

VENEZUELA

@Summary of Amnesty International's Concerns

Introduction

Amnesty International continues to have significant human rights concerns in Venezuela. Some of these concerns are summarized in *Venezuela: Torture and other human rights violations*, (AI Index: 53/05/92), which includes the findings of an AI delegation that visited Venezuela in May 1992.

Torture and ill-treatment

Amnesty International has continued to receive reports of torture and ill-treatment by members of the Venezuelan security forces. Such reports have included cases of death in custody in circumstances suggesting that the victims had died as a result of torture. Most of the cases of torture reported have occurred in the context of criminal investigations. The victims, including some minors, were tortured by the police, frequently following their arrest without warrant and while in incommunicado detention. Community and student leaders or members of grass-root organizations have also been the subject of torture and ill-treatment as a result of their activities.

The Metropolitan Police (*PM, Policía Metropolitana*), the criminal investigations police (*PTJ, Policía Técnica Judicial*), and the National Guard (*GN, Guardia Nacional*) are the branches of the security forces most frequently cited in complaints of torture and ill-treatment. However, there have also been allegations of torture by the police intelligence agency, the Directorate of Intelligence and Prevention Services (*DISIP, Dirección de los Servicios de Inteligencia y Prevención*) and the Directorate of Military Intelligence (*DIM, Dirección de Inteligencia Militar*). The most frequently reported methods of torture include: beatings and near suffocation with plastic bags into which irritant sprays such as pesticides are sometimes introduced. Amnesty International has also received reports of the use of electric shocks. Adequate medical attention is only rarely provided to the victims while in custody.

Lack of effective legal and administrative remedies

The use of torture is reportedly facilitated by the fact that police are allowed to hold a detainee for up to eight days in preventive detention during which time they are entitled to collect incriminatory evidence, including confessions, against defendants. Incommunicado detention is expressly prohibited in the Venezuelan Constitution. Yet, several people

including minors interviewed by Amnesty International said that they had been held for several days without access to a representative from the Attorney General's Office *Fiscalía General de la República*, who is responsible for safeguarding the individual's guarantees¹, or to their relatives. In some cases, the relatives of the detainees were told that the police were not holding the person in question. Other detainees were transferred while in police custody from one police station to another (in a practice known as *ruteo*), making it difficult for their relatives to trace them.

The individual rights of detainees are further undermined by the current judicial practice concerning *habeas corpus*. For example, following the suspension of a number of constitutional guarantees during the widespread riots of February/March 1989, several judges, as well as the Attorney General's Office reportedly interpreted this measure to include the non-derogable right to *habeas corpus*. Amnesty International raised its concern about the application of legal safeguards, particularly that of *habeas corpus* in the context of human rights violations reported in February and March 1989, when hundreds were killed by the security forces. The lack of clarity about the procedure left the population in a state of judicial uncertainty with serious implications for the number of victims seeking recourse to the courts for protection. More recently, in one case brought to the attention of Amnesty International during its visit in May, a writ of *habeas corpus* presented on behalf of a detainee arrested in Valencia on 4 February 1992, the day of the attempted coup, was rejected by the courts in the state of Carabobo on the grounds that constitutional guarantees had been suspended.

Use of lethal force and alleged extrajudicial killings

Amnesty International is also seriously concerned at continuing reports of killings of criminal suspects by members of the security forces, particularly in the *barrios*, poor urban neighbourhoods, in circumstances that suggest that the use of firearms was unnecessary or had been used with the deliberate intention to kill or cause serious bodily harm. For example, **José William Guerra Ortiz**, 16, was shot outside his home in Caracas on 30 June 1990, when he approached a DISIP patrol car. He was reportedly shot again, and killed, by a member of the patrol while he lay wounded on the ground. Although the police later claimed to have killed **José Guerra Ortiz** during an exchange of gunfire, this was denied by several witnesses. Those responsible have remained at large. **José Salas Mendoza** was shot dead by the Metropolitan Police in Caracas on 3 August 1991. Witnesses said that a policeman shot him as he lay wounded and defenceless on the ground. There were allegations that the police tried to fabricate evidence of a shoot-out by planting a weapon on

¹ The *Fiscalía General de la República*, through the Directorate of Human Rights (*Dirección de Derechos Humanos*) is responsible for safeguarding constitutional guarantees and for seeing that members of the security forces who violate the law are brought to justice.

the victim. **Gabriel Antonio Martín Salaverría** was shot at point-blank range by members of the Metropolitan Police while he was having a conversation with friends outside his home in Caracas. The police claimed they shot the victim during an exchange of gunfire but this was denied by witnesses and relatives of the victim, who also alleged that the police failed to provide emergency care to the wounded man who died hours later on 28 January 1992. Those responsible have remained at large. On 18 March 1992 **Kirk García** was shot in the back by members of the Metropolitan Police who fired at him, reportedly without warning, in a *barrio* of Caracas. According to reports **Kirk García** was kicked by the police while he lay wounded on the ground. He died during his transfer to hospital.

