



Venezuela

Country Reports on Human Rights Practices - 2004

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Venezuela is a constitutional democracy with a president and unicameral legislature. In addition to the executive, legislative, and judicial branches of government, the Constitution provides for a "Citizen Power" branch--which includes the Ombudsman, the Public Prosecutor, and the Comptroller General--and an "Electoral Power" branch, headed by the National Electoral Council (CNE). In July 2000, voters elected President Hugo Chavez of the Fifth Republic Movement (MVR) in generally free and fair elections. The MVR and the pro-Chavez Movimiento al Socialismo party won a majority in the legislature. In August 2003, the Supreme Court appointed a transitional CNE after the National Assembly failed to do so. According to the Constitution, the civilian judiciary is an independent branch of power; however, it was highly inefficient, corrupt, and subject to political influence from both the executive and legislative branches.

Following a national strike from December 2002 to February 2003, government and opposition representatives signed an agreement in May 2003 that committed both sides to follow the Constitution and laws and acknowledged the constitutional right to hold a presidential recall referendum if legal criteria were met. After the CNE rejected a first group of signatures, opponents of President Chavez gathered sufficient signatures at the end of November 2003 for the presidential recall referendum. In February, the CNE disallowed, on what appeared to be political rather than legal grounds, more than 1 million of the approximately 3.7 million signatures. The opposition subsequently succeeded in ratifying sufficient signatures to activate the recall referendum through the appeals process (reparos), despite government threats of retaliation against signers. On August 15, 5.8 million persons voted to keep Chavez in office, and 3.9 million persons voted to remove him, according to official results. Opponents of the President charged that the process was fraught with irregularities and that electronic manipulation of the vote constituted fraud. Although the Organization of American States (OAS) and Carter Center observers noted that the process "suffered from some irregularities, politicization, and intimidation," they found that the official results were compatible with their own quick count and "reflected the will of the electorate."

The security apparatus consists of civilian and military elements, both accountable to elected authorities. The military played an increasingly larger role in civilian life. Active and retired military officers held high-ranking government positions, and 6 of the 21 cabinet members previously served in the military. The presidents of three major state-owned corporations--Corporacion Venezolana de Guayana, Corporacion Zulia, and PDV Marina--are active duty military officers. The military also administered and executed numerous public service projects. The Ministry of Defense controlled the General Directorate for Military Intelligence (DIM), which is responsible for collecting intelligence related to national security and sovereignty. The National Guard, an active branch of the military, has arrest powers and is largely responsible for maintaining public order. The Ministry of Interior and Justice controls the Investigative and Criminal Police Corps (CICPC), which conducts most criminal investigations, and the Directorate for Intelligence and Prevention Services (DISIP), which collects intelligence and has a law enforcement role. Mayors and state governors are responsible for local and state police forces and maintain independence from the central Government. The Caracas Metropolitan Police is the main civilian police force in the five municipalities that form the capital. While civilian authorities generally maintained control over security forces, members of the security forces committed numerous and serious human rights abuses during the year.

The population was approximately 25 million. The country is abundant in natural resources and has a mixed agricultural and industrial market-based economy; however, the vast majority of natural resource extraction and production was done by entities owned and operated wholly or in part by the Government. The economy began to recover, with growth of more than 16 percent, following contraction of 8.9 percent in 2002 and 7.6 percent in 2003. Government statistics placed the unemployment rate at 15 percent; however, approximately 50 percent of employed adults worked in the informal sector. The petroleum sector provided the majority of foreign exchange earnings. Despite record oil prices and resulting revenue for the Government, the country faced ongoing deficits and other financial difficulties. Independent economists estimated the Government's deficit for the year was 7.2 percent of gross domestic product.

The Government's human rights record remained poor; despite attempts at improvement in a few areas, its performance deteriorated in other areas, particularly regarding politicization of the judiciary and restrictions on electronic media, and serious problems remained. The police and military committed unlawful killings of criminal suspects. The police reportedly had links to

vigilante groups that killed suspected criminals. Investigations into unlawful killings by the security forces of criminal suspects remained extremely slow. Torture and abuse of detainees persisted, and the Government failed to punish police and security officers guilty of abuses. Prison conditions remained harsh; violence and severe overcrowding constituted inhuman and degrading treatment. Arbitrary arrests and detentions continued. Impunity was one of the country's most serious human rights problems. Crimes involving human rights abuses did not proceed to trial due to judicial and administrative delays. Corruption, lengthy pretrial detention, and severe inefficiency in the judicial and law enforcement systems also were problems. A law enacted in May increased the number of Supreme Court judges and the power of the executive branch, the legislature, and the citizen power over the judiciary. Some judges were summarily dismissed or forced to retire. Prosecutors selectively investigated several opposition leaders and brought charges against some.

