

Venezuela

Human Rights under Threat

Introduction

Between 27 February and 4 March 2004 political violence erupted once again in Venezuela. Street protests and demonstrations by supporters of the opposition movement led to repeated violent confrontations with police and security forces in different parts of the country. There were also demonstrations by government supporters. According to information received by Amnesty International, in the context of the disturbances, as many as 14 people were killed in circumstances that have yet to be clarified and over 200 people were injured, with credible reports of excessive use of force by the security forces. There were also more than 500 detentions and a number of reports of ill-treatment and torture. Several police and security force officials were also reportedly injured in the frequently violent demonstrations. Both the government and opposition sought to gain political advantage from the disturbances: the opposition focussed on allegations of abuses by the security forces, while the administration stressed the violence used by protestors and justified the response of the security forces as proportionate and within the law.

Amnesty International believes that the Venezuela government had a clear duty to guarantee public order in the face of frequently violent protests - which included the use of firearms by some protestors. However, there is strong evidence that the use of rubber bullets, tear gas and batons was frequently indiscriminate and disproportionate and significantly contributed to a week of spiralling violence rather than preventing it.

Furthermore, the cases included in this report indicate that several of those detained were not only not involved in criminal acts prior to detention, but then faced ill-treatment and torture while in the custody of the security forces. Reports received also indicate that subsequent investigations undertaken by the *Cuerpo de Investigaciones Científicas, Penales y Criminalísticas* (CICPC)¹, Technical Police, *Fiscalía General de la Nación*, Attorney General's Office, and *Defensoría del Pueblo*, Human Rights Ombudsman's Office, to establish the facts around these alleged abuses and prosecute those responsible have been slow and inadequate. In comparison, these same authorities have acted with energy against opposition activists who allegedly participated in or incited violence. Over recent years, these institutions have failed to fulfil their constitutional role to act with equal impartiality against government supporters and opponents accused of committing crimes related to the ongoing political crisis. This lack of impartiality, combined with long standing structural weaknesses of these key institutions, threatens to strengthen the culture of impunity that has accompanied human rights abuses over many years in Venezuela.

¹ The Scientific, Penal and Criminal Investigations Unit (CICPC) is the Technical Police who carry out criminal investigations under the supervision of the Attorney General's Office. The CICPC replaced the Judicial Police in 2001 as part of recent reforms to judicial procedures. It is attached to the Ministry of Interior and Justice.

While President Chávez's administration introduced several important improvements in the 1999 constitution to protect civil and political as well as economic, social and cultural rights, many of these have remained unimplemented. The political crisis that has dominated Venezuela since 2001 has exacerbated long standing institutional weaknesses and further undermined the impartiality, independence and effectiveness of key institutions such as the Judiciary, *Fiscalía General de la Nación*, the *Defensoría del Pueblo*, the *Cuerpo de Investigaciones Científicas, Penales y Criminalísticas* (CICPC), state and municipal police and the Military, all of whom to a greater or lesser extent have become political actors in the crisis.

On 18 March 2004 the Inter American Commission on Human Rights (IACHR) published a major country report on Venezuela (Report on the Situation of Human Rights in Venezuela, OEA/Ser.L/V/II.118) highlighting many of these serious longstanding institutional weaknesses related to the rule of law and the respect for civil and political rights. The IACHR recommendations provide a clear blueprint for the government to tackle these issues and strengthen the effectiveness and impartiality of key branches of the State, particularly the justice sector.

Background

Hugo Chávez was democratically elected president in 1998 and, after the approval of a new constitution in 1999, was re-elected for a further six-year term in 2000. Chávez, an ex-army officer who led a failed *coup d'état* in 1992, established the Fifth Republic Movement (*Movimiento Quinta República* - MVR), as an independent electoral force distinct from the traditional political parties. His administration committed itself to ending the corruption associated with the ruling political class and addressing longstanding social injustices, which have made Venezuela one of most unequal societies in the region. In 2001, as a result of President Chávez's pushing through legislation on a number of controversial economic and social policies, several former allies withdrew their support for the president's political movement and joined forces with those opposed to the administration. In the same year, these opposition sectors - led by traditional political parties, the private media and business interests and the largest trade union - began concerted efforts to force President Chávez from office. President Chávez has maintained considerable support, particularly amongst Venezuela's poor and excluded, where social projects have been targeted.

