

VENEZUELA

Protecting human rights The task is not yet over

1. Introduction

Venezuela signed the United Nations (UN) International Covenant on Civil and Political Rights on 24 June 1969 and ratified it on 10 May 1978. Venezuela is also a party to the Optional Protocol to the International Covenant on Civil and Political Rights. On 29 July 1991 Venezuela ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and early this year, on 6 June 2000, the Government of Venezuela ratified the Statute of the International Criminal Court.

On 29 December 1999 a new Constitution came into force in Venezuela. The National Constituent Assembly of Venezuela approved the final text of the Constitution on 14 November 1999 and it was put to referendum on 15 December 1999. About half of those entitled to vote did so and the referendum resulted in the new Constitution being adopted, with 71% of the votes in favour. Under the new Constitution, the name of the Republic of Venezuela was changed to the Bolivarian Republic of Venezuela.

The 1999 Constitution is an important and significant step forward in terms of human rights. The provisions in the Constitution include the following: the clarification of the status of human rights treaties within the constitutional hierarchy and their relationship to domestic legislation; the obligation to investigate and punish those responsible for human rights violations and crimes against humanity, as well as the principle that there should be no statute of limitations for such offences; safeguards to ensure that human rights violations and crimes against humanity do not go unpunished; the principle that human rights violations and crimes against humanity should not be tried in military courts; the right to justice and redress; prohibition of the use, at all times and in all circumstances, of the death penalty, torture, enforced disappearance and incommunicado detention; the principle that the right to a fair trial, together with all fundamental human rights, cannot be revoked; and the banning of secret or special courts. The institution of Ombudsman was also established in the new Constitution and has already begun to function.

One of the greatest challenges facing the Venezuelan authorities is to enact human rights legislation that reflects the new constitutional framework. To this end, a *Comisión Legislativa Nacional ad hoc*, ad hoc National Legislative Commission, was set up with a mandate from the *Asamblea Nacional Constituyente*, National Constituent Assembly, to legislate on certain specific issues. Among other things, the Commission was authorized to adopt a *Ley de Amnistía Política General*, General Political Amnesty Law, benefiting those who participated in the armed conflict between government forces and armed opposition groups during the 1960s and 1970s and in the two failed 1992 coup attempts. This law was approved on 17 April 2000. It does not apply to those who committed crimes against humanity, serious violations of human rights and war crimes.

Under its transitional provisions, the new Constitution also gave the *Asamblea Nacional*, National Assembly, the power to enact legislation including: a basic law on states of emergency; a reform of the Penal Code in order to allow enforced disappearance to be incorporated as a criminal offence; a law on the punishment of torture; a basic law on refugees and asylum-seekers and a basic law on Indigenous Peoples.

General elections were held on 30 July 2000. Hugo Chávez was re-elected as President of the Republic.

Amnesty International welcomes the significant advances made to bring Venezuela's legislation into line with international human rights standards. However, Amnesty International remains concerned about past human rights violations. The vast majority of such violations have still not been adequately investigated, the victims have not received proper redress and the perpetrators have gone unpunished. The coming to power of a new government and the adoption of a new constitutional framework does not exonerate the State from carrying out, in accordance with international human rights standards, its obligations to investigate past human rights violations, to bring those believed to be responsible to trial, to impose appropriate penalties on anyone found guilty of such offences, and to provide proper redress to the victims.

In addition, Amnesty International remains seriously concerned about apparent recent extrajudicial executions, "disappearances" and torture and ill-treatment by the State security forces, as well as prison conditions and the *refoulement* of refugees. The organization is also concerned at the lack of adequate constitutional protection for the right of conscientious objection to military service.

2. The right to life

Article 58 of the 1961 Constitution, like article 43 of the 1999 Constitution, declared the right to life to be an "inviolable right". In recent years, however, Amnesty International has received dozens of reports of people dying at the hands of the security forces in circumstances suggesting that they were the victims of extrajudicial executions.

The police heads the statistics of those responsible for possible extrajudicial executions, but responsibility was also attributed to the army in several instances. Such incidents have hardly ever been exhaustively investigated and only in a very few cases have those responsible been brought to trial.