The Government conducted illegal wiretapping of private citizens and intimidated political opponents. President Chavez, officials in his administration, and members of his political party consistently attacked the independent media, the political opposition, labor unions, the courts, the Church, and human rights groups. Many government supporters interpreted these remarks as tacit approval of violence; they then threatened, intimidated, and physically harmed at least dozens of individuals opposed to Chavez during the year. The International Association of Broadcasters complained that the Government abused its legal power to order that all television and radio stations air material of national interest by requiring the transmission of speeches by President Chavez and other government officials and of other political programming favorable to the Government. A press law enacted in December places restrictions on broadcast content that threaten press freedom. Violence and discrimination against women, abuse of children, discrimination against persons with disabilities, and inadequate protection of the rights of indigenous people remained problems. Trafficking in persons was a problem. The Government's confrontation with the Venezuelan Workers Confederation (CTV) and fired petroleum sector employees continued, and child labor increased.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

Unlike in the previous year, there were no politically motivated killings by the Government or its agents; however, police, soldiers, and government supporters killed several persons at anti-government demonstrations (see Section 2.b.).

According to human rights groups, security forces committed unlawful killings, including summary executions of criminal suspects, used excessive force, and mistreated persons in custody resulting in deaths.

The human rights group Red de Apoyo reported that, on January 10, a group of men, presumably Lara State police officers dressed in black, rounded up nine men and executed them. On March 10, Juan Carlos Zambrano died after being beaten by soldiers who had detained him on March 4 in Lagunillas, Zulia. Six soldiers were arrested on charges of murder in October and ordered detained pending trial (see Section 1.c.). Amnesty International (AI) reported that, in May, Enmary Cava was killed in Cagua, Aragua State, after she and her family had received death threats. The family had called on prosecutors to investigate the death of two brothers and their father at the hands of Aragua State police.

The Venezuelan Program of Action and Education in Human Rights (PROVEA), a human rights nongovernmental organization (NGO), documented 231 unlawful killings from October 2003 through September. PROVEA and the human rights NGO Committee for the Families of the Victims of February 1989 (COFAVIC) identified cases of police death squad activity, linked to police participation in criminal activity. PROVEA noted that such activity decreased in Portuguesa, Yaracuy, and Anzoategui States as a result of media attention and prosecutions.

Prosecutors rarely brought cases against perpetrators of unlawful killings. The police characterized such incidents as "confrontations" (thereby asserting a legal justification for using deadly force) even when eyewitness testimony and evidence strongly indicated otherwise. When prosecutors did investigate, they alleged that unsecured crime scenes, poor investigative techniques, and constantly changing or inexperienced personnel ensured that political and human rights abuse cases were delayed indefinitely or had a pre-ordained result. In addition, the civilian judicial system struggled to implement the Organic Criminal Procedures Code (COPP) and remained highly inefficient and corrupt (see Section 1.e.). In the small number of cases in which the courts convicted perpetrators of unlawful and other killings, sentences frequently were light, or the convictions were overturned on appeal. Members of the security forces charged with or convicted of crimes rarely were imprisoned.

In March, Red de Apoyo called on the mayor of Metropolitan Caracas to fire three Metropolitan Police officers found guilty of murder in November 2003, who were still working as police officers; the authorities subsequently opened administrative procedures to fire the officers but had not acted by year's end.

On August 23, a judge approved release on bail for 14 Portuguesa State police officers being held on 68 counts of murder for their alleged participation in the death squad "Exterminio." The men had been in custody for 20 months longer than the legal 24-month pre-trial detention limit, a delay due in part to the reluctance of citizens to serve as lay judges in the case. Prosecutors appealed

the decision to release the officers from detention, and the measure was suspended. A trial was pending at year's end.

There were no developments in the investigation of the August 2003 killing of human rights worker Joe Luis Castillo in Machiques, Zulia State. Police suspected two Colombian alleged paramilitaries who were subsequently killed, according to press accounts, and no new developments were expected in the investigation.

Police fired on criminal suspects who disobeyed orders to halt and often used deadly force when confronting suspects or rescuing kidnap victims. In November, for example, the Interior Ministry reported that police killed 135 persons who "resisted authority" that month. Security forces also killed some prisoners; however, the majority of deaths resulted from other causes (see Section 1.c.).

In March, prosecutors charged four National Guardsmen with the November 2003 killing of seven prisoners at the Vista Hermosa prison; the guardsmen also allegedly participated in the severe beating of 200 prisoners. While detained, two of the officers were promoted. The case had not gone to trial by year's end.

During demonstrations from February 27 to March 5, unidentified persons killed between 9 (official figure) and 16 (opposition figure) persons and injured 193 throughout the country; on August 16, a group of government supporters fired into a crowd of protesters killing 1 person and injuring 9 others, including a National Assembly deputy (see Section 2.b.).

