



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/CR/29/2
23 December 2002

ENGLISH
Original: SPANISH

COMMITTEE AGAINST TORTURE
Twenty-ninth session
11-22 November 2002

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

VENEZUELA

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

A. Introduction

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

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

¹ The Committee therefore decided to consider document CAT/C/33/Add.5 as the second and third periodic reports of Venezuela.

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

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

B. Positive aspects

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

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

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

(c) It requires the State to investigate and impose penalties on human rights offences, declares that action to punish them is not subject to a statute of limitations and excludes any measure implying impunity, such as an amnesty or a general pardon;

(d) It requires offences concerning human rights violations and crimes against humanity to be heard in the ordinary courts;

(e) It imposes on the State the obligation of compensating in full victims of human rights violations and recognizes the right to rehabilitation of victims of torture and cruel, inhuman or degrading treatment, inflicted or tolerated by agents of the State;

(f) It regulates custody safeguards appropriately, e.g. a prior court order is required for any arrest or detention, except in flagrante delicto; a period of 48 hours is established at the constitutional level for bringing a detainee before a judicial authority, as the Code of Criminal Procedure already provides; the liberty of the person charged is taken as the general rule and pre-trial custody as the exception;

(g) It admits a series of safeguards for the detainee, such as access to a lawyer immediately on being detained and a ban on obtaining confessions by torture;

(h) It makes compulsory the extradition of persons charged with human rights offences, and makes provision for a brief, public, oral procedure for trying them.

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

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

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

C. Subjects of concern

10. The Committee expresses its concern at the following:

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

(b) The numerous complaints of torture, cruel, inhuman and degrading treatment, abuse of authority and arbitrary acts committed by agents of State security bodies which render inoperative the protective provisions of the Constitution and the Code of Criminal Procedure;

(c) Complaints of abuse of power and improper use of force as a means of control, particularly during demonstrations and protests;

(d) Complaints of threats and attacks against sexual minorities and transgender activists, particularly in the State of Carabobo;

(e) Information on threats to and harassment of persons who bring complaints of ill-treatment against police officers and the lack of adequate protection for witnesses and victims;

(f) The absence of prompt and impartial investigations of complaints of torture and cruel, inhuman and degrading treatment, and the lack of an accessible, institutionalized procedure in order to ensure the right of victims of acts of torture to obtain redress and fair and adequate compensation, as article 14 of the Convention provides;

(g) The numerous instances in prisons of prisoner-on-prisoner violence and violence against prisoners by prison officers, which have led to serious injuries and in some cases to death. The precarious material conditions in prisons are also a matter for concern;

(h) The lack of information, including statistical data, on torture and cruel, inhuman or degrading treatment or punishment, broken down by nationality, gender, ethnic group, geographical location and type and place of detention.

D. Recommendations

11. The Committee recommends that the State party should:

(a) Adopt legislation making torture a punishable offence. Pursuant to the fourth transitional provision of the new Constitution, this requires a special act or the reform of the Penal Code within a year of the establishment of the National Assembly; this period had already been greatly exceeded;

(b) Adopt all necessary measures to ensure immediate and impartial investigation of all cases of complaints of torture and cruel, inhuman or degrading treatment. The agents concerned should be suspended from their duties during these investigations;

(c) Adopt measures to regulate and institutionalize the right of victims of torture to fair and adequate compensation and draw up programmes for their physical and mental rehabilitation to the fullest extent possible, as the Committee had already recommended in its previous conclusions and recommendations;

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

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

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

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