In March 1997, **Rubén Darío González** was arbitrarily detained by members of the *Dirección de Inteligencia Militar (DIM)*, Military Intelligence Directorate, in Barcelona, Anzoátegui state. Rubén Darío González was forced into a vehicle where he was shot in the head by members of DIM in front of several witnesses, including members of his family. The DIM members claimed that they had caught Rubén Darío González committing an offence. However, this explanation was refuted by witnesses.

In May of the same year, **Erick Jean Lucena**, aged 16, was arbitrarily detained in Caracas by members of the *Policía Metropolitana*, Metropolitan Police. Police officers brutally beat Erick Jean Lucena and then shot him at point-blank range. According to reports received by Amnesty International, the Police had confused Erick Jean Lucena with a suspected criminal. Several witnesses prevented the police from planting a firearm in the victim's clothing. Amnesty International has received no reports that those responsible for the death of Erick Jean Lucena had been brought to justice.

During 1998, Amnesty International also received information that the security forces killed dozens of people in circumstances suggesting excessive use of force. In July 1998, in the municipality of Sucre, Miranda state, agents of the *Policía Municipal*, Municipal Police, reportedly shot dead **Freddy Díaz**. They fired at Freddy Díaz after pursuing 14-year-old Ali Eduardo Sojo, a cousin of the victim, into the family home. Relatives of the victim and witnesses to the incident have reportedly been threatened by police officers in an attempt to discourage them from denouncing the case.

In 1999 there was a reduction in the number of people killed as a result of action by members of the police and armed forces. However, at least 100 people - the majority suspected of criminal offences- were reported to have been killed by security forces, of which approximately 50 died in circumstances suggesting that they were the victims of extrajudicial executions.

On 14 June 1999, **John Alejandro Linares Peña** was the victim of a possible extrajudicial execution at the hands of agents of the Metropolitan Police in Caracas. The officers had gone to the home of the Linares family. Upon seeing them, John Alejandro Linares fled. The police chased after him and he gave himself up and was taken into custody. One of the officers apparently shot him in the stomach before he was taken away in a police car. At that time, although wounded, John Alejandro Linares was reportedly still alive. His body was later found at the *Hospital Periférico de Catia*, Catia Hospital, with six bullet wounds.

According to reports received by Amnesty International, between 19 and 27 December 1999, when rescue operations were being carried out following flooding that devastated Vargas state, a number of human rights violations, including extrajudicial execution, torture, ill-treatment and "disappearances", were said to have been carried out by personnel belonging to the *Dirección de Servicios de Inteligencia y Prevención (DISIP)*, Directorate of Intelligence and Prevention Services, and members of the Armed Forces. The Attorney General's Office and the Ombudsman's Office opened investigations into the allegations. To date, Amnesty International does not know of anybody having been brought to justice for these abuses.

Between January and July 2000, Amnesty International received further reports of apparent extrajudicial executions. The number of killings involving members of the police and armed forces, has increased in relation to the first six months of 1999.

On 8 April 2000, Donis Ramírez was outside his home in the Nuevo Horizonte district of the capital, Caracas. Whilst talking to **Geralt García**, five officers of the *Policía*

Metropolitana, Metropolitan Police, approached them and one of the policemen fired his gun in the air. Geralt García ran away, and as he ran, Donis Ramírez saw the police open fire, hitting him in the back. The police caught up with Geralt García in Aragua street and shot him in the head several times, killing him. People living nearby heard the shots and looked out of their windows. When the police saw that they were being watched they opened fire, fatally wounding **Guillermina del Carmen Colmenares**. Donis Ramírez was threatened that if he complained about the shootings, they would kill him as well.

2.1 "Disappearances"

In December 1999, in the context of the rescue operations carried out following the Vargas' flooding, Amnesty International received information regarding possible "disappearances".

On 21 December 1999, a group of soldiers belonging to *Infantería Paracaidistas*, Parachute Regiment arrived, at 2.00 pm, at **Oscar José Romero Blanco's** home in the neighbourhood of Valle del Pino. The victim was reportedly beaten and detained by the soldiers. Then, at around 5.00 pm, DISIP forces arrived at his home. Oscar José Romero Blanco was then transferred into DISIP custody who took him to an unknown destination.

Also on 21 December at about 1.00 pm, **Marco Antonio Monasterio Pérez** was arrested by the army at his home in Valle del Pino, in the presence of relatives and neighbours. They took him to an unknown location. According to an official communication from the Military High Command, Marco Antonio Monasterio Pérez was also handed over to the DISIP.