There were two high profile cases of mistreatment of soldiers resulting in death. On March 5, Army Private Roberto Aguilar died of drowning in a cesspool on a military installation in Zulia State. His family claimed he was forced into the cesspool as punishment. After a conflict between military and civilian courts, on August 4, the Supreme Court ruled that a civilian court had jurisdiction. Four soldiers were detained, and the case had not gone to trial by year's end.

On March 30, eight soldiers were burned in a punishment cell in Fuerte Mara in Zulia State; two of the soldiers died of their injuries. Family members charged that one of the soldiers claimed the prisoners were set on fire from outside the cell. In December, prosecutors charged one of the victims with setting the fire, and three doctors with malpractice for the death of one of the soldiers.

On April 2, army Lieutenant Alessandro Sicat was convicted of murder and attempted murder and sentenced to 21 years in prison. Sicat sprayed and ignited paint thinner in the holding cell of three allegedly disobedient soldiers in 2001.

The press reported several cases of lynching and attempted lynching of suspected criminals. A significant portion of the population tacitly supported vigilante activity to control crime.

b. Disappearance

On October 31, retired Air Force Colonel Silvino Bustillo, one of the leaders of the Plaza Francia military dissidents in 2002, allegedly disappeared after being followed by agents of the DIM. The Government alleged that Colonel Bustillos was in hiding, and had contacted his family, which they denied. As of December, Colonel Bustillo's whereabouts and condition were unknown.

Human rights groups noted that police officers sometimes disposed of the bodies of their victims to avoid investigations. PROVEA recorded 11 reports of disappearances allegedly involving security forces from October 2003 to September.

On May 16, CICPC officers allegedly detained three persons in San Cristobal, Tachira State. The three were never brought before a judge and were presumed to have been killed. Prosecutors began an investigation and ordered the detention of seven CICPC officers, but the officers had not been apprehended by year's end.

From January through August, 88 ranchers were kidnapped, according to the National Cattle Ranchers Federation (Fedenaga). Although rancher kidnappings by Colombian terrorist organizations have been a problem in the border states for decades, Fedenaga attributed most of the increase to domestic criminal gangs, common criminals, and the Bolivarian Liberation Forces (FBL), a relatively new organization allegedly composed of militant supporters of the President. They believed that the FBL targeted ranchers as much for political as for economic reasons. The Government denied any links to the FBL. In September, the head of the CICPC in Tachira State told reporters that some police and National Guard officers collaborated with kidnappers.

On August 9, the Inter-American Court of Human Rights agreed to hear a case against DISIP Commissioner Jose Yanez Casimiro and retired Commissioner General Justiniano Martinez Carreno in the alleged disappearances of Oscar Blanco Romero and Marco Monasterio following the Vargas floods in 1999. In December, Attorney General Isaias Rodriguez announced that the officers had been charged in the disappearance of the two men; a judge released the officers on bail.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits torture and the holding of detainees incommunicado, provides for the prosecution of officials who instigate or tolerate torture, and grants victims the right to medical rehabilitation; however, security forces continued to torture and abuse detainees. Abuse most commonly consisted of beatings during arrest or interrogation, but there also were incidents in which the security forces used near-suffocation and other forms of torture.

PROVEA reported that between October 2003 and September, it received 58 complaints of torture and 491 regarding cruel, inhuman, and degrading treatment. From January to June, Red de Apoyo received 30 complaints from alleged torture victims.

The Government did not ensure independent investigation of complaints of torture. COFAVIC questioned the Attorney General's ability to oversee neutral investigations, because he was an active member of the President's political party and a former vice president in the current Government. Human rights groups also asserted that the Institute of Forensic Medicine, part of the CICPC, was unlikely to be impartial in the examinations of cases that involved torture by CICPC members. Few cases of torture resulted in convictions.

The Human Rights Ombudsman documented 7 complaints of torture and 17 of abuse during the disturbances from February 27 to March 5 (see Section 2.b.). Many of the complaints were reported to prosecutors, but no arrests had been made as of year's end. COFAVIC reported nine cases of torture, with an identifiable pattern throughout the country. There were no arrests associated with these cases. For example, on March 1, National Guard troops detained Carlos Eduardo Izcaray, a National Symphony cellist, near a violent street protest. According to AI, Izcaray was beaten repeatedly, given electric shocks, exposed to tear gas in a confined space, had tear gas powder smeared on his face, and was threatened with death.

Reports of beatings and other humiliating treatment of suspects during arrests were common and involved various law enforcement agencies.

In March, the soldiers who arrested Carlos Zambrano and beat him to death (see Section 1.a.) also raped his girlfriend.

In November, police arrested three ex-police officers as suspects in the November 18 killing of prosecutor Danilo Anderson. Lawyers for the three accused the police of torturing the three men after illegally detaining them. All three were arrested days after being reported missing. The torture allegations included the use of electric shock, sensory deprivation, and psychological torture. A judge ordered an investigation into the allegations of torture, but no arrests had been made by year's end.

