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**Comments on the Second Periodic Report of the State of Venezuela
Concerning the Implementation of the UN Convention Against
Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment¹**

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¹ Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Second periodic reports of States parties due in 1996, Addendum: Venezuela CAT/C/33/Add.5, 23 November 2000.

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Introduction

Following are our comments on Venezuela's second periodic report to the UN Committee Against Torture, regarding its compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²

The information in this report is based on the report presented by the Red de Apoyo por la Justicia y la Paz titled "Informe para el Comité Contra la Tortura Venezuela 1999-2000". Complementary information, relative to cases which took place in the period between January and December 2001 have been included.

This report does not cover the events of 11, 12 and 13 April and the failed coup against president Hugo Chavez. It is worth noting however, that those events will, by a decision of the National Congress adopted on April 24 2002, be the examined by a Truth Commission composed of nine persons including parliamentarians, academics and persons who have been active in human rights issues.

1. Preliminary Observations

Venezuela ratified the United Nations Convention against Torture on 29 July 1991.

At the moment of ratification, Venezuela recognized the competence of the Committee Against Torture (CAT) to receive and process both inter-state and individual complaints as provided for in articles 21 and 22 of the Convention, respectively.

Venezuela did not make any reservations to the Convention against Torture.

Venezuela presented its first report to the CAT on July of 1998.³ Its second report was presented on November of 2000.⁴

Venezuela has ratified the following United Nations human rights treaties, which have corresponding treaty bodies : the United Nations Covenant on Economic Social and Cultural Rights,⁵ the United Nations Covenant on Civil and Political Rights, as well as both its first and second Optional Protocols,⁶ the International Convention on the Elimination of all Forms

² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by UN General Assembly resolution 39/46 of 10 December 1984, entry into force on 26 June 1987.

³ U.N. Doc.CAT/C/16/Add.8. See also the Concluding observations of the Committee Against Torture: Venezuela, 5 May 1999, A/54/44, paras.124-150.

⁴ *Op. cit note 1.*

⁵ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force 3 January 1976, *op. cit.*, p. 8-19, ratified by Venezuela 10 May 1978.

⁶ International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force 23 March 1976, *op. cit.*, p. 20-45, ratified 10 May 1978; Optional Protocol to the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966, entry into force 23 March 1976, *op. cit.*, pp. 41-45, ratified on 10 May 1978; Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/128 of 15 December 1989, *op. cit.*, pp. 46-49, ratified 22 February 1993.

of Racial Discrimination⁷, the Convention on the Elimination of All Forms of Discrimination against Women⁸ and the Convention on the Rights of the Child.⁹ Venezuela has also signed the Optional Protocol to the Convention on the Elimination of Discrimination against Women and both Optional Protocols to the Convention on the Rights of the Child.

Regarding relevant United Nations charter based bodies, it should be noted that on June of 1996, the UN Special Rapporteur on Torture carried out a visit to Venezuela and on December of the same year issued a report on the visit.¹⁰ On January of 2000 the Special Rapporteur released follow-up recommendations on his visit to Venezuela.¹¹

In addition, within the Inter-American Human Rights system, Venezuela has ratified the American Convention on Human Rights¹² the Inter-American Convention to Prevent and Punish Torture¹³, the Inter-American Convention on Forced Disappearances¹⁴ and the Inter-American Convention on the Prevention and Punishment of Violence Against Women¹⁵.

2. General Background

Venezuela has adopted a democratic form of government since 1958. Nevertheless, allegations of violations of fundamental human rights have, been frequent. In the recent past reported violations usually involved action by the security forces amongst the poorer sectors of the population and problems arising from the administration of country's prisons which, for decades have been notorious for their overcrowding and violence. The criminal justice system was widely seen as inadequate in the protection of human rights and lacking in basic guarantees such as the presumption of innocence.

Since the presentation of Venezuela's initial report in 1998 the government has undertaken a series of broad-ranging legal reforms including the adoption of a new Constitution which came into effect on December of 1999 and of a new Organic Code of Criminal Procedure

⁷ International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 A (XX) of 21 December 1965, entry into force 4 January 1969, *op. cit.*, pp. 66-79, ratified by Venezuela on 10 October 1967.

⁸ International Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, *op. cit.*, pp. 150-166, ratified 2 May 1983

⁹ Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, *op. cit.*, pp. 174-200, ratified 14 September 1990.

¹⁰ E/CN.4/1997/7/Add.3.

¹¹ E/CN.4/2000/9/Add.1.

¹² American Convention on Human Rights, signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, entry into force 18 July 1978, in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Serv.L/V/I.4 rev-8, General Secretariat Organization of American States, May 2001, pp. 23-47.

