



International Covenant on Civil and Political Rights

Distr.: General
8 July 2015

Original: English

Human Rights Committee 114th session

Summary record of the 3165th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 30 June 2015, at 10 a.m.

Chairperson: Mr. Salvioli

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The meeting was called to order at 10.05 a.m.

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

Fourth periodic report of the Bolivarian Republic of Venezuela (continued)
(CCPR/C/VEN/4; CCPR/C/VEN/Q/4 and Add.1)

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

2. **The Chairperson** invited the delegation to continue its replies to questions raised by Committee members at the previous meeting.

3. **Ms. Ortega Díaz** (Bolivarian Republic of Venezuela) said that the Public Prosecution Service had brought charges against 36 members of the State security forces in connection with the excessive use of force during the policing of the violent demonstrations that had taken place from February to June 2014. Nine officials had been charged with murder and the improper use of firearms, and a further 27 with ill-treatment; seven convictions had been handed down to date.

4. With regard to the murder rate in Venezuela, the figure that had been referred to at the previous meeting was exaggerated. According to official statistics, there had been 62 homicides per 100,000 inhabitants in 2014. The Government was taking action to reduce that figure by, among other things, fostering a culture of peace, monitoring the incidence of violence and disarming the population and armed criminal groups. Regarding public security, article 332 of the 1999 Constitution provided that citizen security bodies should be civilian in nature and that they should respect human rights; the armed forces were tasked solely with ensuring national security. A process had been launched in 2006 to bring operational arrangements into line with constitutional requirements and to ensure that all citizen security functions were exercised by civilian police forces. Pending the complete transition to those new arrangements, the National Guard continued to perform a number of public security tasks on an exceptional basis, in accordance with its constitutional mandate.

5. **Ms. Zuleta de Merchán** (Bolivarian Republic of Venezuela) said that, in a judgement of 16 October 2014, the Constitutional Chamber of the Supreme Court had partially annulled article 46 of the Civil Code, which set the minimum age for marriage at 14 years for women and 16 years for men, and had ruled that the article should be interpreted as meaning that the minimum age was 16 years, without distinction as to sex. In reaching its decision, the Chamber had taken into account the views of various international human rights bodies that had called for the elimination of that discriminatory provision. Furthermore, the Chamber had called on the National Assembly to consider amending article 46 with a view to establishing the minimum age for marriage at 18 years. With respect to a question regarding the separation of powers, she said that the Constitutional Chamber had ruled that article 236 of the Constitution granted the President broad, unlimited powers to issue decrees with the rank of both organic and ordinary laws, subject to prior authorization by an enabling act.

6. **Ms. González** (Bolivarian Republic of Venezuela) said that the Government was determined, as a matter of priority, to address the issue of violence against women. As part of its efforts in that regard, the Act on Women's Right to a Life Free from Violence had been amended to make femicide and incitement to suicide criminal offences. As a result, the Public Prosecution Service had opened investigations into 52 cases relating to those offences; it had brought prosecutions in 19 cases, while a further 32 cases were still under investigation. One conviction had been handed down

since the amended Act had taken effect. In addition, the Prosecution Service had granted more than 14,000 protection measures under article 87 of the Act.

7. **Ms. Oblitas** (Bolivarian Republic of Venezuela) said that the National Electoral Council had recently adopted rules on the right of women to participate in selection processes in accordance with the principles of parity and alternation between men and women on lists of candidates. In addition, the electoral branch of government, acting in accordance with the Constitution and in line with recommendations made by the Committee on the Elimination of Discrimination against Women, had adopted special regulations to ensure that those principles would be respected in the context of the general elections to be held in December 2015 and thereby guarantee women's active participation in public life.

8. **Ms. Boscán** (Bolivarian Republic of Venezuela) said that the Criminal Affairs Unit against the Violation of Fundamental Rights, which had been established to investigate, transparently and objectively, reports of excessive use of force by police officers, had been placed under the authority of the Public Prosecution Service in accordance with the relevant legislation. Since its establishment in 2008, the Unit had successfully investigated a number of cases, including murders committed by law enforcement officials.