Prison conditions were harsh due to scarce resources, poorly trained and corrupt prison staff, and violence by guards and inmates. The prison population was at 118 percent of capacity; 22 of the country's 32 prisons were overpopulated, some severely, according to the Ministry of the Interior and Justice. Severe overcrowding in some prisons constituted inhuman and degrading treatment. Prisoners often complained of food and water shortages.

Inmates often had to pay guards and other inmates to obtain necessities such as space in a cell, a bed, and food. Most prisoners obtained food from their families, by paying prison guards, or in barter with other prisoners. Many inmates also profited from exploiting and abusing others, especially as convicted murderers and rapists often were held with unsentenced or first-time petty offenders. Trafficking in arms and drugs fueled gang-related violence and extortion. Prison officials often illegally demanded payment from prisoners for transportation to judicial proceedings (see Sections 1.d. and 1.e.).

The Government failed to provide adequate prison security. The National Guard and the Ministry of Interior and Justice have responsibility for exterior and interior security, respectively. The Venezuelan Prison Observatory (OVP), a prison monitoring NGO, estimated that interior guard force had only one-tenth the required strength. Violence between gangs was common, with shootouts and riots common occurrences. From January through December 31, the OVP recorded 327 deaths and 655 injuries in the prisons. Security forces committed some of the killings in prisons (see Section 1.a.), but most inmate deaths resulted from prisoner-on-prisoner violence, riots, fires, and from generally unsanitary and unsafe conditions. Prisoners also died as a consequence of poor diet and inadequate medical care.

On August 5, prisoners in the Barcelona prison staged a "blood strike," inflicting wounds on themselves, to protest prison conditions.

Women inmates were held in separate prisons, where conditions generally were better than those in the men's facilities. Security forces and law enforcement authorities often imprisoned minors together with adults, even though separate facilities existed for juveniles. Because reform institutions were filled to capacity, hundreds of children accused of infractions were confined in juvenile detention centers where they were crowded into small, filthy cells, fed only once a day, and forced to sleep on bare concrete floors. Pretrial detainees were not held separately from convicted prisoners.

The Government permitted prison visits by independent human rights observers, and such visits took place during the year.

d. Arbitrary Arrest or Detention

The Constitution and the law prohibit arbitrary arrest and detention; however, the security forces continued to arrest and detain citizens arbitrarily.

The National Guard, a branch of the military, has arrest powers and is largely responsible for maintaining public order, guarding the exterior of key government installations and prisons, conducting counter narcotics operations, monitoring borders, and providing law enforcement in remote areas. The Ministry of Interior and Justice controls the CICPC, which conducts most criminal investigations, and the DISIP, which collects intelligence and is responsible for investigating cases of corruption, subversion, and arms trafficking. Mayors and governors oversee local and state police forces. Often, mayors and governors recruited retired National Guard officers for the top leadership of their police. Corruption was a major problem among all police forces, whose members were poorly paid and trained. Impunity for corruption, brutality, and other acts of violence were major problems. Some local police forces offered human rights training for their personnel.

The COPP states that a person accused of a crime cannot be incarcerated during criminal proceedings unless that person was apprehended in the act of committing a crime or a judge determines that there is a danger that the accused may flee or impede the investigation. All detainees must be taken before a prosecutor within 12 hours and before a judge within 48 hours to determine the legality of the detention. To keep a suspect in pretrial detention, a judge must rule that: A crime meriting a prison sentence of more than 2 years has been committed; there is solid evidence that the suspect is guilty of the crime; and there is a danger of flight or that the detainee might try to obstruct the investigation. A person accused of a crime may not be detained for longer than the possible minimum sentence for that crime, nor for longer than 2 years, except in certain circumstances, as when the defendant is responsible for the delay in the proceedings. Although COPP procedures generally were followed once suspects entered the justice system, confusion over its implementation remained, and arbitrary detention continued to be common.

There was a bail system, but it was common to hold prisoners without according them access to bail. According to the OVP, there were approximately 18,781 prisoners in December, of whom 8,915 had not been convicted of a crime and were held without bail, and the Ministry of the Interior and Justice reported that 48 percent of all prisoners were in pretrial detention. Trials were delayed due to many factors, including the limited power of judges to compel authorities to transport prisoners to court.

Prisoners often had to bribe police to transport them to court for hearings. Judges, prosecutors, and defense lawyers also were responsible for delays, due to excessive workload, corruption, and attempts to avoid controversial cases. Prisoners had reasonably good access to counsel and family members.

