

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL

CCPR/C/SR.248
24 October 1980

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Eleventh session

SUMMARY RECORD OF THE 248th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 21 October 1980, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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GE.80-16781

The meeting was called to order at 10.50 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4).

Venezuela (CCPR/C/6/Add.3)

1. At the invitation of the Chairman, Mr. Nucete-Rondon (Venezuela) took a place at the Committee table.
2. Mr. NUCETE-RONDON (Venezuela), introducing his country's report under article 40 of the Covenant (CCPR/C/6/Add.3), assured the Committee of his Government's willingness to co-operate with it in every way and to answer any questions it might wish to ask regarding the report.
3. Mr. PRADO VALLEJO said that, after overcoming a number of internal difficulties, Venezuela had become a democratic republic and that its Government had succeeded in establishing an excellent record in the promotion of human rights. In that regard, he drew particular attention to the recently established Ministry of Public Information, a unique body designed to disseminate knowledge and promote the intellectual development of the individual. While he commended the Venezuelan report for being succinct, relevant and informative, he thought that certain points still required some clarification.
4. With respect to part I of the report, he drew attention to section A on the conditions in which certain rights could be suspended in Venezuela. Article 4 of the International Covenant on Civil and Political Rights made it clear that certain rights could never be suspended for any reason, but it would appear that under Venezuelan law they could. Article 241 of the Constitution of Venezuela stated that some constitutional guarantees could be suspended in cases of emergency, with the exception of those proclaimed in article 58 i.e. those concerning the right to life, the right not to be held incommunicado or be subjected to torture, and the right not to be sentenced to life imprisonment or to punishment that was infamous or restrictive of personal liberty for a period exceeding 30 years. Article 244 of the Constitution provided that constitutional guarantees could be suspended if there were well-founded indications of imminent disturbances of the public order. Under that article, an individual could be confined or detained for a period of up to 90 days by a decision of the authorities if the Congress raised no objection.
5. He wondered whether those provisions were consistent with the requirement under the Covenant that any person arrested should be brought before an impartial and competent judge, and would like to have some clarification regarding the nature and application of article 244.
6. Article 243 of the Constitution of Venezuela stated that the decree restricting or suspending guarantees could be revoked by the National Executive or by the Chambers in joint session. In view of the dilatory nature of congressional proceedings, he wondered whether that provision might not have the effect of delaying the release of detainees beyond a reasonable time.
7. While welcoming the statement in section 8 of part I that the provisions of the Covenant might be invoked in the courts of justice or before administrative authorities since they had become the law of the country, he wondered how a citizen would be able in practice to invoke the provisions of the Convention if the President of the Republic was empowered to suspend certain rights in a manner contrary to the Convention. It would also be interesting to hear if information on the Covenant were disseminated by means other than publication in the Gaceta Oficial, so as to create a broad awareness among citizens of their rights under that instrument.

8. Turning to section C, which referred to the responsibilities of the Public Prosecutor's Department (Ministerio Público), he said he would like to know what action it had taken and on what occasions to defend human rights in cases of reported abuses of authority. In particular, he wondered how it complied in practice with the provision of article 220 of the Constitution that it must ensure the proper enforcement of the laws and guarantees of human rights in gaols and other prison establishments, and with the provision of article 6 of the Public Prosecutor's Department Organization Act that it must investigate cases of arbitrary detention and promote measures to terminate them.

9. From section D he noted that the right of habeas corpus was limited and that the exercise of the much broader remedy of amparo was governed by the provisions of an act which had not yet been issued by Congress and therefore lacked the necessary law to secure its implementation. Amparo was important because it guaranteed the citizen security against any infringement of his rights, including violations committed by the public authorities. He hoped, therefore, that steps were being taken to enact legislation to make that remedy effective.

10. Turning to part II of the report, he drew the Committee's attention to the provisions relating to article 2 of the Covenant and the statement that foreigners had the same duties and rights as Venezuelans, with the limitations and exceptions established by the Constitution and the laws. It would be useful to hear what those limitations and exceptions were. He was aware that Venezuela had many foreigners residing illegally in its territory and he wondered how the resultant problems had been solved. The same section of the report also commented that a State's power to grant or refuse foreigners permission to remain within its territory was a principle inherent in the exercise of sovereignty, and therefore indisputable. Under article 13 of the Covenant, however, an alien might be expelled only in pursuance of a decision reached in accordance with law, and not as an arbitrary exercise of sovereign right. The question arose whether an individual alien had any recourse -- in the absence of the appropriate legislation, the remedy of amparo -- to protect him against an arbitrary expulsion order.