¹³ Inter-American Convention to Prevent and Punish Torture, signed at Cartagena de Indias, Colombia, 9 December 1985 at the fifteenth session of the General Assembly, entry into force 28 February 1987, *op. cit.*, pp. 83-88

¹⁴ Inter-American Convention on Forced Disappearances of Persons, adopted at Belém do Pará on June 9 1994, at the twenty fourth regular session of the General Assembly, entry into force on March 28, 1996, *op. cit.* pp. 92-98, ratified on 19 January 1999.

¹⁵ Inter-American Convention on the Prevention and Punishment of Violence Against Women, adopted at Belém do Pará on June 9 1994, at the twenty fourth regular session of the General Assembly, entry into force on March 5, 1995 *op. cit.* pp. 102-108, ratified on 3 February 1995.

which came into effect in July of 1999. This new code has already been the object of revision of some of its provisions.

The new Constitution contains numerous provisions designed to recognize and guarantee various human rights. Important provisions recognize the principle of the presumption of innocence, establish that soldiers accused of human rights abuses shall be tried by the ordinary justice system and determine that the government will implement the rulings of international courts.

The Constitution establishes that human rights treaties ratified by Venezuela have constitutional rank also created a national Ombudsman.

The new Criminal Code of Procedure provided for a more adversarial justice system moving away from the traditional inquisitorial system. Its implementation has also contributed to a sharp decrease in the number of incarcerated persons.

Nevertheless, as will be seen below in spite of this abundant legislation, little had been done to eradicate the practice of torture, the main victims of which are amongst the poorest in the population. In spite of 40 years of democracy, torture and ill-treatment are still routinely practiced, constituting a form of institutionalized violence practiced by State agents who should protect the physical integrity of all citizens but who, in fact, rely on the power granted by their official status and the all but absolute impunity from which they benefit to commit numerous violations of the right to personal integrity.

The government's report provides a detailed overview of new legislation. However, the report fails to give sufficient information regarding the concrete situation and in this aspect does not comply with the CAT's General Guidelines.¹⁶

2.1 Security bodies

In Venezuela a number of security bodies are involved at different levels in crime prevention and investigation. The Interior Ministry and the Justice Ministry control the Judicial Technical Police (Policía Técnica Judicial-PTJ), which carries out most criminal investigations, and the State Security Police (Directorio DISIP) which is responsible for investigating cases of corruption, subversion and arms trafficking.

The National Guard which is a branch of the military and under the Ministry of Defense has arrest powers and is responsible for guarding the exterior of prisons, certain government installations, monitoring frontiers and counter-drug operations.

The State Police forces carry out crime prevention work and are under the authority of the governors of the respective States as are the Metropolitan Police which covers the Metropolitan area.

¹⁶ The Guidelines specify regarding Part 1 b (iii) The State parties should provide, in particular, information concerning: ...iii) Complaints, inquiries, indictments, proceedings, sentences, reparation and compensation for acts of torture and other cruel, inhuman or degrading treatment or punishment;

The Red's past experience over 15 years has led it to conclude that in spite of official claims that torture no longer exists in the country and that the cases denounced are the result of isolated acts by some public officials, the practice of torture is common to all of the state security corps described above. All of these bodies have, at various times, been involved in acts of torture against the common citizen (see annexes 1 and 2). This would seem to indicate that torture is routinely practiced at the interior of these bodies.

2.2 The victims

Although no one is exempt from being tortured, the sectors of the population most frequently affected are generally male, aged between 15 and 34. The victims exercise a variety of occupations including student, rural worker, and others. The majority of the victims assisted by the Red originated from the Capital, followed by the State of Miranda and the border states. An analysis of the information received has led to the conclusion that the low-income sectors of the population, the prison population and persons living near the country's borders are the most vulnerable to torture.

Torture and ill-treatment always have serious physical and mental consequences for the victims which will depend on the methods used, their intensity and duration as well as the physical and mental state of the victim previous to such treatment. Amongst the most common consequences are contusions, scars, headaches, neuralgia etc. If the different systems affected are grouped together the most common troubles are those of the osteomuscular, those of the feet and the nervous system. As for psychological consequences these usually manifest themselves in the form of various sleep disorders (nightmares, insomnia, frequent awakenings during the night), mild to serious depression, anxiety, anguish, alteration of eating habits, feelings of persecution and permanent damage. Also frequent consequences are a tendency to isolation (avoiding social intercourse) and feelings of defenselessness.

2.3 The Practice of Torture

In the majority of cases, torture and other ill-treatment occurs during crime control operations in the context of action against so-called "delinquents", and in particular in police or military precincts for the purposes of obtaining confessions (although this has diminished since the implementation of the new Organic Code of Criminal Procedural).