The Human Rights Ombudsman's office reported that, during the disturbances from February 27 to March 5, authorities arrested 513 persons and held 53 persons in pretrial detention for their actions. Arbitrary detentions by the Caracas Metropolitan Police, the DISIP, municipal police forces, the National Guard, and the CICPC continued; however, PROVEA estimated that the number of persons detained in anti-drug sweeps had declined.

The Government used the justice system selectively against the political opposition, including investigations against, and arrests of, opposition leaders on charges of conspiracy and treason.

On May 4, a judge ordered Baruta mayor Henrique Capriles Radonski detained on charges relating to a violent demonstration in front of the Cuban Embassy in 2002, despite the lack of evidence and the fact that Capriles was a public official. On September 6, a judge ordered him released on bail. Human rights groups, the political opposition, and media called Capriles a political prisoner. On October 18, an appeals court dismissed the Capriles case, a decision that the prosecution appealed.

On May 22, a military court ordered the detention of retired Army General Francisco Uson for "defaming" the army, despite the fact that Uson was retired and therefore not subject to military jurisdiction. When asked about the Fuerte Mara case (see Section 1.a.) in an interview program, Uson had explained how a flamethrower functions. On October 4, the military court found Uson guilty of insulting the army and sentenced him to 5½ years in prison. The defense appealed the decision.

On August 9, in the 2002 case against National Guard General Carlos Alfonzo Martinez, a judge ruled that the general was not guilty of instigating rebellion and abandoning his command but found him guilty of violating a security zone. General Martinez was sentenced to 5 years' probation and was forbidden to contact the media. Prosecutors and defense lawyers appealed the decision, and prosecutors also opened a new investigation against General Martinez for his actions in support of the Plaza Francia military dissidents in 2002. In October, an appeals court overturned General Martinez' conviction and set him free, a decision that the prosecutors appealed.

Prior to the August 15 presidential recall referendum, Carlos Melo, an opposition leader, was detained on charges of weapons possession, and was held until an appeals court ordered him released a few weeks later. Images captured by a video monitor at the time of Melo's detention supported his contention that the charges were fabricated.

In March, three judges were fired without cause, immediately after releasing protesters arrested in the February-March disturbances (see Section 1.e.). In May, one of the tenured judges who ruled to free Carlos Melo was suspended indefinitely, while the tenured judge who wrote the decisions to release Capriles and General Alfonzo Martinez was suspended in December; in both

cases, the alleged reasons for the suspensions were minor infractions of judicial rules.

e. Denial of Fair Public Trial

The civilian judiciary is an independent branch of power according to the Constitution; however, it was subject to political influence, highly inefficient, and sometimes corrupt.

The judicial sector consists of the Supreme Court, the Attorney General's office, and the Ministry Interior and Justice. The Supreme Court is the country's highest court and directly administers the lower courts. It is divided into six chambers: Constitutional, criminal, social, administrative, electoral, and civil. The Supreme Court administers the lower courts through the Executive Directorate of the Magistracy (DEM). The competitive exams to select permanent judges remained suspended, and only provisional and temporary judges, who constituted 80 percent of all working judges, were hired. The Supreme Court's Judicial Committee may hire and fire temporary judges without cause and did so, without explanation. Provisional judges legally have the same rights as permanent judges; however, in March, the Judicial Committee fired without cause a temporary judge who had been working for 3 years and at least two provisional judges (see Section 1.d.). Human Rights Watch (HRW) raised the problem that this situation represents for judicial independence, as did leaders of the judicial system.

On May 18, the National Assembly passed the Organic Law of the Supreme Court, which increased the number of Supreme Court judges from 20 to 32 and allowed them to be appointed with a simple, rather than a two-thirds, majority vote of the National Assembly. The law also permits the Moral Council (Attorney General, Human Rights Ombudsman, and Comptroller General) to suspend judges and allows the National Assembly to revoke the appointment of Supreme Court judges by a simple majority vote, even if they were appointed by a two-thirds majority. On June 15, using this authority, the legislature annulled the appointment of the Court's vice president. HRW noted that the law threatens the independence of the judiciary by subjecting it to political control.

Control judges oversee the protection of the rights of suspects and hear prosecution and defense motions prior to criminal cases going to trial judges. Executive judges oversee the application of sentences. Appeals courts, consisting of three-judge panels, review lower court decisions. The Attorney General oversees the prosecutors who investigate crimes and bring charges against criminal suspects.

Corruption was widespread, and judges also were susceptible to political pressure. Following the February/March protests, several provisional judges who freed protesters were fired. Human rights groups and judicial observers believed that they were fired for their refusal to detain protesters. In September, police detained provisional control judge Juan Ramon Leon Villanueva for soliciting a bribe from the head of the CICPC. Leon was the most recent judge to confirm the detention of Baruta mayor Capriles, prior to his release (see Section 1.d.). Leon accused other judges of setting him up. Following the killing of prosecutor Danilo Anderson on November 18, prosecutors investigated allegations that Anderson may have been involved in extorting money from persons in return for not pursuing investigations against them. The investigation was ongoing at year's end.