The confrontation between the government and the opposition has been characterised by violent discourse, with the private media explicitly supporting the opposition and the state media backing the administration. In the process both sides have sought to de-legitimise and demonise the other and have encouraged a polarized and violently intolerant climate in many parts of the country. The administration has been accused of inciting supporters to threaten and attack media workers who are identified with the opposition and many of these cases have never been adequately investigated by the authorities. There have been regular mass pro- and anti-government demonstrations that on a number of occasions have resulted in violent clashes between the different groups of demonstrators and the police and security forces, with several allegations of excessive use of force by security forces.

In April 2002 the confrontation between the opposition and the government led to wide-scale political violence and a short lived *coup d'état* forcing the president from office for 48 hours, leaving at least 50 people dead and many more wounded. The human rights violations committed in this context have not been clarified and virtually all those allegedly responsible have avoided prosecution.

At the end of 2002 the opposition once again tried to force President Chávez from office with an indefinite national strike, particularly affecting Venezuela's crucial oil industry. The strike, which lasted until February 2003, failed in its objective, but had a crippling impact on the economy. In its aftermath negotiations mediated by the Carter Centre² and the Organization of American States (OAS) led in May 2003 to an agreement between the government and the opposition umbrella organization, the *Coordinadora Democrática*, committing both sides to seek a "constitutional, peaceful, democratic and electoral solution" to the crisis. This has focussed on the opposition petition for a recall referendum against President Chávez³. Under the constitution such a referendum may take place after half the president's term of office and if 20% of the electorate sign a recall petition. After many months of wrangling, a National Electoral Council (CNE) was formed to oversee the process. In December 2003, amidst government claims of widespread fraud, signatures were collected under the auspices of the CNE and international monitors. The CNE then took two further months in the initial process to check the authenticity of the signatures.

During 2003 there were frequent rumours of impending *coup d'états* and continuing polarization - the government accused the opposition of conspiring by non-constitutional means to bring down the democratically elected government, such as occurred in April 2002. The opposition accused the government of trying to cling to power through its monopoly control of all key branches of the state. Despite this, the political negotiations between the sides contributed to a reduction in reports of political violence.

Nevertheless, at the end of February 2004 it became clear that the CNE, which the opposition accuse of government bias, would not accept as valid sufficient signatures to trigger the referendum. The opposition required 2.4 million signatures to trigger the referendum, and claim they collected 3.2 million, but the electoral authority's preliminary decision recognised only 1.8 million as valid, requiring more than 800,000 to be re-authenticated and the remaining signatures were ruled invalid. The OAS and the Carter Center said that they had "some discrepancies with the CNE over the verification criteria"⁴, but called on the opposition to remain within the process for establishing the re-authentication procedures.

² The Carter Center, according to its website is "guided by a fundamental commitment to human rights and the alleviation of human suffering; it seeks to prevent and resolve conflicts, enhance freedom and democracy, and improve health." www.cartercenter.org/

³ Government supporters have also petitioned for referenda against opposition deputies in the National Assembly.

⁴ Carter Centre and OAS statement issued on 2 March, ref <http://www.cartercenter.org/viewdoc.asp?docID=1631&submenu=news>

On 27 February a summit of G15 leaders from the developing world was held in central Caracas. The opposition called a demonstration rejecting the decision of the CNE. Government authorities granted permission for a small delegation of opposition leaders to present a statement to G15 participants, while refusing the main body of opposition demonstrators access to the location of the summit. However, pro-government supporters were allowed to demonstrate in the locality, reflecting what the opposition allege is unequal treatment of opposition and pro-government demonstrations.

While the opposition and the government blame each other for the rapid manner in which the demonstrations led to violent confrontation, over the following days there were street protests in many different parts of Venezuela. The majority of demonstrations were by opposition supporters protesting at the CNE decision (which was finally made public on 2 March), though there were a number of pro-government protests supporting the decision.

Many demonstrations rapidly became violent confrontations between the *Guardia Nacional* (GN), National Guard⁵ and groups of opposition supporters using barricades, stones, Molotov cocktails and firework rockets. There were also several reports of protesters using firearms. In this context, there were clearly legitimate public security concerns, which the authorities had a duty to respond to. However, as has happened repeatedly in Venezuela's history, Amnesty International believes security forces responding to serious breaches in public order on a number of occasions employed excessive use of force to disperse or detain demonstrators, and subsequently subjected several detainees to ill-treatment or torture.