11. In the provisions relating to article 3 of the Covenant, he noted that the report itself recognized that a few discriminatory provisions against women still existed, such as article 970 of the Commercial Code. In view of the obligations under article 2 of each State Party to the Covenant, he wondered what steps were being taken to correct that situation.

12. In connexion with the provisions relating to article 9 of the Covenant, he noted that article 60 of the Constitution stated that, in cases where a punishable act had been committed, the police authorities might adopt provisional measures of necessity or urgency, indispensable to ensure investigation of the act and trial of the guilty parties. Police investigations were often protracted, and he wondered just how long a citizen could be detained under that provision before the judicial authorities were notified.

13. With regard to the provisions relating to article 12 of the Covenant, he wondered what limitations could be placed on liberty of movement under the provisions of article 64 of the Constitution. The same article also stated that no act of the Public Power might establish against Venezuelans the penalty of banishment from the national territory, except as commutation of some other punishment and at the request of the guilty party himself. It would be useful if the Committee were informed when a sentence could be commuted and how the penalty of banishment was actually applied.

14. Article 1 of the Aliens Act stated that the territory of Venezuela was to be open to all aliens, subject to the limitations and restrictions established in the Act itself. He would like to know just what those limitations and restrictions were, particularly in view of the problems created for Venezuela by the influx of aliens.

15. Among the provisions relating to article 13 of the Covenant, he noted that, under the Aliens Act, aliens could be expelled if, in the event of the suspension of the constitutional guarantees, they prejudiced the restoration or maintenance of peace. He wondered what kind of acts would qualify under that provision. Under article 37 of the same Act, an alien who infringed neutrality could be expelled. Infringement of neutrality was the act of a State rather than an individual citizen, and it was thus unclear what that provision was intended to mean. Article 47 of the Act stated that no appeal was permitted against an expulsion order adopted in accordance with article 34 of the Act. It was difficult to see how such an absence of remedy for what might well be an arbitrary administrative act directed against an alien could be justified.

16. Turning to the provisions relating to article 14 of the Covenant, he noted that article 60, paragraph 5, of the Constitution stated: "... Persons having committed an offence against public property may be tried in their absence, with the guarantees and in the manner prescribed by law." Public property was an extremely broad concept which could, in fact, be construed to mean virtually anything. For that reason, it would be useful if the Committee were informed how public property was to be defined for the purposes of article 60, paragraph 5, of the Constitution.

17. Article 43 of the Constitution, mentioned in connection with article 16 of the Covenant, referred to certain limitations on the right to develop the personality, the statement concerning those limitations being a very broad one. He wondered what limitations could derive from social order and, indeed, what precisely was to be understood by social order.

18. The commentary on the provisions relating to article 17 of the Covenant stated that it would be more correct to speak of the inviolability of the "house". It would be useful to know what the Venezuelan Government meant by "house" in that context.

19. In connection with the provisions relating to article 18 of the Covenant, it was noteworthy that article 65 of the Constitution stated: "Religious faith shall be subject to the supreme inspection of the National Executive in conformity with the law." He would like to know what was meant by "supreme inspection of the National Executive", on what basis such an inspection was carried out in matters of religion and religious faith and what restrictions could be imposed. Such restrictions appeared to be quite incompatible with freedom of religion.

20. He was extremely gratified to note, among the provisions relating to article 19 of the Covenant, that article 66 of the Constitution stated that propaganda for war would not be permitted. Anti-war legislation was extremely rare in the Latin American countries, and he congratulated the Government of Venezuela on including that provision in the country's Constitution. The commentary on that article in the report stated, however, that freedom of the press without any restriction might become a most powerful instrument, not only in attacking the honour and reputation of individuals but also in endangering State security. That statement,

and the sentence which followed it, led one to fear that measures were being planned or were being enacted to restrict freedom of expression when State security was endangered. Further clarification was needed on that point, since freedom of expression should be maintained in all circumstances. He wondered whether that part of the report really reflected the official position of the Government of Venezuela and whether measures could be adopted against the freedom of the press in order to protect State security.