The COPP provides for the right to a fair trial and considers the accused innocent until proven guilty. The COPP also provides for open, public trials with oral proceedings. Suspects have the right to plead guilty without trial and make reparation agreements. Trial delays were common. A professional judge and two lay judges try serious cases. A single judge may hear serious cases, if the defendant or victim so requests and the judge agrees, or if attempts to appoint lay judges have failed. Difficulty in finding persons willing or able to serve as lay judges frequently caused delays. Usually, single judges try minor cases. Defendants and complainants have the right of appeal.

The law provides for public defenders for those unable to afford an attorney; however, there were not enough public defenders. According to the DEM, as of September 2003, there were 619 public defense attorneys for the entire country, of whom 188 handled juvenile cases exclusively.

Prison officials often illegally demanded payment from prisoners for transportation to judicial proceedings. Those who were unable to pay often were forced to forgo their hearings (see Section 1.c.).

On July 19, the Supreme Court president swore in the members of the First and Second Courts for contentious administrative matters. The Committee of Judicial Restructuring disbanded the First Court in 2003 following a series of decisions unfavorable to the Government. Citing reasons of workload, the DEM then created two courts.

The military created executive courts, as part of the restructuring the military justice system, mirroring the civilian courts. The Constitution establishes that trials for military personnel charged with human rights abuses would be held in civilian rather than military courts. However, the provision does not apply to cases that predate the 1999 Constitution.

On April 2, army Lieutenant Alessandro Sicut was convicted of murder and attempted murder and sentenced to 21 years in prison (see Section 1.a.).

Human rights NGOs continued to express concern that the Supreme Court's selection of military judges from a list of candidates provided by the Minister of Defense linked the careers of military judges to the high command, making them more responsive to the views of their military leaders and influencing them to act slowly in cases in which the military is implicated. In May, without due administrative process, five military judges were fired for incompetence, although they had between 15 and 19 years' experience. Four of the judges were handling politically sensitive cases at the time.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions; however, the security forces continued to infringe on citizens' privacy rights by conducting searches of homes without warrants, such as during anticrime sweeps in poor neighborhoods. There were reports of illegal wiretapping and invasion of privacy by the security forces.

Throughout the country, witnesses to abuses by security forces reported instances in which their family members later were harassed, threatened, or killed (see Section 1.a.). There were also reports that the family members of persons, including military personnel, who signed the petitions for a recall referendum were threatened with loss of jobs and benefits.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press; however, persons associated with the Government provoked, threatened, physically harmed, or encouraged others to attack private media owners, their installations, and journalists. The Government did not restrict academic freedom.

International organizations such as the Inter American Press Association (IAPA) and domestic journalists charged the Government with encouraging a climate of hostility toward the media. The IAPA called on the Government to end anti-democratic practices. Although assaults against the media declined compared with 2003, journalists attributed this trend to their lack of access to government events and their avoidance of activities in pro-government neighborhoods. Pro-government assailants shot and injured four reporters, and one reporter was killed, allegedly by drug traffickers. National Guard troops shot and injured several reporters with rubber bullets and tear gas cannisters, sometimes fired at close range. Legislative and administrative efforts to limit private media's right to freedom of expression continued, including threats of prosecution and the enactment of a restrictive law to govern media content.

The country has 15 national newspapers (14 based in Caracas, 1 in Maracaibo); 77 regional newspapers; 89 magazines and weekly journals; 34 representatives of foreign media outlets; 47 national and international television and radio news agencies; 344 commercial and over 150 FM and AM community radio stations; and 31 television channels, 23 of which were in the interior. Both government and private media were highly politicized. The majority of the larger newspapers opposed the President. One tabloid in Caracas, whose sole source of advertisement appeared to be the Government, sided fully with the Government.

Print and electronic media were independent, and many criticized the Government, although they felt threatened by the Government and pro-government sympathizers. In 2003, the OAS's Inter-American Commission on Human Rights (IACHR) Special Reporter on Press Freedom noted that reprisals and threats of violence restricted freedom of expression in practice. During the year, the IACHR granted "precautionary" protective measures to petitioners in 12 cases and granted "provisional" protective measures in another 4 cases. The Supreme Court ruled in 2002 that such international orders were not binding in the country, and media owners and journalists complained that they were not carried out in good faith by the Government. President Chavez repeatedly singled out media owners and editors, charging that the media provoked political unrest. The National Press Union accused the Government of punishing or firing state press employees for political reasons, particularly for signing the petition for the August 15 referendum. The country remained on the International Press Institute's watch list of countries with a growing tendency toward suppression or restriction of press freedom.