These types of human rights violations committed by police and security forces have occurred in Venezuela over many years, particularly in situations of mass public demonstrations or civil disturbances. In 1989, in what is known as the "*Caracazo*", over 250 people were killed in the context of security forces' response to massive street protests and civil disorder. In 1992 the security forces intervention in the Catia detention centre led to the deaths of over 60 inmates. Neither of these incidents have ever been effectively investigated to establish criminal responsibility of violations of the right to life and physical integrity. Abuses of this nature have taken place due to poor training of officials, inadequate command and control structures and the absence of effective measures to ensure accountability. Most of all, the impunity that accompanies these abuses sends a clear message to the police and security officials that such conduct will remain unpunished and can continue to be a feature of policing and security operations.

In recent years Amnesty International and national human rights organizations have also documented extra legal killings, torture and other serious human rights violations committed by police and security forces in the context of social cleansing or combating common crime in different parts of the country. These cases, often affecting poor and marginalized communities, gain little public attention and receive an equally inadequate official response; exposing the

⁵ The National Guard is part of the armed forces, rather than the police.

victims and their families to threats and intimidation and leaving members of the police and security forces responsible free to commit further human rights violations.

As part of its ruling on the *Caracazo* case, The Inter American Court on Human Rights recently called on the Venezuelan government to review its training, procedures and operational plans for the security forces to respond to serious civil disturbances in order that international standards on the minimum use of force and firearms⁶ are followed to prevent events similar to those of 1989. Amnesty International is not aware of any steps officially taken by the Venezuela government to comply with this ruling.

In the civil disturbances of 27 February to 4 March 2004 Amnesty International recognises that wide scale indiscriminate or extrajudicial killings were avoided in the face of frequently violent demonstrations. However, rather than acknowledge the use of excessive force and torture in a significant number of cases and ensure full, thorough and impartial investigations, the authorities made numerous public statements offering unqualified support for the conduct of the security forces and sought to dismiss or downplay allegations of human rights violations as merely part of the opposition strategy to discredit the government. The government only reluctantly agreed the need to investigate alleged abuses in the face of numerous complaints and strong national and international pressure.

Ill-treatment and torture

Amnesty International has documented ill-treatment and torture and excessive use of force by the police and security forces over many years in Venezuela. Article 46 of the 1999 Constitution guarantees the right to physical integrity; to be free from torture or ill-treatment; of detainees to be treated with dignity; and of victims of these abuses to rehabilitation. It also stipulates that any state official responsible for causing, instigating or tolerating ill-treatment or mental or physical suffering will be punished according to law. In November 2002, the United Nations Committee against Torture welcomed such key elements of the 1999 Constitution and a number of other advances in the legal framework to prevent and punish acts of torture, but expressed concern at the continuing incidence of torture cases and the failure to investigate or punish those responsible. The Committee called for the introduction of specific anti-torture legislation to make effective the Constitutional prohibition. Despite efforts by national human rights organizations to advance both the legal and practical efforts to combat torture, no substantive progress has been made since the Committee made its recommendations. The inadequate legal framework, the absence of effective investigations and the increasing lack of credibility of institutions such as the CICPC, Attorney General's

⁶ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990; Code of Conduct for Law Enforcement Officials, December 1979.

Office and the *Defensoría del Pueblo*, continue to make impunity for crimes of ill-treatment, torture or excessive use of force the norm.

According to information gathered by Amnesty International, on 1 March **Carlos Eduardo Izcaray**, a cellist with the Venezuela Symphony Orchestra and music teacher, was reportedly a bystander as opposition demonstrators clashed violently with the *Guardia Nacional* (GN), National Guard in Altamira, a middleclass neighbourhood in Caracas known for its fervent opposition to the Chávez government. Opposition demonstrators had erected barricades with burning tyres and rubbish and were throwing stones and bottles and firing fireworks at GN lines, who fired tear gas and rubber bullets at protestors. According to Carlos Izcaray, he was not participating in the protest but merely observing. However, as the situation became increasingly violent he tried to leave the area, only to be detained by members of the GN who reportedly beat him with their baton (*rolos y peñillas*) and fists and dragged him by the hair. According to the victim, he was repeatedly insulted and beaten as he was taken to the rear of the GN lines and forced into the back of a GN truck. He was made to sit in a corner with 3 other detainees and was beaten around the head and the back of the neck with different objects, including GN helmets, traffic cones and tear gas canisters. Members of the GN reportedly shouted “*Now you’re going to see who the Nacional Guard are*” (“*ahora si van a ver quien es la Guardia Nacional*”). He was repeatedly insulted and one official forced his pistol into his mouth and compelled him to repeat humiliating phrases. Tear gas powder was repeatedly rubbed into his face and hair then water was thrown on him to increase the burning of the powder. Detainees were made to inhale tear gas fumes, while the GN present wore gas masks.