21. In connection with the provisions relating to article 22 of the Covenant, article 114 of the Constitution referred to legislation to guarantee the equality of political parties before the law and he would like to know if such legislation actually existed.

22. With regard to article 23 of the Covenant, the report frankly acknowledged that in Venezuela there was no equality of rights and responsibilities of spouses as to marriage, mentioning that article 140 of the Civil Code stated: "Decisions regarding all matters relating to common marital life shall be made by the husband." It certainly appeared that such a provision was incompatible with article 23, paragraph 4, of the Covenant and he wondered what action the Government of Venezuela was proposing to take in order to bring its domestic law into line with the Covenant.

23. As for the provisions relating to article 25 of the Covenant, he noted that Venezuelans had the right to vote when they reached 18 years of age but might not be elected to public office until they were over 21 years of age. He wondered why there was a difference in the age requirements for voting and for holding public office.

24. The report stated, in relation to article 26 of the Covenant, that Venezuela was a country without discrimination of any kind and quoted the relevant article of the Constitution which provided: "Discrimination based on race, sex, creed or social condition shall not be permitted". However, it had been acknowledged that there was discrimination based on sex, so there appeared to be a contradiction between the Constitution and such legislation as the Civil Code as well as between the latter and the Covenant.

25. Part II, section B, of the report listed a number of rights which might be suspended or restricted in exceptional situations, including the right to express and disseminate opinions. He wished to point out to the Government of Venezuela that article 18 of the Covenant was one of those listed in article 4, paragraph 2, and thus that the right to express opinions might not be suspended during an emergency. There appeared to be a further contradiction between Venezuelan law and the Covenant in respect of the right to be sentenced only to established and pre-existing punishment. The report indicated that the right in question could be suspended or restricted whereas article 15 of the Covenant was also listed in article 4, paragraph 2, and, consequently, such was not the case.

26. In conclusion, he welcomed the last paragraph of the report by Venezuela. That country was one of the very few democratic, constitutional and peaceful countries in its area and he unreservedly endorsed the statement made in that paragraph.

27. Mr. BOUZIRI expressed his appreciation of the willingness of the Government of Venezuela to co-operate with the Committee. The report was a very interesting one and he had been particularly struck by its note of honesty and sincerity. The Government of Venezuela had shown rare courage in acknowledging that some legal

provisions still in force were not in conformity with the Covenant. Human rights seemed to be a living reality in Venezuela and their protection seemed well assured, thus providing a ray of hope in that part of the world.

28. Nevertheless, he had found the report somewhat too summary, in view of the very many issues raised by the implementation of the Covenant. The statement by the representative of Venezuela had certainly had the merit of brevity, but a more detailed statement would have compensated for certain omissions and obscurities which were perhaps inevitable in an initial report and he hoped that the representative of Venezuela would subsequently be able to clarify a number of those issues.

29. Part I of the report, entitled "General considerations" contained a list of absolute fundamental rights, three in number, whose limitation was prohibited by the Constitution, and a much longer list of relative rights which might be regulated by the legislature. Certain of the relative rights would, in his opinion, unquestionably deserve to be embodied in the Constitution and to be considered as fundamental rights, since they were vital to the individual and the Covenant clearly regarded them as being of great importance.

30. Despite certain attenuations and precautions, it was clear, from articles 240, 241, 242 and 244 of the Constitution that the President of the Republic and the Executive had excessive powers with regard to the suspension or restriction of constitutional guarantees and of individual, social, economic and political rights.

31. The report stated that, in a free society, it was essential that the Judiciary should be autonomous and independent (part I, section C) and it would be useful if some indications were given as to how that independence was guaranteed by the law, because the report was not very informative on that important aspect. He wondered, for instance, how judges were appointed and whether members of the Public Prosecutor's Department could be transferred or punished.

32. Part I, section D of the report indicated that an act concerning the exercise of the remedy of amparo had yet to be issued by Congress. It would be interesting to learn whether the act in question had been issued since the report had appeared.