José Francisco Rivas Fernández, from the neighbourhood of Las Tucanas, was detained on 21 December at about 7.30 pm, by the army under the command of a sergeant, minutes after a curfew had come into force. According to witnesses he was also beaten by seven soldiers and taken away to an unknown destination. He had been sitting at the front door of a house used by the local branch of the political party, *Acción Democrática*, Democratic Action, where his family had taken shelter. The next day his parents were informed by the sergeant that he had been transferred into DISIP custody.

Roberto Javier Hernández Paz, from the neighbourhood of Tarigua, was detained at about 7.30 pm, on 23 December at his uncle's home by unidentified agents. The agents arrived in a yellow jeep which was identified by witnesses as a DISIP vehicle. The victim was reportedly shot by one of the agents before being driven away to an unknown destination. The DISIP has denied this accusation.

The fate of these four people has not been clarified by the authorities. To date, no perpetrator has been brought to justice charged with their "disappearances".

3. The right to personal integrity

Although article 46 of Venezuela's 1999 Constitution (article 60.3 of the 1961 Constitution) prohibits torture as well as cruel, inhuman or degrading treatment, it is not categorized as an offence in the Venezuelan Penal Code. Acts amounting to torture can be prosecuted either as "injury to the person" or under article 182 of the Penal Code. However, these legal definitions do not allow for the punishment of torture as defined in article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This means that several types of act which amount to torture are still not punishable under current Venezuelan legislation.

Information has been gathered by Amnesty International over a period of several years indicating that the use of torture and ill-treatment is widespread. The relevant authorities have not yet implemented effective measures designed to halt the practice of torture. Except in a few isolated cases, members of State security bodies implicated in acts of torture or ill-treatment have not been subjected to investigation and criminal prosecution.

Amnesty International has received numerous reports of cases in which people, often detained arbitrarily, claim to be victims of torture and/or ill-treatment.

According to reports received by Amnesty International, in many cases torture has been used as a means of political repression. For example, on 8 March 1997, at about 11 o'clock at night **Félix Faría Arias**, a university student and member of the group *Bandera Roja*, Red Flag, a legal political opposition party, was seized in Baruta, near Caracas by people who identified themselves as members of DISIP. Félix Faría Arias was handcuffed and forced to get into a car where he was placed on the floor and beaten repeatedly. As the car was driven around the city of Caracas, Félix Faría Arias was reportedly tortured by his abductors who beat him continually and held a gun in his mouth while questioning him about his political activities. He was also blindfolded while his assailants burnt his arms with a hot cylindrical object, leaving more than 40 wounds on his forearm. At 2.00 am he was thrown out of the vehicle and left on the street. On 9 March, Félix Faría Arias lodged a complaint about what had happened with the *Fiscalía General*, Attorney-General's Office. On 7 October 1997, Félix Faría Arias was again abducted, by hooded individuals near the National University in Caracas and pushed into a vehicle similar to the one used in his previous abduction. Once inside, the university student was handcuffed, hooded and interrogated. His assailants beat him around the head with the butts of their guns and burned his arms, more than 46 times, with the same sort of cylindrical instrument used in the March attack. His captors threatened to kill Félix next time they caught him and they also questioned him about his report on what had happened on 8 March. Members of the DISIP had reportedly detained Félix Faría Arias on previous occasions in relation to his political activities. Furthermore, he was one of the witnesses to the killing of university student Belinda Alvarez, who was killed at the University of Caracas on 3 April 1991 by members of the security forces. Félix Faría Arias was wounded in the same incident.

Wilfredo Alvarado, chairman of the *Asociación Pro-Vivienda de Brisas del Turbio 1*, Brisas del Turbio 1 Pro-Housing Association, and a well-known community activist, was arbitrarily detained on 16 July 1997 in the city of Barquisimeto, Lara state, by members of the

Guardia Nacional, National Guard. He was taken to a police station in the same street and he was held in a cell for half an hour before being transferred to the National Guard post in the zone of Lomas de León. Here, he was taken to a sports field where members of the National Guard reportedly chained him to a pipe and tied his hands. He was then hung upside down and kept hanging in this position until mid-day on 17 July. During that time he was tortured with electric shocks to the hands, beaten on the back and other parts of the body, and subjected to a mock execution. He was not told at any point why he had been detained. That same day he was transferred to Lara State police station in Barquisimeto where he remained until 22 July. A complaint against members of the National Guard responsible for the arrest and torture of Wilfredo Alvarado was opened. He continued receiving death threats in an attempt to deter him from pursuing the case. Amnesty International has received no reports that those responsible for the torture of Wilfredo Alvarado had been brought to justice.