Later, a member of the GN, who had apparently come from the street battles taking place with demonstrators, told his colleagues in the truck that a GN had been wounded by demonstrators. Threatening to kill the detainees in reprisal, the members of the GN reportedly told them: “You have to be killed, we are going to kill you” (“*A Uds. hay que matarlos, los vamos a matar*”). Two further detainees were put in the truck then the rear flap was closed and a tear gas canister was fired in. Carlos Izcaray has stated: “The gas was burning my lungs.. I felt as if I was going to die” (“*Este gas me quemaba los pulmones...sentí como que me iba a morir*”). When he tried to put his head out the side of the truck to breath he was beaten back inside. The GN finally allowed the detainees out of the truck to breath, but then beat them further on the back, buttocks and knees.

The prisoners were then forced back in the truck and taken to the GN barracks (*Destacamento*) 51 where they were made to line up outside with two other detainees – one of the original detainees who had reportedly been arrested in possession of a firearm was separated from the group at this time. They were then beaten again and one of the GN present reportedly applied electric shocks to the back of their necks and hands. A senior officer then approached and began to question the detainees about their involvement in the demonstrations and told them that under emergency measures they were all going to be imprisoned in La Planta prison pending their trial. However, the detainees were not transferred, but held on a bus overnight

and subjected to further beatings and forced inhalation of tear gas as members of the GN reportedly tried to compel them to admit to participating in violent acts in the demonstration.

Injuries to the back and buttocks of Carlos Eduardo Izcaray (© private)

The medical report from the clinic on 4 March stated multiple traumas; second degree burns on the back; rhabdomyolysis (kidney damage); Trauma to the neck (cervical); damage to nerve of right elbow.

On 5 March he filed a legal complaint with the official medical forensic examination on 8 March to see. A few days later Fiscal No 126 was assigned. In writing, the victim was only aware of the investigation members of his family who had collected him from the base.

On 26 March the prosecutor in charge of the case stated that he accompany him to the GN base in order to see. and his legal representatives rejected this suggestion as it would not meet minimum standards required for Izcaray to further trauma and potential threat. He received no further information from the prosecutors those responsible for his ill-treatment and torture.

According to information received by Amnesty International, **Deivis Jordan Meneses de Freitas** was walking in San Antonio de los Altos, a small town near Caracas.

Injuries to the legs of Deivis Jordán Meneses de Freitas (© COFAVIC)

When one detainee asked about his right to make a telephone call he was reportedly told that he was detained but not under arrest and as such the rules were different. A member of the GN reportedly told them “no one knows you’re here, if anything happens to you who is going to find out?” (“nadie sabe quien esta aqui, si algo les pasa a Uds. Quien se va a enterar?”)

Early in the morning a number of GN arrived who tried to justify the manner in which the detainees had been treated, explaining that many of the GN were frustrated and angry at the treatment they had received from demonstrators. While the detainees had been told that prosecutors would come in the morning to question and charge them, before being transported to La Planta, no prosecutors arrived. Finally, at 2pm the group of detainees were told they could go, but were reportedly warned that if they appeared in the media or reported what had happened to them they would be killed. The same day Carlos Izcaray went to the Policlinica de Mendez Gimón for medical attention for his injuries.

On route he reportedly witnessed violent clashes between the Guardia Nacional and protestors near his home in the Urbanización Castores and was detained by advancing GN forces. He was then repeatedly beaten by the GN with batons and helmets as he was taken behind their lines, where tear gas powder was thrown over his face and back. An officer reportedly pointed his regulation army light automatic rifle, (FAL - *fusil liviano automatico*) at him and threatened to kill him, while other members of the GN repeatedly kicked him and insulted him. The same official that threatened him then reportedly shot him twice in the body with rubber bullets at close range. A short while later he was beaten repeatedly on his bare buttocks and legs with sticks and metal bars by another official. He and eight other detainees, who were reportedly treated in a similar fashion, were put in the back of the GN truck and driven around the streets, forced to remain on the floor while being beaten. When the truck stopped they were made to get out at gunpoint and line up against a wall.

