politicians and that a clarification would be useful.

56. **Ms. Medina Quiroga** inquired about the role of the National Human Rights Commission and its

relationship to the Ombudsman. Since the Commission was not empowered to abrogate any provisions of the Constitution, she would welcome information on the Commission's real powers and modus operandi. With respect to the broad powers granted to the President of the Republic to issue law-ranking decrees, subject to authorization by an enabling act, she wondered how presidential decrees had affected presumption of innocence and human rights, particularly those rights listed on pages 15 and 16 of the Venezuelan responses to Committee questions.

57. With respect to the measures adopted to provide compensation in cases of excessive use of force by the police or the armed forces, she failed to understand why military courts were involved in civil matters in the first place. Regarding torture and the remedies provided for in article 49 of the Venezuelan Constitution, she would welcome further information about such remedies as well as on progress made in investigating cases of abuse, torture and forced disappearances. Furthermore, it would be useful to have more details on remedies available to victims other than those provided for under article 30. Article 63 of the Inter-American Convention on Human Rights might apply, but judges did not use that provision because of undue delays.

58. She congratulated Venezuela on the legal reforms carried out since 1999 with respect to detention, particularly the reduction of detention periods from eight days to 48 hours under the new Constitution, and wondered whether the restructuring process had been completed. She also echoed the concerns expressed by Mr. Solari Yrigoyen as to how judges had been affected by the reforms, and asked how many judges had lost their positions and how many new judges had been appointed to replace them. Concerning prisons, she would appreciate additional information on the number of prisoners, the percentage not yet tried, and whether individuals could be held as suspects.

59. With respect to the newly established civic power under article 273 and subsequent articles of the Constitution, she inquired about the composition of the National Ethics Council, the Public Prosecutor's Department, the Office of the Ombudsman and the Office of the Comptroller-General, which generally concerned itself with financial matters. Further information would be welcomed with respect to the role, independence and powers of the Council. In particular, it would be interesting to know whether

warnings could be issued to public officials and penalties imposed, and whether an article should be included in the Constitution regarding the Council's power to determine serious errors on the part of Supreme Court justices and impose penalties. As for the Ombudsman, she would be grateful for additional information on why only 20 of the 16,329 complaints filed thus far in fact dealt with torture, as indicated in Venezuela's report, whether the Ombudsman could take action in cases of torture on a priority basis, and whether abuses by the police were being dealt with more expeditiously.

60. **Ms. Chanet** expressed admiration for the new Venezuelan Constitution, particularly those provisions related to human rights. Article 23, for example, seemed to indicate that human rights treaties, covenants and conventions ratified by Venezuela took precedence over standards laid down in the Venezuelan Constitution. She would be grateful for additional information on that point.

61. Turning to the reform of the Venezuelan judiciary and the adoption of the accusatory system, she wondered whether the provisions of articles 43 and 44 of the Venezuelan Constitution (concerning the rights of an accused person to be made aware of the nature of the charges against him and to be allowed to communicate with his lawyer and/or family), appeared in the Code of Criminal Procedure. Specifically, it was unclear how lawyers initially became involved, whether access to a doctor was permitted, whether secret incarceration existed, and if and how individuals could be detained pending trial. Furthermore, with respect to the presumption of innocence and the transition to an accusatory system, she would be grateful for additional information on the respective roles of the defence and prosecution with regard to examination for discovery and access to evidence.

62. **Sir Nigel Rodley** praised the human rights achievements of Venezuela, noting the country's decades-long lobbying effort against the death penalty, early ratification of the statutes of the International Criminal Court, and the many legal reforms adopted on the basis of recommendations from the Special Rapporteur on Torture. Alluding to comments by Mr. Amor concerning the crimes of torture, extrajudicial executions and disappearances, he said that more information on the legal and legislative status of those issues would be useful.

63. With respect to the 19 cases investigated by the Ombudsman's Office during its first six months, he would appreciate further data on legal proceedings instituted, claims for compensation filed, and the percentage of successful cases brought. With regard to refugees and asylum seekers, further information about the role of the United Nations High Commissioner for Refugees would be useful, particularly with respect to gaining access to such individuals as well as in relation to articles 6 and 7 of the Covenant.

64. **Mr. Henkin** also expressed admiration for the new Constitution and the promises that it contained. Referring to comments made by Mr. Scheinin and Mr. Ando on late reporting, he emphasized that States were responsible for submitting timely reports, failing which they were in clear violation of the Covenant. With respect to expulsion, extradition and *refoulement*, he pointed out that States must recognize that, as a result of their own actions, violations of human rights could occur in other States, and he called on Venezuela to review its policies in that regard.

*The meeting rose at 6 p.m.*