Victor Castellanos, aged 26, on 7 February 2001 had just reached his home from work together with friend when police from the special police brigade of Yaracuy who were carrying out a search operation in the region approached him and started beating him. V.C. tried to explain that he had just come home from work, a statement which was confirmed by his neighbor. Nonetheless, he was detained and taken away in a patrol car. He was found the next day San Felipe Central Hospital where he had been taken because he had blood in his urines in consequence of the severe beating he had received.

César David Mendozy aged 18, on 17 December 2001 was returning home after a party when he was illegally and arbitrarily detained by members of the DISIP. He was taken to a tank containing dirty water and his head was forced under while he was threatened and asked for his identification. C.D.M begged them not to kill him and in response a gun was put to his head. The men reminded him that his brother had been killed some years back by DISIP officials. He was later released.

On 8 April 2000 at approximately 6 30 pm, **Donis Ramírez**, aged 19, had been standing in front of his house at the Barrio Nuevo Horizonte in Caracas as another young man named Gerard was walking up

the street when five men from the Metropolitan Police arrived and ordered them to stop. Both of the young men put their hands up but the policemen started to shoot at the sky. Gerard began to run and was shot dead from behind. Guillerma Colmenares, a neighbor who had witnessed the killing was also shot and the policemen involved simulated a confrontation. Donis was severely beaten and threatened.

Torture and ill-treatment are also frequently used as a method of social control during operations to maintain order during demonstrations or public protests. In prisons, torture is generally practiced as a form of punishment or in order to maintain control over the prisoners.

In the border areas of the country torture and other ill-treatment has been used as a method of socio-political control.

The different torture methods most commonly used usually combine physical and psychological torture. Repeated beatings, kicking, near suffocation by placing a plastic bag over the head, throwing persons down flights of stairs or against a wall, striping, binding and blindfolding and electric shocks combined with isolation, deprivation of food, death threats or threats of torture directed at the victim or his or her family are the most common methods employed. Usually several of these methods are used in combination.

José Francisco Matheus

On 1 March 2000, at approximately 5 p.m., José Francisco Matheus was at his home at Barrio El Manzanillo, State of Zulia, when several members of the Zulian State Police entered and began to abuse him verbally and physically. Asked to explain their actions and to show a search warrant the policemen responded by beating him. He was arrested for his alleged involvement in the kidnapping of Dra. Maritza Serizawa. José Matheus was taken to a location close to Maracaibo Airport where he was savagely tortured. He was beaten, burnt and given electric shocks, suspended from both arms, weapons were fired at close range to his face and plastic bags put over his head to produce asphyxiation. He was moved from place to place and kept incommunicado for 11 days.

Other methods include mock executions, moving the victims to different places in cars., immersion in clean or dirty water and sexual torture. Many of those tortured were kept incommunicado for 8 days – which until recently was the legal delay of pre-trial incommunicado detention before the control of the legality of a detention -and were denied access to either doctors or lawyers during that period.

3. Definition of Torture (issues under articles 1 and 4)

In spite of the extensive legal reforms undertaken by the government in recent years Venezuela did not adopt a definition of torture in its criminal law which corresponds to the requirements of articles 1 and 4 of the Convention.

As is revealed in the government's report, present legislation consists of article 46 of the Constitution which contains a general prohibition of torture and a declaration of the right of victims to rehabilitation¹⁷ and article 182 of the criminal code which provides that torture and

¹⁷ Article 46 reads "Toda persona tiene derecho a que se respete su integridad física psíquica y moral; en consecuencia: ninguna persona puede ser sometida a penas, torturas o tratos crueles, inhumanos o degradantes.

other ill-treatment of imprisoned persons by a public official is liable to prison sentences of between three to six years.¹⁸

The latter falls short of what is required by the Convention as it provides that:

- 1) only “officials” are covered by this provision whereas the Convention includes the much broader “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”;
- 2) only persons who are actually in prison seem to be covered by this provision which does not protect other persons either in detention or under the power or control of the control of public officials;

Article 176 of the Penal Code, also mentioned by the government in its report, does not seem to specifically address torture but rather to criminalize different types of coercion.¹⁹ The sanctions prescribed, of 15 days to 30 months are clearly inadequate to address the crime of torture.

The government also mentions art.114(3) of the Code of Criminal Procedure which does not criminalize torture but, in fact, prohibits the use of torture in the section where rules for police action are set forth.

The government seems to be aware of the shortcomings of present legislation as its report to the CAT mentions that a bill to prevent and punish torture is currently being examined (see

Toda víctima de tortura o trato cruel inhumano o degradante practicado o tolerado pro parte de agents del Estado, tiene derecho a la rehabilitación.