After a number of hours a GN officer reportedly ordered his subordinates “to give each of them another batoning then let them go” (“denle un rolazo a cada uno y que se vaya.”). Deivis Meneses reported that one of those to give the last beating was a military policeman who expressed his intense hatred of the detainees, repeatedly insulting them and calling them “*escualidos*”⁷. According to Deivis Meneses, they were held for four hours without ever being taken to an appropriate facility, neither being allowed to call a lawyer or their families. When he asked for medical attention for his bleeding leg and swollen hand, he was told “that is not our problem” (“eso no es nuestro problema”). Finally, the GN released Deivis Meneses along with the other detainees. None of the men was charged or interviewed in relation to their involvement in the demonstration.

Deivis Meneses reported the treatment he had suffered at the hands of the GN and Military Police to the Attorney General’s Office and an investigation has been opened in the First Prosecutor’s Office of the Public Ministry of Miranda State, *Fiscalía Primera del Ministerio Público del Estado de Miranda*. On 3 March he was examined at the Medical forensics facility (Medicatura Forense) of los Teques, part of the CICPC. Amnesty International is not aware what steps have been taken by the investigating authorities to identify the officials responsible for participating in or being complicit in the ill-treatment and torture of Deivis Meneses and the other detainees.

Amnesty International has received information on several other cases of ill-treatment of detainees in the context of the civil disturbances. Many victims were reportedly unwilling to file a legal complaint with the authorities, apparently because they feared reprisals or doubted the willingness of the authorities to investigate with impartiality.

It is vital that the authorities guarantee the safety of victims, relatives and witnesses of human rights violations in order to encourage them to make complaints and improve the effectiveness of investigations and prosecutions. The lack of a proper witness protection

⁷ A word used by supporters of the government to insult middleclass supporters of the opposition.

program has been a longstanding factor undermining both the reporting and the investigation of human rights violations. It is the authorities' responsibility to ensure that victims, relatives and witnesses can come forward to file reports and provide evidence without fear of reprisal, confident that the authorities will act effectively to investigate the complaint. However, it is also the responsibility of society, including the opposition and the media, to encourage citizens to report human rights violations through official channels as well as reputable non-governmental human rights organizations. Only by doing so will the scale of alleged abuses be known and official institutions be challenged into living up to their constitutional obligations to provide judicial remedy for the victims.

Deaths

"The right to life is inviolable" ("*El derecho a la vida es inviolable*"), Article 43 of the 1999 Bolivarian Constitution.

Human rights organizations have reported that up to 14 people were killed in the context of the civil disturbances between 27 and 4 March. The circumstances surrounding the deaths remain confused, though opposition-supporting media repeatedly accused the security forces of responsibility.

On 9 March the Minister of Interior and Justice, Lucas Rincón Romero, and the head of the CICPC, Marcos Chávez, made public statements blaming the media and other opposition elements for the violence and particularly the deaths, categorically denying the deaths were the responsibility of the security forces. This statement was made only days after the deaths occurred and apparently based on evidence that none of the ballistics tests carried out by the CICPC on the victims matched the calibre of standard issue GN weapons, known as FAL. At the same time, other tests carried out with virtually unprecedented speed on a number of the victims, appeared to demonstrate some had chemical residues on their hands indicating that they had fired weapons, suggesting that the victims were involved in exchanges of fire with other civilians, but not the security forces.

The CICPC is responsible for carrying out the technical investigation arising from criminal acts. However, the categorical statements issued by the head of this force, on the basis of limited evidence and the unprecedented speed with which the official investigation appeared to confirm the authorities' version of events raises serious concern about the impartiality of this institution in the conduct of the investigations.

In a research mission by Amnesty International to the states of Anzoategui and Bolívar in 2002 to investigate reported extrajudicial killings by police officers in the context of "social cleansing" operations, the organization found in several cases that CICPC investigators failed to conduct serious investigations against members of the police or security forces accused of human rights violations, fatally undermining prosecutions and leaving victims and their relatives without redress.

The failure of the CICPC and the Attorney General's Office to effectively investigate the events of 11 April 2002 during the failed *coup d'état* against President Chávez, when at least

50 people were killed and many more were wounded over 3 days, has also raised doubts about the capacity or willingness of these key institutions to conduct impartial and effective investigations in politically sensitive cases.