9. **Mr. Vardzelashvili**, referring to concerns expressed by, among others, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights regarding the lack of security of tenure for judges in Venezuela, asked what percentage of judges in the State party had been appointed on a permanent basis. He also wished to know when the Government planned to hold open competitive examinations for judges with a view to filling vacant posts. The delegation should comment on reports that the Judicial Code of Ethics had not been applied since its adoption in 2009 and that judges had been removed and sanctioned by the Judicial Commission by means of a simple communication indicating that their appointment was no longer in effect. According to information available to the Committee, the Constitutional Chamber of the Supreme Court had temporarily suspended the application of the Code of Ethics to all judges who held temporary positions. He therefore wished to know what procedures were currently in place regarding the appointment and dismissal of judges and whether the Government considered that those procedures were in line with the requirements of the Covenant. He asked the delegation to comment on reports that the legal provisions governing the selection and appointment of prosecutors were not applied in practice.

10. Referring to the case of Judge Afuni, who had reportedly been arrested in 2009 without a warrant following her decision to release a prisoner whose detention had been considered arbitrary by the Working Group on Arbitrary Detention and who had subsequently been charged in 2010 with corruption and abuse of authority, he asked the delegation to comment on reports that during the preliminary hearing in the case the Public Prosecutor had admitted that there was no tangible evidence of a bribe in relation to the charge against her. Noting that the late President Chavez had publicly called for Judge Afuni to be sentenced to 30 years' imprisonment, he asked the delegation whether it considered that such statements undermined the judicial system. Lastly, he asked for clarification of the circumstances surrounding the arrest, pretrial detention and sentencing of Judge Afuni's counsel, Mr. José Amalio Graterol.

11. **Mr. Shany**, noting that according to the State party's replies to the list of issues (CCPR/C/VEN/Q/4/Add.1 para. 240), conscientious objectors were not coerced into performing military service, asked whether there were sufficient legal guarantees to prevent forced conscription. Although a 2008 Supreme Court ruling had recognized that conscientious objection was protected by article 61 of the Constitution, he asked what was the precise scope of such protection, since it was qualified by existing law,

including the Act of 2009 concerning conscription and military enlistment, which set out the duty to serve in the military and provided for sanctions for failure to enlist. Clarification of the relevant legal framework would be appreciated. He asked whether registration requirements for juridical persons under the new law on registration and enlistment, published in the Official Gazette in June 2015, extended to civil society groups, making them subject to military jurisdiction. He understood that pre-military training was a compulsory subject in high-school curricula and wished to know whether the State party had considered the recommendation by the Committee on the Rights of the Child that such military training should be transferred to a civilian setting and provided by civilian teachers.

12. The responses provided to the questions on media freedom had heightened his concern that the legal standards employed by the State party in balancing freedom of expression and freedom to disseminate information with protection of the public interest were inconsistent with article 20 of the Covenant. With regard to the grounds for restricting private media in Venezuela, he sought an explanation concerning the powers that had been assigned to the Executive, under the transitional provisions of the 2010 amendments to the telecommunications law, to suspend or revoke private media concessions for reasons of national interest. Were those powers deemed to be consistent with articles 19 and 20 of the Covenant and had they ever been invoked? Were there sufficient legal safeguards to guarantee freedom of speech given the provisions of the Act on Social Responsibility in Radio, Television and Electronic Media on the offence of incitement, and more specifically, the offence of fostering anxiety among citizens or disturbance of the public order. Concerns had been raised with the Committee about legal issues relating to freedom of speech in the specific case of Global Vision, which had incurred significant fines after broadcasting a programme on the prison riots of 2011. There had been further reports of the blocking of websites in 2013 and of a Colombian television channel in 2014. He asked for an explanation of the powers exercised by the National Telecommunications Commission (CONATEL); the robust monitoring by a State agency of thousands of broadcast hours could lead to self-censorship on the part of public and private media and he was concerned that, by according the State a role in defining and protecting citizens from exposure to “untimely, inaccurate and partial information”, the Act on Social Responsibility in Radio, Television and Electronic Media did not protect freedom of expression as defined in the Covenant. He asked how the commissioners of CONATEL were appointed and to what extent the Office of the President was involved in the process. He wished to know how the independence of the commissioners was ensured.