33. Turning to the question of specific articles of the Covenant (part II of the report), he said that the Government of Venezuela appeared to be pursuing a foreign policy that enabled it to fulfil its obligations under article 1, paragraph 3, since, for instance, it had decided to move its Embassy from Jerusalem to Tel Aviv in response to the relevant United Nations resolutions. However, it would be useful if the Committee could learn more about the Government's policy towards such other areas of the world as Africa, where there were countries still suffering from colonialism and apartheid, the Middle East, where the situation obtaining was a direct breach of the Covenant and of the United Nations Charter, and Asia, where the right to self-determination was not acknowledged in a number of cases.

34. With regard to article 2 of the Covenant, it appeared from the third paragraph of article 45 of the Constitution of Venezuela that any naturalized Venezuelan citizens who had entered the country at the age of eight or later would not enjoy the same rights as those who had entered the country before they reached the age of seven. That seemed to be a very arbitrary distinction and one that could have practical consequences. Once a person had held Venezuelan nationality for a certain number of years, there was no reason why his rights should be restricted in comparison with those of his compatriots.

35. The report stated, with reference to article 3 of the Covenant, that while, in general, men and women were guaranteed equality under Venezuelan law, a few discriminatory provisions still remained; for instance, women could not act as receivers even if they were engaged in trade. He noted, however, that there was also a significant element of discrimination where the family was concerned inasmuch as, under article 140 of the Civil code of Venezuela, decisions regarding all matters relating to common marital life had to be made by the husband. He wondered whether there were any other areas of officially sanctioned discrimination.

36. Moreover, since laws were not always fully applied, a degree of discrimination against women was almost inevitably practised by certain Governments and official bodies, male chauvinism being a feature not only of men but also of many women throughout the world. In particular, he would like to know what was the attitude of the administrative authorities and judges in Venezuela in divorce proceedings, more specifically in cases involving adultery. He wondered whether they were totally objective or whether the man was treated more indulgently than the women, as was so frequently the case? In France, for example, prior to the Second World War, a woman who committed adultery was liable to imprisonment, whereas a man was so liable only if the committed adultery in the home. It was possible that such differences before the law still persisted in certain countries or that, even when the law stipulated that men and women must be equal, it was not very well observed.

37. It would also be interesting to hear something more about wages in Venezuela. Article 87 of the Constitution referred to equal pay but did not expressly stipulate, as was the usual practice, that women must receive the same wages as men. It would also be useful to know how many women were members of Parliament, how many were to be found among the leaders of the political parties, and how many ambassadors, heads of Government departments and judges were women.

38. With regard to article 8 of the Covenant, he did not wholly understand the meaning of article 60, paragraph 9, of the Criminal Code, which read: "No person may be subjected to forced recruitment or compelled to perform military service in conditions other than those laid down by law". It was not clear whether military service was voluntary or compulsory or whether if the latter were the case, conscientious objection was recognized.

39. The report further stated that there was no forced labour in Venezuela. In that connection, he had before him the comments of an ILO expert committee on the implementation of ILO Convention No. 29 relating to forced labour. In those comments, the expert committee referred to its earlier comment on Venezuela's implementation of the Convention - to the effect that the internment of vagrants in certain institutions, including labour camps, was in breach of the terms of the ILO Convention - and noted that a bill had been tabled to amend the Criminal Code to take account thereof. It would be useful to know what had become of that bill, which would prohibit forced labour within the meaning of the Covenant on Civil and Political Rights and of other international instruments.

40. In its reference to article 13 of the Covenant, the report did not make it clear whether an alien could appeal against a deportation order. Article 40 of the Aliens Act suggested that, contrary to the terms of the Covenant, there was no provision for such an appeal.

41. It was also not clear, from the report on the implementation of article 14 of the Covenant, particularly if that was read in conjunction with the report on article 9, for what periods a person could be held in custody by the police and how

long preliminary investigations lasted. It also seemed, from the first paragraph of 209 of the Code of Criminal Procedure, that an accused was not entitled to have a lawyer until the preliminary investigation had been concluded. That was not only serious departure from the guarantees that should be afforded to the accused but was also in conflict with article 68 of the Constitution of Venezuela which provided that defence was an inviolable right at every stage and level of trial.