There have also been reports of extrajudicial executions of people, both civilians and military, detained by the security forces during the attempted coup of February 1992. For example, four students and at least three soldiers were reportedly killed in custody by the security forces in the town of Valencia, in the state of Carabobo, on 4 February 1992.

The organization is also deeply concerned at continuing reports of killings of demonstrators by members of the security forces as a result of the excessive use of force, including the use of firearms. Despite several announcements by the authorities against the excessive use of force by the security forces in demonstrations, several people, many of them students, have died during protests, and numerous others have needed medical attention after receiving buckshot wounds and beatings by the security forces. For example, on 29 October 1991, **Raúl Contreras**, a student at the University College "Cecilio Acosta" in Los Teques, was killed by a member of the state police of Miranda during a demonstration. Reports indicate that he was standing on the tenth floor of the university and had gone to help a fellow student affected by tear-gas when the policeman opened fire in an unprovoked attack. On 10 August 1992 **Wilmer Alfredo Freitas**, 12, was killed outside his home in Caracas by members of the Metropolitan Police who reportedly fired against residential buildings to quell an anti-governmental demonstration.

Impunity

Amnesty International is seriously concerned at the apparent failure of the courts to properly investigate complaints of torture and other serious human rights violations, and to bring those responsible to justice. To Amnesty International's knowledge, very few cases of torture and ill-treatment have resulted in convictions against those responsible and in cases where convictions have been secured, they have often been on the most lenient of charges, usually resulting in suspended sentences or conditional release.

The complaints procedure for cases of human rights violations by members of the security forces appears to be largely ineffective. There are number of contributory factors

including long delays in both the pre-trial investigations² carried out by a state attorney (*fiscal*) representing the Attorney General's Office, and in the proceedings in the courts of justice. In addition, there have been numerous allegations of leniency towards members of the security forces, political manipulation and of corruption, in the courts.

Another significant factor that reportedly seriously undermines the investigations into the use of torture is the lack of independence of the *Instituto Médico Forense* (Institute of Forensic Medicine) which is part of the *Policía Técnica Judicial*, a force that has often been cited in reports of torture. Forensic examinations are reportedly carried out as a matter of routine in investigations of police abuse. However, Amnesty International has received reports that forensic doctors are often unwilling to certify injuries and other evidence which might incriminate members of the police, and that this is not the result of their lack of skills or resources, as alleged by some authorities. For example, Dr. Clyde Collin Snow, a forensic anthropologist who visited Venezuela in November 1990 on behalf of Amnesty International, was able to verify the high professional standard of many Venezuelan official forensic specialists and the relatively adequate resources of the Institute of Forensic Medicine.

In July 1991 the Venezuelan Government ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, in August 1991, it ratified the Inter-American Convention to Prevent and Punish Torture. Despite these measures, which have been welcomed by Amnesty International, judicial investigations into reports of torture and other gross human rights violations in Venezuela continue to be mostly ineffective and, with few exceptions, those responsible for such abuses have continued to benefit from impunity. For example, more than 200 cases of unclarified deaths and serious injury reported during the period of suspended constitutional guarantees in 1989 are still unresolved in the courts. Most of the remains of 68 victims of the killings, which were exhumed during 1990 and 1991 from a mass grave in the cemetery of "La Peste", Caracas, have remained unidentified despite the availability of competent forensic specialists. Nobody has been sentenced in connection with the 1989 killings, despite evidence to suggest that a number were extrajudicial executions. (See *Arbitrary Killings in February/March 1989: Victims Exhumed from Mass Graves*, AI Index: AMR 53/01/91). Also, to Amnesty International's knowledge, compensation has never been granted to victims of human rights violations in Venezuela.

Prison Conditions

² The preliminary investigations are known as the *información de nudo hecho* - a secret procedure whereby a court carries out a pre-preliminary investigation, usually at the request of a state attorney. The attorney, who has discretionary powers to determine whether there are sufficient grounds to proceed with a criminal complaint against police or other public functionaries also participates in the investigations. These investigations are meant to be brief but have been known to last for months, if not years.