13. He enquired why it had been deemed necessary to expand defamation laws in 2005 and to criminalize disrespect for State officials. It was regrettable that the State party did not appear to have heeded general comment No. 34, in which the Committee had called on States to consider the decriminalization of defamation, pointing out that “the application of the criminal law should only be countenanced in the most serious of cases”. He sought information on the travel bans issued in respect of 22 editors and executives from three independent media outlets in connection with a libel suit brought against them by the President of the National Assembly.

14. Noting that the State party acknowledged its obligation to protect human rights defenders and journalists from physical harm and intimidation and to fight impunity, he asked whether the Government had investigated the alleged attack against the journalist Horacio Giusti. In its replies to the list of issues, the State party had maintained that no complaints had been received by the Public Prosecution Service concerning violations of the rights of human rights defenders; that was somewhat surprising since the authorities were currently implementing a number of protective orders issued by the Inter-American Court of Human Rights. Perhaps the requirement

that human rights defenders in Venezuela must produce evidence concerning the source and nature of the threats against them deterred them from approaching the authorities.

15. Referring to paragraph 22 of the list of issues, he asked whether Mr. Rodrigo Diamanti was still in detention and what was the nature of the offence of obstruction of a public highway with which he had been charged. He asked whether the criminal proceedings brought in the case of the murder of human rights defender Mijail Martínez had ended and whether it was true that one of the murder suspects had been released. Was Victor Martínez, the victim's father, still under police protection? He asked whether there had been any developments in respect of the abduction of the husband of Marianela Sánchez Ortiz and the death threats made against the latter. The Committee was concerned that the death threats made against Mr. Prado Sifontes might have been partially induced by a public climate in which those who reported on prison conditions in Venezuela were publicly denounced. The harsh rhetoric that was used by some State officials, including the President of the National Assembly, against human rights defenders, inter alia for cooperating with international monitoring bodies, might contribute to the climate of fear of which some human rights defenders had complained.

16. The State's acknowledgement of the importance of protecting the rights of indigenous peoples was commendable, but he was concerned by the delays in implementation of the land demarcation process which, in some cases, appeared to have been superseded by natural resource development projects. It was important that indigenous populations should be involved in decisions affecting their land; he asked what procedures had been put in place to protect their constitutional rights and specifically what consultations had been conducted with them in relation to the recently concluded gold swap deal with Citigroup and whether the Yukpa and Wayúu had been consulted about coal mining concessions in the Sierra de Perija. Had the Wayúu been consulted on the creation of a military district in their territory? He wished to know whether adequate measures had been taken to protect indigenous populations against violence by private actors such as cattle ranchers or gold miners, in the light of the case of the indigenous chief Sabino Romero who had been murdered after his request for police protection had been denied. He asked whether the State party was familiar with the report that, in the region of La Guajira, State troops had violated the right to life of 13 indigenous persons, and whether it had taken measures to address the allegations raised.

17. **Sir Nigel Rodley** suggested that, in view of the length of the questions which both he and fellow members of the Committee wished to pose, the Chairperson might wish to confer with the delegation on the possibility of providing extra time for the State party to respond.

18. Turning to the delegation's earlier replies, he sought confirmation that the law relating to the criminalization of adultery was no longer in effect. He was concerned at the language used in the new legislative provisions on incitement to suicide in relation to femicide, and asked why such legislation had been introduced, whether it was based on precedents and whether it had generated legal proceedings.

19. He noted the reasons given for moving the Forensic Medical Examination Division from the responsibility of the police and placing it within the Public Prosecution Service, which was responsible for protecting human rights, but wondered whether that move was appropriate since the Public Prosecution Service formed part of an adversarial, rather than an inquisitorial system, and conflicts of interest could still arise.