Journalists lodged 30 complaints of harassment during the year. Supporters of the Government committed most of the incidents against the private media; however, opposition supporters committed a few acts against state-owned or community media. The National Guard, the DIM, the DISIP, and some local police forces also harassed journalists. Government sympathizers also harassed, vandalized property and equipment, and threatened the private media.

On September 1, unidentified assailants killed radio personality, opinion columnist, and activist Mauro Marcano Ramos of the State of Monagas. Ramos was known as a harsh critic of drug traffickers. In February and March, National Guard and other unidentified persons shot and injured several journalists covering protests in Caracas.

The National Union of Press Workers reported 35 cases of assaults on journalists in the first 8 months of the year. The Committee

to Protect Journalists investigated and verified 28 of those cases.

Pro-government and state-owned media reported four assaults, one case of vandalism, and three cases of harassment. On March 2, for example, opposition supporters vandalized the offices of VTV. Outside the capital, opposition demonstrators surrounded, threatened, and beat two operators of a community radio station. The IACHR later granted the couple precautionary measures.

The Government had two national television stations, a national radio network, and a newswire service whose directors were named by the President. The President had a weekly show on television and radio and frequently demanded access to major media outlets. Independent media observers criticized the state media for extreme pro-government politicization. Most community media--radio and television stations with different frequency licensing requirements and advertising regulations--were pro-government in editorial policy.

The 2002 Organic Telecommunications Law establishes that the President can suspend telecommunications broadcasts. The President referred to this law repeatedly and threatened to revoke commercial broadcast licenses or not convert pre-2000 licenses to new ones. Media professionals complained that investigations of television and radio stations by state broadcast regulation agency CONATEL were politically motivated.

On August 11, government sympathizers attacked a crew from news channel Globovision in front of the vice presidency in sight of both the building's staff and nearby National Guard troops. The National Guard troops made no effort to intervene. The attackers stole one of the station's radios and used the stolen radio to disrupt the station's ability to communicate with its crews. National Guard troops prevented a crew from changing the radio frequency and detained crew members at the site of the tower for 2 days, during which they were not allowed to receive any food or supplies. On August 15, the day of the presidential recall referendum, CONATEL workers made surprise inspections of the facilities of several private television stations.

Media analysts, journalists, and other observers alleged that the Government used criminal defamation and libel laws to intimidate or harass the media.

On December 7, the Government enacted the Law of Social Responsibility in Radio and Television, which restricts certain content, such as sex and violence, to specific hours of the day and requires disclosure of sources of information. The law also requires private radio and television stations to show a set amount of domestically and independently produced programming. The law makes CONATEL the arbiter of compliance with the law. The IAPA criticized the law as a "clear interference in news media content and a restriction of the work of journalists to report and provide opinion." HRW said that the law "severely threatens press freedom." The IACHR also expressed concern over enactment of the law, noting that it places conditions on information carried by news broadcasts, employs vague terminology, provides for "potentially excessive penalties," and places broad restrictions on the content of programs that could have the effect of intimidating the media.

The Government influenced the media through licensing requirements for journalists, broadcast licensing concessions for television and radio stations, and lucrative public sector advertising. In July, the Supreme Court reaffirmed the law that requires practicing journalists to have journalism degrees and be members of the National College of Journalists and prescribes 3- to 6-month jail terms for those who practice journalism illegally. These requirements are waived for foreigners and for opinion columnists.

Some commercial radio stations complained that broadcasting frequencies for community radios were not allocated in accordance with broadcast regulations. According to the National Venezuelan Radio Broadcasting Chamber, most of these community radio stations neither received broadcasting licenses nor followed regulations and interfered with the broadcasts of licensed stations. The Government, not the communities, reportedly funded the community stations, whose broadcasting was pro-government and anti-opposition.

The law permits the Government to order national broadcasts (cadenas) requiring all broadcast media to pre-empt scheduled programming and transmit the Government's message in its entirety. Domestic and international observers criticized the Government for abusing this legal provision. The International Association of Broadcasters stated that it considered the Government's "unlimited abuse of official 'cadenas' on radio and television" a violation of Article 13 of the American Convention on Human Rights and "one of several direct or indirect means the Government uses to intimidate the communications media and society in general." According to private media sources, through December, there had been 282 hours of cadenas.

The Government denied private media equal access to many official events, and, in cases when private media had access to government facilities, they often did not have access to officials and information. For example, only the government radio and television stations were authorized to have reporters at the presidential palace. State-controlled television and radio stations and many foreign news reporters continued to have full access to official events.

There were recurrent, violent pro-government demonstrations in front of the studios of RCTV. On June 3, a group of men surrounded the station's headquarters, shot at office windows, vandalized the building, and drove a truck into the lobby of the building and set it afire. On June 8, video captured by the station showed a DISIP truck pulling up to the same building and several

men, dressed in civilian clothing, getting out of the truck and further vandalizing the building.