On 24 March 2004 the *Defensoría del Pueblo*, the state human rights ombudsman, issued a preliminary report on the allegations of human rights violations that occurred during the events of 27 and 4 March. While the report urges investigations into allegations of excessive use of force, it accepts without question the impartiality of the investigations of the CICPC and the Attorney General's Office. In the case of **William Jesús Álvarez Morales** who was shot in the back and killed in the *Urbanización* (Residential complex) la California on 2 March, the *Defensoría del Pueblo* accepted CICPC evidence that the victim had himself fired a gun, despite the existence of testimony contradicting this evidence and serious questions about the manner in which the CICPC took samples from the body of the victim and carried out chemical residue tests. The preliminary report by the *Defensoría del Pueblo*, does not provide an independent or impartial analysis of the conduct of the security forces or the subsequent investigations, but largely endorses the view of events of the administration. The credibility of the *Defensoría del Pueblo*, which human rights organizations have repeatedly criticised for failing in its constitutional role to expose human rights violations and pressure the authorities to act appropriately, has been further called into question by its failure to respond impartially to allegations of human rights violations committed during the actual events of 27 February to 4 March 2004 and subsequently with the publication of the report.

Cosme Biella

According to information received by Amnesty International, on the evening of 1 March 2004 66 year-old Cosme Biella was returning to his home in the large *Urbanización* (Residential complex) Miranda outside Caracas. When he arrived near the residential complex, he rang his home to tell his family he was being diverted to another route by the Municipal Police of Sucre, who had informed him that there was shooting between municipal police and residents at the security gates of the *Urbanización*. He asked his son to go to the gate to check if this was true. When his son arrived at the gate five minutes later he called his father's mobile phone but received no reply. After waiting for 30 minutes near the gate where shots were being exchanged, his mother phoned to say that the Municipal Police of Sucre had called and told her that Cosme Biella had suffered a serious gunshot wound when confronting an armed robber and that he had been taken to hospital. When the victim's wife and son arrived at the hospital they found that he was already dead. Hospital records indicate that Cosme Biella was already dead on arrival and later the official autopsy reportedly indicated that the bullet would have caused virtually immediate death. As a result, it appears that the police illegally moved the body from the crime scene. The family also reported that none of Cosme Biella's possessions and money had been stolen, despite the alleged attempted robbery.

The case was originally filed with the CICPC and a prosecutor assigned. Police investigators from the central office of the CICPC in Caracas have informed relatives that the whole family will be required to testify. At the time of writing only one family member had been interviewed.

The circumstances in which Cosme Biella was killed are not clear. The family report that they were informally told by an eyewitness that police were responsible for his death; however, the witness reportedly refused to make a statement. The family also claim that one of Cosme Biella's sons has been advised by local officials not to try to push for investigations into his father's death or the family may face reprisals.

As with the other deaths that occurred in the context of the recent civil disturbances, there is not so far sufficient evidence to identify those responsible. Nevertheless the response of institutions such as the Attorney General's Office, the CICPC and the *Defensoría del Pueblo* has not demonstrated a proper commitment to establish the facts surrounding the deaths and bring those responsible to justice, whoever they may be. While these institutions have never enjoyed the confidence of large sections of the population, their inefficient and dismissive response to these cases indicates a growing lack of impartiality, which risks further weakening the justice system and strengthening impunity.

Detentions and criminal proceedings

Between 27 February and 4 March at least 500 people were detained by the police and security forces in the context of the frequently violent demonstrations. Many of those detained were held incommunicado for several hours before being released. As shown in this report, in a number of cases these detainees suffered ill-treatment or torture. In some cases, opposition parties reported that activists had "disappeared" after detention by the security forces, particularly the Internal Security Agency, *Dirección General de los Servicios de Inteligencia y Prevención* (DISIP), which carried out a number of detentions. Amnesty International has not been able to confirm any continuing cases of forced disappearance.

In other cases, suspects were detained then brought before prosecutors and judges and formally placed in custody facing charges such as resisting arrest (*resistencia a la autoridad*), incitement to commit crime (*instigación a delinquir*) or causing criminal damage. President Chávez's administration has claimed that these detentions and criminal proceedings were carried out by police and prosecutors legitimately against individuals suspected of being responsible for or inciting serious breaches in public order. Opposition parties claim that these individuals were not involved in criminal acts, but detained and charged because of their political activism or involvement in the demonstrations.

The majority of those charged were remanded in to custody by judges. Two judges, María Trastoy Hombre y Petra Jiménez, who ordered the release of a number of detainees, were relieved of their posts on disciplinary grounds. The authorities have claimed that the Supreme Court disciplinary process against the two judges predated their decision to release the detainees. However, reports received by Amnesty International indicate that the disciplinary procedures were not followed strictly with the apparent intention of securing the judges' immediate dismissal.