20. Continuing with the theme of conflicts of interest, he had been surprised to hear from the head of delegation and to read in the replies to the list of issues, the outright denial by the State party concerning the ill-treatment of Judge Afiuni, an approach that did not seem to be consistent with the Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August–7 September 1990). Judge Afiuni had been outraged by the allegations placed before the Committee, on which she was powerless to act since for more than four years she had been forbidden to talk to the media or to communicate via social networks. She wished the Committee to be informed that she confirmed each of her own allegations concerning the physical and psychological torture to which she had been subjected at the National Women’s Correctional Institution, including rape and sexual assault. She had never signed any denial of those allegations and she would be requesting from the office of the Attorney General, via her lawyer, a copy of the denial said to have been signed in her own hand. She had made requests on several occasions to meet with the Attorney General, without success. He (Sir Nigel Rodley) hoped that a thorough investigation of her allegations would be conducted, in keeping with the responsibilities of an Attorney General.

21. Turning to the issue of military jurisdiction, he wished to understand the involvement of the military in the handling of civilian cases. In paragraph 214 of the replies to the list of issues (document CCPR/C/VEN/Q/4/Add.1), it was stated that “cases involving ordinary offences, human rights violations and crimes against humanity shall be tried in the ordinary courts” and that the jurisdiction of the military courts was limited to offences of a military nature. He assumed that the reference in paragraph 215 to military criminal jurisdiction covering “military personnel or civilians, jointly or separately”, concerned civilians working in the military; however, the explanation in paragraph 216 that ordinary offences committed by military personnel and civilians would be “subject to military jurisdiction” seemed to be more complicated and required further clarification. He was, nevertheless, reassured by the statement in paragraph 219 that civilians would be tried in military courts only if they had been involved in offences of a military nature. The State party had not responded to the questions concerning the jurisdiction of the military in cases involving trade unionists. He wished to know why trade unionists had been brought before military courts.

22. When considered cumulatively, individual restrictions on freedom of assembly, expression and association raised issues of concern. With respect to freedom of assembly, he wished to know the reason for the introduction of the Political Parties, Public Meetings and Gatherings Act given that its contents were broadly dealt with in the 1961 Constitution. It would be helpful to receive examples of the application of the authorization provisions under the Act. Referring to paragraph 293 of the replies to the list of issues, he wished to know what were the “security reasons” for which public meetings or demonstrations were not permitted in security zones. He enquired what had led to the adoption of the National Security Act and questioned how national security could be used as a basis for strengthening democratic institutions.

23. He asked why the Organized Crime and Financing of Terrorism Act had been introduced and what offences might be included under it that were not mentioned in paragraph 297 of the State party’s replies.

24. Although the delegation had provided some explanation of article 121 of the Code of Criminal Procedure and the registration of associations of victims of offences that affected collective or broad interests, he would welcome more information on how that article was applied in practice. Articles 123 and 124 of the Code, defining situations where military personnel and civilians were subject to trial before military

tribunals, were somewhat confusing, or even contradictory, and he asked the delegation to explain the practical application of those articles.

25. With regard to the Defence of Political Sovereignty and National Self-Determination Act, he was concerned that the requirement that political organizations and political rights organizations must derive their assets exclusively from national funding sources might be applied to human rights organizations. A precise definition of “political organizations and political rights organizations” would be welcome. As for the Act on Registering and Enlisting for the Comprehensive Defence of the Nation, and the requirement for all legal persons to register with the Comprehensive Defence Registry, he wondered if those provisions would apply for example to associations for the education of children and whether associations would be required to promote the defence of the nation. He found such language Orwellian. Turning to the People’s Power and the Communes Act relating to the organization of and support for communes and social movements, he wondered if any mechanism existed to verify organizations’ compliance with the Act.