Juan Bautista Moreno, a human rights defender working with the *Comité para la Defensa de los Derechos Humanos*, Committee for the Defence of Human Rights, was arbitrarily detained in the municipality of Páez, Apure state, on 19 October 1998, by members of the Venezuelan Armed Forces. Juan Bautista Moreno was taken to the military barracks at Guasdualito, Apure state. There, a senior army officer accused Juan Bautista Moreno of belonging to a Colombian armed opposition group and threatened several times to “disappear” him. After being held for eight hours, Juan Bautista Moreno was released. Months later, between 27 and 29 January 1999, nine people, among them Juan Bautista Moreno, were detained by members of the police, armed forces and DISIP. All nine, including **Asdrúbal Lozada, Wilfredo Bracho, Santiago Díaz, Morli Ratia and Claudio Rivas Espinosa** (a minor) were taken to the military headquarters in Guasdualito, Apure state, where they were reportedly tortured. Some were severely beaten and verbally abused. Others were given electrical shocks and were asphyxiated with a plastic bag. They were all released some days later.

José Asdrúbal Ríos Rojas was a alleged victim of torture and other ill-treatment at the hands of police officers. José Asdrúbal witnessed a raid by the Metropolitan Police on a house of one of his neighbours in the neighbourhood of Isafías Medina Angarita in the city of Caracas on 17 May 1999. Upon realizing that he was a possible complainant, the police officers reportedly beat him up in front of his wife and children. Later, one of the police officers who identified themselves as being members of the *Brigada Motorizada “Antonio José de Sucre”*, “Antonio José de Sucre” Mobile Brigade, detained José Asdrúbal Ríos Rojas and took him away handcuffed to the local police station where he was again beaten. After his release, José Asdrúbal Ríos Rojas lodged a complaint about what had happened with the Department of Internal Affairs of the Metropolitan Police. While there, he was able to identify two of the officers who tortured him from photographs held on file there. While in custody and for some time after he was released, José Asdrúbal and his family received threats as a result of having reported the police officers concerned to the relevant authorities.

In response to an Amnesty International’s communication regarding this case, the Venezuelan authorities stated in August 1999 that the Metropolitan Police had conducted an investigation into the complaints filed by José Asdrúbal Ríos Rojas. The police claimed that an internal investigation had established that the officers who carried out the detention had acted

according to normal procedures and in compliance with the law. However, Amnesty International believes that an independent investigation should be carried out by the Public Ministry.

The December 1999 Constitution, in its fourth transitional provision, authorized the National Assembly to pass, within a year of being set up, legislation “on the punishment of torture, either by means of a special law or reform of the Penal Code”¹.

4. Refugees

As stated by the UN Committee on Human Rights², the right of refugees not to be forcibly returned to their country of origin, the guarantee of *non refoulement*, implicit in article 7 of the International Covenant on Civil and Political Rights, is not duly protected under Venezuelan law. Although the laws of Venezuela make provision for special procedures to be followed in cases of extradition, neither the 1972 *Código de Enjuiciamiento Criminal*, Code of Criminal Procedure, nor the new *Código Orgánico Procesal Penal*, Basic Code of Criminal Procedures, in force since 1 July 1999, include any provisions relating to the guarantee of *non refoulement*.

Cecilia Rosana Núñez Chipana, a Peruvian citizen, was detained in Caracas on 16 February 1998 by the DISIP. On 26 February the Peruvian authorities asked the Venezuelan authorities for her extradition because Cecilia Núñez Chipana was the subject of criminal proceedings for offences “against public tranquillity and terrorism against the Peruvian State” and for her alleged membership of the illegal organization “*Sendero Luminoso*”, “Shining Path”. Cecilia Núñez Chipana denied to the Venezuelan authorities that she had, or had had, any connection with the organization, but told them that she was a member of the “*Movimiento de la Izquierda Unida*”, “Movement of the United Left”, a legal organization in Peru.