Opposition parties have claimed that a number of political leaders and activists are facing criminal prosecution on the basis of fabricated evidence and that the charges against them are politically motivated. Amnesty International has not been able to confirm these allegations, but continues to monitor closely these cases in order to assess whether the procedures followed guarantee the due process rights of defendants and meet international fair trial standards as set out in American Convention on Human Rights and International Covenant on Civil and Political Rights (ICCPR) and other treaties.

Nevertheless, Amnesty International believes that there is a clear disparity in the urgency and resources made available to investigate and prosecute those suspected of participating in or encouraging the week of demonstrations, compared to official efforts to investigate and prosecute those members of the security forces or police allegedly responsible for or complicit in human rights violations. While the systemic ineffectiveness of the judicial system pre-dates the present administration – denying access to justice to large sections of the population – the increasing lack of impartiality in the functioning of key security and judicial institutions, such as the military, police, DISIP, CICPC, Attorney General's Office, Judiciary and *Defensoría de Pueblo*, is further undermining the rule of law. Unless and until these institutions begin to fulfil their constitutional roles both effectively and impartially, then human rights and the rule of law will remain at risk.

Reporting human rights violations and human rights organizations

Venezuela has many reputable and longstanding non-governmental human rights organizations which have documented and attempted to seek redress for human rights abuses over many years. These organizations play a crucial role in helping draw attention to abuses by state agents and assessing the Venezuelan government's compliance with its international human rights commitments, both in the sphere of civil and political rights as well as economic, social and cultural rights. Organizations such as *Programa Venezolano de Educación-Acción en Derechos Humanos* (Provea), Venezuelan Programme for Human Rights Education-Action, *Red de Apoyo por la Justicia y la Paz*, Justice and Peace Support Network, COFAVIC (*Comité de Familiares y Víctimas de los sucesos de febrero y marzo de 1989*, Committee of Families and Victims of the events of February and March 1989) and other members of the national human rights coalition, *Foro por la Vida*, Forum for Life, play a critical and constructive role in highlighting these issues and urging the authorities to fulfil their duties. However, in the present crisis all too frequently these organizations have either been ignored or criticised by the government and the opposition for failing to take sides in the political dispute and because they have reminded both sides of their duty to protect and strengthen the rule of law and human rights and to resolve the crisis through peaceful, democratic and constitutional means.

In the present crisis, where confidence in official institutions such as the police, the CICPC, the Attorney General's Office, the Judiciary and the *Defensoría del Pueblo* has been eroded, human rights organizations play a crucial role in receiving and documenting complaints of violations and assisting the victims and their families in their struggle for justice. Human rights organizations such as COFAVIC have received a number of threats over recent years in

apparent reprisal for highlighting abuses. Since the events of February and March 2004, the organization has reportedly received more email and telephone threats.

In January President Chávez sought to undermine the legitimacy of a number of reputable human rights organizations, such as Provea and the Red de Apoyo, by questioning their links to international organizations and making unfounded allegations of links to foreign governments. The public statements by President Chávez are in direct opposition to the 1999 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and risks encouraging further threats and attacks on human rights defenders. It is vital that the government and the opposition publicly recognise the legitimate role of human rights organizations and make clear that any harassment of human rights activists will not be tolerated.

Conclusions

While many opposition supporters took part in legitimate peaceful demonstrations, a significant number of these protests were violent with the use of barricades, stones, Molotov cocktails, and fireworks and, in some cases, firearms. It is the duty of the state to guarantee public order, respecting the rule of law in accordance with international standards. However, the response of the *Guardia Nacional* and other branches of the security forces frequently involved excessive use of force, apparently contributing to spiralling violence rather than preventing or controlling it.

At least 14 people died in the context of the disturbances in circumstances that have yet to be clarified. Several of those who were detained were severely ill-treated or tortured by members of the security forces, violating the fundamental rights of detained persons and the right to physical and mental integrity.

Key institutions entrusted with the control of public order and the investigation and prosecution of criminal acts - including human rights violations - suffer from systemic long-term failings. These institutions have been further weakened by their lack of impartiality in the present political crisis. As a result, officials have frequently downplayed the deaths that occurred during the disturbances and allegations of human rights violations committed by state agents, and investigations into these incidents have been seriously inadequate. The failure of the justice sector to guarantee an impartial and effective response to these incidents has further undermined the credibility of key institutions in many sectors of the public opinion, making it harder to report abuses and tackle impunity.

Unless these institutions begin to tackle all serious human rights violations, particularly the right to life and physical integrity, effectively and impartially, whether in the context of present political crisis or abuses committed by police in the form of “social cleansing”, then impunity will be strengthened and the state will continue to fail its obligation to uphold the rule of law and prevent and punish human rights violations as established in the constitution and the international treaties to which Venezuela is a state party.