26. With regard to paragraph 25 of the list of issues, he welcomed the amendment of the National Electoral Council rules in 2009 to relieve the Council of responsibility for organizing trade union elections, in response to recommendations made by the International Labour Organization (ILO). He shared Mr. Shany’s concerns about intimidation of human rights defenders, including the public shaming of them by senior public officials, and cited the case of an individual who had participated in a regional forum on the Optional Protocol to the Convention against Torture and had been publicly rebuked by the President of the National Assembly in his weekly radio broadcast. Such incidents were highly regrettable.

27. **The Chairperson** agreed that intimidation of human rights defenders was lamentable and underlined the importance of their contribution to the dialogue between the Committee and the State party.

28. **Mr. de Frouville** likewise stressed the importance of ensuring the safety of human rights defenders and called on the delegation to make a commitment to taking up that issue with the authorities. In that connection, he wondered whether the judiciary as a whole, not just the Supreme Court, received training in the provisions of the Covenant; it was after all judges in the lower courts who would first have to deal with issues relating to the Covenant. Referring to paragraphs 20 and 21 of the list of issues, he said that he, too, had concerns about the lack of transparency in the award of broadcasting licences by the National Telecommunications Commission and wondered whether it was truly independent and impartial. He urged the State party to raise the minimum age for marriage to 18 for both boys and girls and wondered whether the minimum age for sexual consent for girls, currently 12, had been raised (paragraph 27 of the list of issues).

29. He requested more information on progress made towards helping street children, in particular protecting them against sexual exploitation for commercial purposes, as well as on how many children were being helped by the Neighbourhood Children (Niños y Niñas del Barrio) programme. He hoped that programmes aimed at street children were not coercive in nature but sought rather to engage with those children and encourage their participation. More information would also be welcome on the dissemination of information about the Covenant and on the participation of civil society in the preparation of the State party’s report to the Committee, in particular whether that participation had been free and without discrimination.

The meeting was suspended at 11.45 a.m. and resumed at 12.05 p.m.

30. **The Chairperson** noted that the delegation had provided written answers on a number of issues, including crime prevention, the protection of persons living with

HIV/AIDS, the state of the prison system, the judiciary, minimum age for marriage, consultations with indigenous peoples and the problem of impunity for hate crimes against the lesbian, gay, bisexual and transgender (LGBT) community, information that would be invaluable to the Committee when it formulated its concluding observations.

31. **Ms. Ortega Díaz** (Bolivarian Republic of Venezuela) regretted the disrespectful approach taken by some members of the Committee, who, on the basis of unsubstantiated and defamatory reports and falsehoods, seemed to have associated themselves with the international campaign to misrepresent the situation of human rights in Venezuela and impugn its reputation. That was not in keeping with the spirit of the human rights treaty body review system, which was to engage in a constructive interactive dialogue with a view to helping the State party improve the situation of human rights in its territory. She also regretted that a great amount of time had been devoted to questions from Committee members, while her delegation had had comparatively little time to reply, which again demonstrated a lack of respect for her delegation. The delegation would nevertheless continue to make every effort to answer the Committee's concerns, first orally in the time remaining, and subsequently in written replies as necessary.

32. She regretted that although her delegation had already responded to the Committee's concerns about the allegations of rape and torture of imprisoned judge Maria Lourdes Afiuni, the Committee had once again raised that issue. She hoped that the information provided by her delegation would shed light on the true situation of Ms. Afiuni and that the Committee would disseminate the relevant facts. She stressed that there had been allegations of mistreatment of Ms. Afiuni, but not physical or sexual violence, following her arrest in 2009. The first, unsubstantiated, allegations of torture or rape had been made in 2012 in a book about the Afiuni case, entitled "Afiuni, Prisoner of the Comandante".

33. She underscored that Venezuela guaranteed its citizens protection of all their human rights. Citizens who considered that they had been physically harmed or that their rights had been violated were entitled to file a complaint with the courts. Anyone, even at the highest levels of government or the civil service, could be subject to punishment if found guilty of human rights violations.

