



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Seventy-first session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

VENEZUELA*

Addendum

**Comments by the Government of Venezuela on the concluding observations
of the Human Rights Committee**

[19 January 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

**Concluding observations of the Human Rights Committee on the third
periodic report of Venezuela under the International Covenant on
Civil and Political Rights**

12. While the Committee in principle welcomes the reform of the Code of Criminal Procedure, it is concerned at the lack of information on the provisions of the Code offering guarantees of a fair trial as called for by article 14 of the Covenant.

It is clear that the text of the aforementioned Code of Criminal Procedure has incorporated reforms with regard to the matters of concern to the Committee, namely: (a) equality of persons before the law, laws and tribunals; (b) the outcome of the courts and/or tribunals, that is, the judgements, will be not only public but also mandatory (except as regards publicity with a view to protecting minors and young persons); (c) the presumption of innocence is not only provided for in the present Code, but has also always been established in previous criminal codes; (d) the guarantees of the accused are those enumerated in article 4 of the Covenant; (e) the Venezuelan State will seek to implement policies aimed at the reintegration of minors involved in crime and young offenders; (f) once sentence has been passed, the person sentenced may, in accordance with the criminal laws in force, have recourse to higher courts, and appeal to the Supreme Court, Criminal Division, where other remedies have been exhausted; (g) persons who have not had a fair trial, either as to the form or as to the substance, shall receive reparation and compensation in accordance with the national legislation in force.

It can thus clearly be seen that the Code of Criminal Procedure complies with article 14 of the Covenant, both of which instruments uphold and provide for the principle of due process.

13. The Committee is particularly concerned at the situation of the judiciary in Venezuela, which is still undergoing reform. An extended reform process threatens the independence of the judiciary, given the possibility that judges could be removed as a result of the performance of their duties, thus infringing article 2, paragraph 3, and article 14 of the Covenant. Another cause for concern is the lack of information on the effects of the reform process to date and the absence of a date for that process to come to an end.

The process of reforming the judiciary, which was carried out by the Commission on Reorganization of the Judiciary, culminated some years ago when that Commission ceased its functions. The concept of independence of the judiciary entails the capacity of the judge to take decisions without being subject to external or internal pressures. We do not associate it with personal attributes, since there is no such thing as absolute independence of opinions and persons form opinions regarding a wide range of environmental, economic, political and other matters in a variety of ways.

Accordingly, independence is more a form of conduct than an ontological manifestation. Thus, for the judge, it is a means of proceeding independently at the moment of taking a decision and passing sentence. We should add that it is for the State to organize the justice system in such a way as to promote independent action on the part of judges. In Venezuela we have facilitated this by means of the following measures:

(a) Selection

Candidates are chosen by the Judicial Committee (a technical auxiliary body of the Plenary Chamber of the Supreme Court comprising five judges) on the basis of a combination of academic, democratic and moral values. Candidates selected will sit provisionally as temporary judges for one year, and their performance will be rigorously scrutinized. They may be removed simply by higher order.

(b) Stability of tenure

After one year, provisional judges are evaluated in order to assess their competence and suitability for the task (number of cases heard, judgements, etc.), and undergo psychological and medical tests, before going on to take a preparatory course, after which they sit a competitive examination involving written, oral and practical tests on general legal matters and their own area of jurisdictional expertise. Judges who pass the evaluation and the competitive examination receive tenure, and with it stability for life. Thereafter they can be removed only for breaches of professional discipline as established by law and following a process in which their constitutional right to a defence and due process is respected.

It should be noted that on 1 June 2005 the Chamber of the Supreme Court approved the Standards for Evaluation and Competitive Examinations for Entry and Promotion in the Judiciary, announcing public examinations that have been held since that date.

(c) The National School of the Judiciary

This is an academic body that trains and evaluates judges for entry to the judicial profession and promotes vertical mobility from the lower to higher courts. This year the school will be transformed into a Post-Graduate University Institute, following an agreement already signed with the Ministry of Higher Education.

(d) The Judges' Code of Ethics

We are currently governed by a series of separate enactments contained in various legal texts predating our Constitution of 1999. However, these standards have been brought together in a single legal instrument, the Judges' Code of Ethics, which is currently before the National Assembly and will shortly become a Law of the Republic. One part of the Code consists of a dogmatic enumeration of principles outlining judges' moral conduct, while the other sets forth the disciplinary structure applicable to judges.

(e) The National Inspectorate of Courts

This body inspects the courts and draws up reports. It is on the basis of its conclusions that disciplinary proceedings against judges are instigated.