On 27 February 1998, Cecilia Rosana Núñez Chipana verbally requested political asylum from an official on duty that day at the DISIP offices. Later she tried to send a written application for asylum to the Minister of Internal Affairs but this possibility was repeatedly denied her by police officials who prevented her from signing the request. Only on 24 March (35 days after her detention), when she was taken to the *Tribunal 37 Penal de Primera Instancia*, 37th Criminal Court of the First Instance, in the Metropolitan Area of Caracas, to make a statement, was she able to request asylum and/or refuge from the *Juez de Despacho*, Duty Judge. Eventually, that same day she was able to make a written request for asylum which was presented by her lawyers to the *Ministro del Interior*, Minister of Interior.

¹ Amnesty International’s translation.

² UN Committee on Human Rights, General Observation 20 - Article 7 (44th session, 1992), paragraph 9, Doc HRI/GEN/1/Rev.3.

Lawyers representing Cecilia Rosana Núñez Chipana submitted a communication to the UN Committee against Torture citing possible violation of article 3 of the Torture Convention if the extradition went ahead and requesting that steps be taken for her extradition to be stopped. The communication was endorsed by the Committee against Torture under reference number 110/1998 and the Committee against Torture requested the Venezuelan authorities not to expel or extradite Cecilia Rosana Núñez Chipana, pending a resolution by the Committee of her case.

However, the extradition procedures continued, the request from the Committee against Torture was disregarded, and on 3 July 1998 Cecilia Rosana Núñez Chipana was extradited to Peru. There were numerous anomalies in the extradition process, including violation of the right to defence and the principle of due process. The legal representatives of Cecilia Rosana Núñez Chipana were initially refused a copy of the Supreme Court of Justice decision authorizing the extradition to go ahead. The extradition was carried out without notifying the relatives or lawyers of Cecilia Rosana Núñez Chipana. It took place four days before the Supreme Court of Justice had ruled on an appeal for legal protection lodged by the lawyers of Cecilia Rosana Núñez Chipana. On 10 November 1998, the Committee against Torture ruled that the State of Venezuela was in breach of its obligation under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment not to extradite Cecilia Rosana Núñez Chipana³.

During the month of June 1999, about **3,700 Colombians**, including women and children, who, fearing for their lives and physical safety, fled from the violence arising from the armed conflict in the Catatumbo region of Colombia, crossed the Colombia-Venezuela border into the Venezuelan state of Zulia in search of protection and security. They entered Venezuela in four distinct waves: the first group of 2,135 people arrived in Casigua El Cubo, in the parish of Jesús María, Zulia state, on 2 June; the second group of 610 reached “La Vaquera” on the banks of the Oro river in the municipality of José María Semprum in the same state, on 5 June. The third group of about 300 people crossed the border between 13 and 16 June and the fourth, consisting of about 700 people, crossed from Colombia into the area of “La Vaquera” on 29 June.

A few days after entering Venezuelan territory, the first group of Colombian refugees returned to their country of origin, apparently voluntarily. About 500 of the 610 people who made up the second group also reportedly returned to Colombia on a voluntary basis. However, the remaining members of the group (numbering about 100) were apparently returned against their will after expressing the wish to request asylum in Venezuela and after having asked non-governmental human rights organizations in Venezuela for assistance in doing so. The approximately 1,000 people who made up the third and fourth groups of refugees were also returned to Colombia. According to numerous independent sources, appropriate asylum procedures were not followed in order to adequately assess the situation of any of the 3,700 Colombians fleeing the violence in their country.

³ UN Committee against Torture, Communication No. CAT/C/21/D/110/1998, jurisprudence dated 10 November 1998, paras. 6.4 and 7.

On 10 June 1999, Amnesty International received reports that 100 of the 610 people in the second group of refugees wished to formally request asylum in Venezuela; the 610 people were at that time in La Vaquera, El Cedro and El Portón, all areas within the municipality of Jesús María Semprum, Zulia state, and were on the point of being transferred by launch to Casigua El Cubo, Venezuela, along a river which forms a natural frontier with Colombia. Subsequently, on 13 or 14 June the 610 people, including the 100 who had expressed the wish to remain in Venezuela, were returned to Colombia. In fact, they were all returned despite the fact that fighting was still going on between the Colombian Armed Forces and armed opposition groups from that country and that paramilitary groups were still present in the region from which they had fled. Their return had apparently been agreed between the Colombian and Venezuelan authorities without the participation or cooperation of the United Nations High Commissioner for Refugees (UNHCR), whose representatives were reportedly prevented from carrying out their mandate of evaluating whether the refugees were in need of international protection.