34. **Mr. Castillo** (Bolivarian Republic of Venezuela) said that the Committee's concerns about freedom of expression in Venezuela were completely unfounded and seemed to be based on misinformation and unsubstantiated reports. He explained that the telecommunications sector was regulated by two laws, the Organic Act on Telecommunications and the Act on Social Responsibility in Radio, Television and Electronic Media. Unlike in a neoliberal, commerce-based jurisdiction, the Constitution gave the State the power to regulate the telecommunications sector with a view to providing services in the public interest. The telecommunications system was considered to be a public good for the benefit of all citizens, not the licence-holder; its purpose was to promote access, democracy and social and political participation.

35. Respect for human rights and freedom of expression were fully guaranteed under the regulatory system and the Constitution. While there was no censorship of the media before broadcast or publication, he stressed that persons expressing their opinion were, however, responsible for any ideas expressed. The public, as well as the National Telecommunications Commission (CONATEL), which monitored the media, could complain about content that was irresponsible or violated the law. In such cases, for example with regard to the NGO Un Mundo Sin Mordanza, those responsible for abusive content could be prosecuted and sanctioned in accordance with the process set out in the Act on Social Responsibility in Radio, Television and Electronic Media.

36. He noted that the Bolivarian Republic of Venezuela, with a total population of only 30 million, currently had 873 FM, 192 AM and 117 open-broadcast television stations, of which 60 per cent, 89 per cent and 54 per cent, respectively, were privately owned. The number of broadcasting licences granted had increased by more than 40 per cent between 2000 and 2015. Venezuela had been one of the first countries in the world to launch television services, in 1952. Telecommunications and the media for some 60 years had been unregulated, until the current laws had been adopted to reorganize and regulate the sector.

37. He said that the Act on Social Responsibility in Radio, Television and Electronic Media respected the spirit of the Covenant, covered non-discrimination and provided for sanctions. Under the Act, the media could not be used to incite hatred, a principle which nonetheless had to be weighed against freedom of expression. Civil servants had the right to that freedom; however, they were subject to some legal restrictions owing to their position. As further evidence that the Government was not suppressing media freedoms, he said that since the adoption of the Act, the National Telecommunications Commission had initiated investigations into only 15 of the hundreds of radio and television service providers, only one of which had been fined for distorting the facts by introducing misleading sound effects in its news reports. The Commission had 12 members who represented the executive branch, consumer and children's rights advocates, academia and religious groups.

38. The State did not censor the media and there was no evidence that any media outlets had been shut down by administrative decision. The only two television stations to have been closed during the failed coup d'état against former President Chavez had been stormed by opposition sympathizers. Radio Caracas Televisión had shut down simply because its broadcasting licence had not been renewed. In 2014, the State had ordered the removal of Colombian channel NTN24 from cable packages because it promoted violence and broadcast false images, thereby posing a threat to national security. The State did not have a policy of blocking Internet access. "Dolartoday" had been blocked following an administrative process because its status had changed from that of an economic information portal to a website that promoted violence and led defamatory campaigns against senior government officials. As in most other countries, the courts could order specific websites to be closed: for example, if they portrayed child pornography or facilitated the sale of protected animals and plants. It was natural for the Government to take appropriate measures against Internet-based threats to human rights and national security.

39. Regarding the supply of paper, the Government had originally agreed to provide the print media with foreign currency to make purchases. However, the system had become corrupt and larger newspapers, two of which had been publicly denounced for the practice, had begun purchasing more paper than they needed and then selling it to smaller outfits. The Government had stepped in and taken over procurement, although not all newspapers had agreed to that system.

40. He urged the Committee to broaden its view of freedom of expression in the State party and to be careful in choosing its sources of information.

41. **The Chairperson** stressed that the Committee fully respected the State party and did not treat it any differently than others. Recalling that the dialogue was not a court but a forum to raise issues and seek information, he invited the State party to peruse the records of the dialogues with other States parties, which could be found on the Committee's website. Given the volume of replies that remained outstanding, he said that, exceptionally, the dialogue would be extended into the following meeting.

The meeting rose at 1.05 p.m.