(f) Social Security for judges and auxiliary judicial staff

In addition to being adequately remunerated, judges and administrative staff enjoy the benefits of an extensive social security system, covering medical care and hospitalization for

themselves and their close relations (parents, spouse and children), together with other benefits such as crèche facilities, schools with transportation provided, social benefits paid into a bank account annually, and funeral insurance.

(g) Economic independence of the Judiciary

It must receive a guaranteed minimum proportion of the national budget. Under our Constitution that proportion cannot be lower than 2 per cent of the national budget.

(h) Current situation regarding tenured judges in Venezuela

The situation in 2000 was the same as had prevailed over the last 50 years: fewer than 18 per cent of judges had tenure. Last year the evaluations were carried out and a competitive examination held, resulting in 60 per cent of judges becoming tenured.

The lists of judges sitting the examinations to be held and timetables for those examinations were published in the media and can also be found on the web page of the National School of the Judiciary <http://enm.tsj.gov.ve/formacion/formacionDocentes.asp>:

1. Official announcement of public competition for non-tenured judges category A, press announcement dated 6 October 2005;
2. Official announcement of public competition for non-tenured judges categories B and C, press announcement dated 10 November 2005;
3. Final list of judges categories B and C to sit the public competitions from 21 to 23 November 2005, published on Friday, 18 November 2005;
4. Official announcement of public competition for non-tenured judges categories B and C II. Press announcement dated 26 November 2005;
5. New timetable for public competitions category A (administrative, tax, land and maritime proceedings) dated 2 December 2005;
6. New timetable for public competitions categories A, B and C to be held from 6 to 15 December 2005, announcement dated 2 December 2005;
7. Final list of judges categories A, B and C to sit the public competitions from 6 to 15 December 2005, announcement dated 5 December 2005.

As of the present date, we have sworn in 200 judges and are continuing to hold competitive examinations, with a view to securing tenure for 95 per cent of the total of 1,860 trial judges by the end of the year. Of the original roster of judges, that is, those who were performing their duties in 2000, only 400 have been removed, and those as a result of the evaluation and competitive examination process.

(i) The Supreme Court

This is the highest body called upon to review the law in our judicial system, and the organ dealing with judicial review in Venezuela. In addition, however, it directs the judicial government department, running the judiciary, appointing judges and promoting/demoting them within the hierarchy, and dealing with auxiliary staff, the buildings from which justice is administered, the Legal Aid Department, the Inspectorate General of Courts, the National School of the Judiciary, the Judicial Commission and the disciplinary system. Of the 32 judges, 9 occupy posts in judicial government: the Executive Directorate of the Judiciary, the National Inspectorate of Courts, the Legal Aid Department, the Directorate of the National School of the Judiciary and the 5 members of the Judicial Commission. This was the basic reason why the number of judges increased from 20 to 32, on the occasion of the adoption of the Organic Act on the Supreme Court in 2004. The Legal Aid Department is the natural provider, for citizens on low incomes, of lawyers to act as advisors or counsel for the defence in criminal matters or as assistant advocates to act in any other court. The Judicial Commission is a technical body that advises and proposes the appointment of the provisional or temporary judges, or their suspension, to the Plenary Chamber, which is the body responsible for their appointment and removal. As already explained, the procedure for the appointment of tenured judges is completely different.

(j) The appointment of Supreme Court judges

The Constitution of the Bolivarian Republic of Venezuela provides for a procedure whereby the National Assembly appoints a Judicial Nominations Committee, which receives proposals from civil society organizations and universities, and from the candidates *proprio motu*, to consider the candidates and their academic and professional credentials, and to ensure that they comply with the requirements for the post as indicated in the Constitution. It draws up a list of candidates' names and their proposers, and publishes it in the national press, together with a deadline for objections and complaints, following which it conducts individual interviews and makes an initial selection which is transmitted to the Republican Ethics Branch, our fifth branch (the other is the Electoral Branch, besides the three traditional branches). The Republican Ethics Branch, which consists of the Attorney-General, the Comptroller-General and the Ombudsman, conducts a second selection which is submitted to the National Assembly, the body that takes the final decision. Judges serve a non-renewable term of 12 years in office.

14. The Committee's concern about the independence of the judiciary extends to the information, delivered by the delegation, that article 275 of the Constitution empowers the National Ethics Council (*Consejo Moral Republicano*) comprising the Ombudsman, the Attorney-General and the Comptroller-General to issue warnings to judges, even those of the Supreme Court, and impose sanctions if those warnings are not heeded.

The independence and autonomy of the judiciary are clearly established in article 256 et seq. of the Constitution of the Bolivarian Republic of Venezuela. The warnings referred to in article 275 of the Constitution relate to officials in the public administration, that is, officials of the Executive Branch.