On 24 June, Amnesty International received reports that the third group of about 300 Colombian refugees had been returned to Colombia between 13 and 16 June, immediately after they had entered Venezuela. Venezuelan Army General Rafael Vethencourt had reportedly told the national press on 22 and 23 June that, despite what non-governmental human rights organizations might have to say, the Venezuelan State was not in a position to grant the Colombians any kind of special treatment or status. The General said that “we are returning them [the Colombian refugees] by canoe, which is how they arrived, to the place from where they entered”⁴. A few days later, Amnesty International received reports that, as a result of a decision by the Venezuelan authorities, the fourth group of 700 people was on the point of being returned.

Although the Venezuelan Government denied in several communications to Amnesty International that it has failed to comply with its international obligations, Amnesty International believes that the return of these Colombian refugees to their country of origin constituted a serious breach of the principle of *non refoulement*, which is a fundamental norm of international customary law and guaranteed under article 7 of the International Covenant on Civil and Political Rights. Amnesty International reached this conclusion after analysing the human rights situation which currently exists in Colombia and the specific circumstances from which the Colombian refugees were fleeing, as well as statements from several independent sources indicating that at no time did the Venezuelan authorities implement satisfactory asylum procedures in order to determine whether any of the refugees concerned were genuinely at risk.

Under the December 1999 Venezuelan Constitution, the right to asylum and refuge is expressly protected. Transitional provision No. 4 in the Constitution authorizes the National Assembly to pass a basic law on refugees and asylum-seekers. This is an opportunity for the

⁴ Statements made by Brigadier General Rafael Vethencourt to the newspapers *Panorama*, 22/6/99, p. 4-12, and *El Nacional*, 23/6/99, p. A-2, reproduced in a weekly bulletin, *Provea: Derechos humanos y coyuntura*, Provea: Human Rights and Current Affairs, 19-25 June 1999, published by Provea, a Venezuelan human rights non-governmental organization.

Venezuelan authorities to ensure that the principle of *non refoulement* is endowed with adequate legal safeguards.

5. Prison conditions

By the end of January 2000, Venezuela had a prison population of some 14,000 inmates⁵. Of the total number of prisoners, 44% had been sentenced and 56% were waiting to be tried and/or sentenced⁶.

Prison conditions continue to be extremely harsh, often amounting to cruel, inhuman or degrading treatment. Endemic violence within the Venezuelan prison system is an ongoing problem. Serious overcrowding, appalling sanitary conditions, inadequate food and insufficient provision of medical care and rehabilitation programs are still features of Venezuelan prisons and have often been the cause of protests by inmates over the last few years.

In March 1997, in El Dorado Prison, in Bolivar state, prisoners organized a peaceful protest against torture and other human rights abuses carried out by prison guards. In October of the same year, hundreds of inmates at La Planta Prison in Caracas went on hunger strike demanding an improvement in prison conditions and an end to the systematic beatings being inflicted on them by prison guards. In November 1997, 16 prisoners died and another 32 were seriously injured in a fire which took place at Sabaneta Prison, Maracaibo, Zulia state, where there were serious overcrowding problems. The inmates had previously asked for improvements to the dreadful conditions in the prison and pointed out the serious fire hazards which later led to the tragedy. In April 1999, 135 prisoners in El Dorado Prison, notorious for its degrading conditions of detention, cut themselves with knives in a so-called "blood strike" in protest at being transferred there from other prisons.

The chronic overcrowding which exists in many prisons and the failure on the part of the authorities to ensure the protection of those in their custody are contributing to the problem. In

⁵ Source: *Una Ventana a la Libertad*, Window to freedom, Venezuelan non-governmental organization working on prison conditions.

⁶ Source: *Idem*.

August 1997, 29 people died and at least 10 were injured in El Dorado Prison, Bolivar state, during a clash between rival gangs. The authorities failed to prevent the killings despite having been warned by prisoners' relatives and local officials that tensions were reaching crisis point. Another ten prisoners died in a violent riot in El Dorado Prison in December 1998. According to reports received by Amnesty International, over 300 prisoners died violently and another 1,000 were injured during 1998. In the majority of cases, other detainees were responsible for the violence. However, some deaths were the result of attacks by prison guards. The number of violent deaths rose to over 400 during 1999. In addition, in January and February 2000, eight prisoners were killed and over 40 injured in three different prisons.