Prison conditions throughout the country continued to be extremely harsh, in many cases amounting to cruel, inhuman and degrading treatment. These conditions include the arbitrary use of punishment cells; food and medication so inadequate in most prisons that they need to be supplied by the prisoners' relatives; poor sanitary conditions and lack of proper medical care; lack of adequate security and of protective measures (for example, in the *Centro Penitenciario de Valencia*, a prison known as *El Tocuyito*, an average of 14 prisoners reportedly died every month between January 1989 and February 1990, most of them killed in violent incidents); and inadequate rehabilitation programs. Although the authorities have acknowledged this situation, the government has failed to implement effective measures to correct it. Minors are sometimes illegally remanded in custody in adult prison-establishments. For example, in May 1991 a judicial inspection found 83 minors illegally detained in the prison of La Planta, in El Paraíso.

The poor prison conditions have prompted frequent protests by prisoners, some of which have been violently quelled by the security forces. For example, in October 1991, at least three prisoners in the *Penitenciaría General*, General Prison in San Juan de los Morros died in unclear circumstances when prison guards moved in to quell protests about overcrowding and ill-treatment. According to reports the conditions of many establishments for minor offenders are also appalling. For example, in May 1991 a fifteen-year-old detainee at the *Albergue Carolina Uslar*, an establishment for minor offenders, in Antimano, was reportedly held in a punishment cell for 25 days. According to reports he had repeatedly asked to be let out, and died after setting fire to the mattresses in the cell. In August 1991 a seventeen-year-old boy died in the same establishment as a result of severe burns, during protests against the appalling conditions of detention.

Law of Vagrants and Crooks (*Ley de Vagos y Maleantes*)

Amnesty International has continued to express its serious concerns about the *Ley de Vagos y Maleantes*, which permits administrative measures of detention for periods of up to five years, without judicial appeal or review. This law, which has been used in the past for arresting political dissidents, is commonly applied against members of the poorest sectors of the Venezuelan population.

In Amnesty international's view both the letter and the application of the Law of Vagrants and Crooks present serious procedural and substantive problems affecting individual rights, and should be repealed.

The provisions of this law fall short of internationally accepted standards and principles on several counts:

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- a) It is purely administrative, in violation of Art. 9 [4] of the International Covenant of Civil and Political Rights (ICCPR).
- b) There is no proper right of defense.
- c) The procedure under this law is so akin to a penal action that, in Amnesty International's view, it should carry the same guarantees as those established in international norms for fair hearing, including the right to proper defense.
- d) It classifies as "vagrants" and "crooks" a wide range of conducts, with definitions which are essentially imprecise and which raise serious questions as to whether these provisions are compatible with the principle of equality before the law, and which are open to arbitrary and discriminatory interpretation and practices.
- e) It is often applied on the basis of mere suspicion, usually where individuals have been arrested or interviewed by police on previous occasion, even in cases where no prosecutions followed.
- f) It can be applied to individuals merely on the basis of their penal record, including against individuals who have been convicted and who have served their sentence.
- g) In practice, no provisions are made for rehabilitation. Those affected are sometimes held together with convicted criminals and unconvicted detainees, in establishments where conditions are so bad as to have been acknowledged and severely criticized by the authorities.
- h) The *redadas*, police sweeps, conducted under this law to identify individuals with police records or who may otherwise be deemed to be "dangerous" give rise to countless complaints of arbitrary detention and other abuses.

Concerns about trial procedures

Another matter of serious concern to Amnesty International are the long and unjustified delays in trial procedures, which often result in defendants being held without being convicted - frequently together with convicted prisoners - for periods which extend well beyond those established by law.

With regards to trial procedures in the military justice, time limits are very vaguely defined or non-existent at various stages in the proceedings. Where limits are set in law, these are rarely adhered to and sometimes trials have remained paralysed for years, as has occurred with the investigations, under military jurisdiction, into the killings of

February/March 1989, and into the massacre of 14 fishermen by members of the army in El Amparo on 29 October 1988.

Amnesty International is also concerned about the vague definition of the jurisdictional competence of military courts. This has led to the disputed transferral to these courts of cases originally presented before the civilian jurisdiction, such as those of the killings of February/March 1989, and those of the recent extrajudicial executions of four civilians by the security forces, on 4 February 1992 in the town of Valencia. To Amnesty International's knowledge, none of those responsible for these abuses has been brought to justice, and the organization is therefore concerned that the transferral of cases of human rights violations to the military courts might in fact be a means of granting impunity to those responsible.