



**International covenant
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HUMAN RIGHTS COMMITTEE

**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.