Hundreds of prisoners have complained about ill-treatment by prison guards and Ministry of Justice employees. In March 1998, over 100 relatives of inmates at Los Llanos Prison, Portuguesa state, held a four-day protest calling for the sacking of the local head of the *Guardia Nacional*, National Guard, who was said to be responsible for the ill-treatment of prisoners.

In 1999, the former government of President Hugo Chávez publicly acknowledged the serious state of Venezuelan prisons and said that his administration was committed to solving the problem. The new *Código Orgánico Procesal Penal*, Basic Code of Criminal Procedures, in force since 1 July 1999, allowed for a significant reduction in overcrowding in some prisons, as well as a reduction in the numbers of people being held in preventive detention. Despite these improvements, the physical conditions and lack of basic services faced by many prisoners continue to be poor. Dozens of prisoners are reported to have died as a result of deplorable sanitary conditions and inadequate medical care. To that must be added the endemic climate of violence which exists inside the prisons and which Amnesty International believes is in large measure due to the persistent problems of overcrowding, inmate-on-inmate and guards-on-inmate violence and the corruption prevalent in many of the penitentiary establishments.

The Venezuelan Ministry of Justice has implemented a series of measures which are hoped to bring about further improvements in the future. The new Basic Code of Criminal Procedures has sought to partially remedy the administrative chaos facing the Venezuelan prison system as well as delays in the administration of justice. However, in September 1999, several prison mutinies took place in Yare I and Yare II Prisons, apparently in protest at the failure to implement the reforms enshrined in the Basic Code. During a day of disturbances which ended with one prisoner dead and another injured, the prisoners managed to gain almost total control of the two prisons.

In December 1999, Amnesty International called on the Venezuelan Government to fulfill the commitment it made to improve prison conditions and to provide the resources necessary to do so⁷.

⁷ Amnesty International News Service: AMR 53/16/99

6. Criminal Proceedings in Military Courts

The fact that members of the military implicated in human rights violations have been subject to the jurisdiction of military courts has historically been one of the factors contributing to impunity in Venezuela. Amnesty International considers that the military justice system has systematically failed to ensure impartial investigations and to bring perpetrators of human rights violations to justice. The UN Committee for Human Rights recommended in 1992 that Venezuela “should see to it that all members of the armed forces or the police who have committed violations of the rights guaranteed by the ICCPR are tried and punished by civilian courts”.⁸

The 1999 Venezuelan Constitution has introduced a ground-breaking safeguard against impunity in its article 29 which states that “human rights violations and offences against humanity shall be investigated and tried by ordinary courts”⁹. This provision is reiterated and extended in article 261 of the Constitution which stipulates that “common law offences, human rights violations and crimes against humanity shall be prosecuted by ordinary courts”¹⁰. Furthermore, the sole derogation clause contained in the Venezuelan Constitution states that “the legal system shall remain in effect in all matters which do not contradict this Constitution”¹¹.

By the end of July 2000 the 1967 Code of Military Justice had yet to be amended to bring it into line with the new constitutional provisions.

7. Conscientious Objection

The 1999 Venezuelan Constitution, in its article 61, guarantees the right to freedom of conscience. Nevertheless, the same clause goes on to impose restrictions on this right.

“Article 61. Everyone has the right to freedom of conscience and to give expression to it except when, in doing so, the personality is affected and rituals which constitute an

⁸ Observations of the UN Committee on Human Rights - Venezuela, Doc. CCPR/C/79/Add.13, 28 December 1992, para. 10.

⁹ Amnesty International’s translation.

¹⁰ *Idem*

¹¹ *Idem*

offence are carried out. Conscientious objection may not be invoked to avoid obeying laws or to prevent others from obeying them or from exercising their rights¹².”

In addition, article 134 of the Constitution stipulates that it is a “duty to undertake any civilian or military service which is necessary to defend, preserve and develop the country, or to deal with disasters affecting the general public¹³”.

The right to conscientiously object to military service is not guaranteed, as such, under the Constitution. Although the Constitution refers to “civilian service”, so far Venezuelan legislation has not provided for any type of civilian service which replaces military service. Furthermore, the current *Código de Justicia Militar*, Code of Military Justice, contains several provisions stating that anyone who refuses to do military service or tries to give it up shall be deemed to have committed the offence of desertion and should be punished. The right to object to military service on grounds of conscience is therefore not guaranteed within the Constitution.