Recommendations

In January 2003 Amnesty International published “A Human Rights Agenda for the Current Crisis” (AMR53/001/2003). The recommendations included in that report focus on the need to strengthen the administration of justice and end impunity; depoliticise the armed and security forces; guarantee freedom of expression and the right to information; and the need to tackle the underlying causes of Venezuela’s political crisis of poverty and marginalization. Amnesty International believes that all sections of society, including the authorities and the opposition, should act on this human rights agenda to overcome the present crisis and ensure respect for human rights and the rule of law. In addition, the organization is calling for the implementation of a number of recommendations specifically to deal with issues that have been highlighted in this report.

Condemn and prevent human rights violations

- Condemn all human rights violations whoever is responsible;
- Refrain from making unsubstantiated statements about alleged responsibility for abuses;
- Ensure all protests and demonstrations are conducted peacefully within the law. Both government and opposition leaders should clearly indicate to their supporters that all protest actions should not endanger or violate the human rights of other citizens;
- Ensure policing of protests is carried out within the law, respecting the right to peaceful protest and ensuring security measures are proportionate with the level of potential threat.

Police and security forces:

- Ensure that training and operational procedures comply with UN guidelines on minimum use of force and firearms.
- Review procedures for the use of tear gas and rubber bullets in order that these are used as a final option before the use of lethal force and do not contribute to increased violence;
- Ensure chain of command authority and that any officer suspected of having ordered, tolerated or covered up abuses is investigated and punished;
- Ensure military and police carry out their duties to guarantee the rule of law and human rights impartially.

Torture and ill treatment and unlawful killings:

- An effective mechanism should be established for reporting complaints so that victims, relatives and witnesses can file legal complaints without fear of reprisal and will be confident that the authorities will act properly and impartially;
- Any allegation of torture, ill-treatment or unlawful killings should be promptly and impartially investigated by an independent body. The accused official should be suspended whilst the enquiry is conducted. The findings of the enquiry should be made public. Any official found responsible should be prosecuted and prevented from serving in the police or security forces in the future. Victims should receive adequate reparations.
- Urgent steps should be taken to fulfil the obligations set out in the UN Convention against Torture and the Inter American Convention to Prevent and Punish Torture to introduce domestic legislation, in accordance with these international standards, to criminalize torture and ill-treatment committed by state agents or with their consent or acquiescence.
- Investigation of allegations unlawful killings should follow the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Detentions

- The fundamental rights of all detained persons should be guaranteed as set out in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988;
- Any violations in the detentions procedures should be fully investigated;
- The right to due process and a fair trial to all persons facing a criminal process should be enforced with impartiality in accordance with American Convention on Human Rights, the ICCPR and other treaties.

Investigative and judicial procedures

- All allegations of human rights violations should be investigated promptly, thoroughly, impartially and independently. Any failure of the institution to conduct such an investigation should lead to immediate review of the fairness and thoroughness of the investigative procedure. Any official not carrying out his or her duties on this basis should face disciplinary investigation;

- Steps should be taken urgently to strengthen the efficiency, independence and impartiality of Judiciary, the Attorney General's Office and the *Defensoría del Pueblo* in line with international standards⁸;
- Strengthen capacity of CICPC to carry out technically high quality and impartial investigations under the supervision of the Attorney General's Office. The work of both these institutions should be open to effective scrutiny;
- Make the medical forensic institutions independent of the CICPC and other branches of the executive and ensure the introduction of clear forensic procedures guidelines to improve evidence gathering and assessment.

Human Rights Defenders

- Ensure that human rights defenders can carry out their legitimate activities without fear of reprisal and with the full cooperation of the authorities, in line with the UN Declaration on Human Rights Defenders.
- Condemn, investigate and punish promptly and thoroughly attacks, threats or intimidation of human rights defenders.

International experts and recommendations

- Request the participation of international experts from the United Nations or Inter American Commission or Court on Human Rights in torture and other serious human rights violations to visit and assess criminal investigations undertaken by the authorities to demonstrate their efficiency and impartiality and make recommendations on how to strengthen the functioning and credibility of the justice system;
- Implement the recommendations of international human right organizations, such as the UN and the IACHR, in particular those included in the recently published report by the IACHR.

⁸ UN Basic Principles on the Independence of the Judiciary, 1985; Guidelines on the Role of Prosecutors September 1990.