42. The section of the report dealing with article 16 of the Covenant, which referred to article 43 of the Constitution, was extremely vague. There was no indication who the "others" referred to in article 43 were or what the "limitations" were that derived from the rights of those others and from public and social order. He wondered whether those matters had been defined by the law.

43. The second paragraph of the provisions relating to article 16 of the Covenant quoted article 17 of the Civil Code, which read: "The foetus shall be deemed to have been born in matters concerning its good ...". While he was completely unable to understand the meaning of the words "concerning its good", they prompted the question as to the legal position of the foetus when in utero. The developing countries were suffering from a sharp upsurge in population and, while many methods of birth control were being employed, not all of them were readily intelligible to everyone. He would like to know, therefore, whether abortion was permitted in Venezuela and whether, for instance, a woman who wished to abort within the first three months of her pregnancy would be allowed to do so or whether she would be prosecuted. In some countries, abortion was allowed, subject to certain conditions, not merely on the ground of the woman's health but also because she did not want the child.

44. In connection with article 18 of the Covenant, the report referred to article 65 of the Constitution which provided that everyone had the right to profess his religious faith, provided it was not contrary to "public order or decency". That was a highly subjective concept and it would be useful to know what exactly was understood by "public order or decency" in Venezuela. Article 65 of the Constitution also provided that religious faith should be subject to the "supreme inspection of the National Executive in conformity with the law". He would like to know what precisely such inspection entailed, which religions were practised in Venezuela, how many there were, how they differed from one another, whether any one religion received State aid of any kind and, in general, whether the State adopts different attitudes to the various religions that were practised in Venezuela.

45. In its comments on article 19 of the Covenant, the report referred to a law governing the press. He wondered whether that law had since been promulgated. While freedom of the press should be guaranteed by law, such freedom should not be abused and had therefore to be regulated.

46. In connection with article 23 of the Covenant, article 46 of the Civil Code provided, in effect, that a young man could marry at the age of 14 and a girl at the age of 12. Even allowing for the precocious development of children in certain countries, a boy of 14 and a girl of 12 seemed far too young to accept the responsibility of founding a home and rearing children. A Venezuelan national could not vote until he was 18 years of age, but was allowed to take the infinitely more serious step of marriage at the age of 14.

47. The section of the report dealing with article 24 of the Covenant was extremely interesting, particularly in its reference to the protection afforded by law to both legitimate and illegitimate children. It would however be interesting to know whether any distinction was made between legitimate and illegitimate children regarding the right of inheritance.

48. With regard to article 25 of the Covenant, he noted that, under article 112 of the Constitution, voters over 21 years of age were eligible for public office provided that they could read and write. He wondered what yardstick was used to determine whether a person could read and write and whether he had to sit an examination. Since, under that provision, many capable people might well be debarred from office and from taking part in the affairs of the country simply because they could not speak Spanish, he would be grateful for clarification on the point.

49. Article 195 of the Constitution provided that the President of Venezuela had to be a Venezuelan by birth. That might be understandable in the case of a head of State, but the same provision applied to the ministers of Government and he would like to know why. There seemed to be three categories of Venezuelan citizen: those born in Venezuela; those who came to Venezuela before the age of seven and who enjoyed certain rights on naturalization; and those who came to Venezuela at the age of eight or later and did not enjoy the same rights. That distinction hardly seemed to be in keeping with the spirit of the Covenant.

50. A question had been raised earlier regarding aliens. He would like to know whether the attitude of the police and customs officers to the many Colombians who entered Venezuela to seek asylum or take up work was unduly harsh. Admittedly, such a large influx could cause problems but those involved were, after all, human beings.

51. In connection with article 27 of the Covenant, he would like to know whether the culture and identity of the Indians living near the Colombian border were respected, whether there was a law relating to them and, if so, what its provisions were and whether they were citizens of Venezuela, albeit with lesser rights.

52. Venezuela was a truly democratic country where human rights were essentially respected and its policy was one which gave hope to many countries in the third world. There were, however, a few points in the report regarding which he would welcome clarification.

The meeting rose at 1.00 p.m.