The UN Human Rights Committee, in its General Comment No. 22, relating to article 18 of the International Covenant on Civil and Political Rights, took the view that “the Covenant does not explicitly refer to the right to conscientious objection but the Committee believes that such a right can be derived from article 18, in as much as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief”¹⁴. In two decisions on individual cases¹⁵, as well as in its observations on periodic reports submitted by States¹⁶, the Committee on Human Rights has reiterated that conscientious objection is a right protected under article 18 (1) of the International Covenant on Civil and Political Rights.

¹² Amnesty International’s translation: “*Todas las personas tienen derecho a la libertad de conciencia y a manifestarla salvo que su práctica afecte la personalidad y ejecuten rituales que constituyan delito. La objeción de conciencia no puede invocarse para eludir el cumplimiento de las leyes o impedir a otros su cumplimiento o el ejercicio de sus derechos*”.

¹³ Amnesty International’s translation.

¹⁴ UN Committee on Human Rights, CCPR General Observation N° 22.30/07/93 - Article 18 (48th session, 1993), para 11, in Doc. HRI/GEN/Rev.3, p.44.

¹⁵ UN Committee on Human Rights, Communications N° 446/1991 (para. 4.2) and 483/1991 (para. 4.2).

¹⁶ UN Committee on Human Rights, Final Observations of the Human Rights Committee - France, Doc. CCPR/C/79/Add.80, 4 August 1997, para. 19, and Final Observations of the Human Rights Committee - Spain, Doc. CCPR/C/79/Add.61, 3 April 1996, para. 15.

8. Amnesty International's recommendations to the Government of Venezuela

- , unresolved allegations of human rights violations, in particular cases of extrajudicial executions, torture and "disappearances", be promptly, impartially and effectively investigated by the civilian courts;
- , agents of the state implicated in human rights violations be suspended from duty until their guilt or innocence is established;
- , agents of the state responsible for extrajudicial executions, "disappearances" and torture must be brought to justice in accordance with international standards for fair trial;
- , those found responsible for such serious human rights violations be not reincorporated into the service of the state;
- , the victims of human rights violations or their relatives receive appropriate reparation which complies with standards and principles enshrined in international human rights instruments, including article 2.3 of the International Covenant on Civil and Political Rights;
- , the right to life and personal integrity be guaranteed by:
 1. incorporating into Venezuela's Penal Code the crimes of extrajudicial executions, enforced disappearances and torture in line with international human rights standards, together with the appropriate punishment that take into account the gravity of these offences;
 2. derogating those norms on due obedience from the Penal Code¹⁷ and the Basic Law of the Armed Forces¹⁸, which are in contravention of articles 3 and 19 of

¹⁷ Penal Code, article 65.2: (not punishable) "Those who act by virtue of due and legitimate obedience. In this case, if the action performed constitutes an offence or an error, the corresponding punishment will be imposed on the one who gave the illegal order". (*No es punible*) "El que obra en virtud de obediencia legítima y debida. En este caso, si el hecho ejecutado constituye delito o falta, la pena correspondiente se le impondrá al que resultare haber dado la orden ilegal".

¹⁸ Basic Law of the Armed Forces, article 22: "For improper orders, the subordinate after obeying will have the means to complain before the immediate superior of the one who gave the order". "Para las órdenes abusivas, quedará al subalterno después de obedecer, el recurso de queja ante el inmediato superior de

UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, article VIII of Inter-American Convention on the Forced Disappearance of Persons and article 2.3 of UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

3. ensuring that the right to life, the right not to be "disappeared" and the right not to be tortured are fundamental human rights which may not be suspended in any circumstances;

- , enable legislation to be passed guaranteeing refugees and asylum-seekers prompt and independent legal safeguards designed to determine their situation and protect them from being forcibly returned to their country of origin if their lives or physical integrity is at risk;
- , introduce monitoring procedures to prisons and detention centres to guarantee respect for the integrity of prisoners, in accordance the UN Basic Principles for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- , reform the 1967 Code of Military Justice to ensure that members of the armed forces or the police implicated in human rights violations are tried and punished by civilian courts;
- , approve legislation guaranteeing the right to conscientious objection to military service and a fair procedure be implemented to determine the right to conscientious objection.

aquel que dio la orden".