Also on June 3, government sympathizers attacked the offices of the dailies *El Nacional* and *Asi es la Noticia* for 4 hours. Approximately 20 persons threw rocks and bottles, crashed a truck into the building's parking lot, set ablaze a distribution truck, and ransacked the offices of *Asi es la Noticia*.

Journalists complained that official actors, including the National Guard, DIM, DISIP, and some local and municipal police forces, perpetrated a significant number of violent or threatening incidents against the media. Complaints lodged with the National Syndicate of Press Workers listed 7 assaults, 13 cases of harassment, and 2 incidents of vandalism directly involving such official perpetrators. In February, several police officers beat Victor Serra, a Merida reporter. On March 2, three National Guardsmen harassed and attacked Juan Carlos Aguirre and Francisco Marcano, of CMT television, while they covered a protest in Caracas. On May 10, DIM agents stopped a reporter, photographer, and driver at a roadblock; beat and threatened them at gunpoint; and confiscated their cameras, tape recorders, radios, and press credentials.

The Government did not restrict access to the Internet.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of peaceful assembly and association, and the Government generally respected these rights in practice. Public meetings, including those of all political parties, generally were held unimpeded, although government supporters disrupted numerous marches and rallies. The Government required permits for public marches but did not deny them for political reasons. A 2002 government decree established eight security zones in Caracas and gave the central Government, rather than municipal officials, the authority to permit demonstrations there. The zones included areas around military installations, state television and radio stations, and headquarters of *Petroleos de Venezuela, S.A. (PDVSA)*.

The Constitution prohibits the use of firearms to control peaceful demonstrations. Supporters and opponents of the Government repeatedly demonstrated in the capital and other cities during the year, and several demonstrations resulted in injuries or loss of life. The authorities used firearms (including military weapons), tear gas, and billy clubs against demonstrators, and occasionally demonstrators fought back with clubs and rocks.

On February 27, National Guard troops confronted a peaceful opposition march using tear gas and rubber bullets. The Government had changed the ending point of the march 24 hours beforehand. The ensuing violent confrontation continued for many hours, with civilian Chavez supporters and police using firearms to support the National Guard. A preschool was evacuated when the children were affected by tear gas. Demonstrations throughout the country, at times violent, followed for the next 7 days. According to the Human Rights Ombudsman, 9 persons were killed, 193 injured, and 513 detained. Human rights organizations and the political opposition claimed 16 persons were killed. Among those killed was Evangelina Coromoto Carrizo Leal, a local leader of Democratic Action, who was shot to death during a demonstration in Machiques, Tachira State on March 4. One National Guard officer was arrested, but was confined to his base, rather than detained. In November, a judge ordered the case to go forward. Many of those detained, and human rights organizations accused the police and National Guard of excessive use of force, torture, and abuse, and the Human Rights Ombudsman documented 7 cases of torture and 17 cases of abuse (see Section 1.c.).

On August 16, some 50 persons demonstrated at Caracas' Plaza Francia against alleged fraud in the August 15 referendum. A group of government supporters arrived, and after a verbal confrontation, began shooting. One demonstrator was killed, and nine injured. Police arrested three of the gunmen after the media showed photos and videotape of them shooting into the crowd. In November, a judge ordered the three to stand trial.

Professional and academic associations generally operated without interference; however, in 2000, the Supreme Court defined which organizations could act in the name of "civil society" to defend collective rights before the courts. The ruling declared that groups belonging to civil society could not receive money from foreign governments or groups influenced by foreign governments, engage in political activism, or be run by members of the military or religious groups. The Government brought charges of conspiracy against the NGO SUMATE based in part on the fact that the organization received financing from abroad (see Section 4).

c. Freedom of Religion

The Constitution provides for freedom of religion, on the condition that its practice does not violate public morality, decency, or the public order, and the Government generally respected this right in practice.

The Government and the Holy See have signed a concordat that underscores the country's historical ties to the Roman Catholic Church and provides government subsidies to the Church, including to its social programs and schools. Other religious groups are free to establish and run their own schools. While these groups do not receive subsidies from the Government, they may receive funding to repair buildings for religious use.

Religious groups must register with the Ministry of Interior and Justice's Directorate of Justice and Religion to hold legal status as a religious organization and to own property. The requirements for registration are largely administrative; however, some groups complained that the process was slow and inefficient. Foreign missionaries must have a special visa to enter the country. Missionaries generally were not refused entry but faced the general bureaucratic inefficiency of the Government taking months or years to process a request.

Several senior government officials, including the President, personally attacked Catholic Church leaders and made numerous public statements intended to intimidate the Church. In April, President Chavez denounced the country's Catholic Church leadership as "immoral liars."

Statements by senior government officials supporting Iraq's Saddam Hussein and Islamic extremist movements raised tensions and intimidated the country's Jewish community. In April, the office of Vice President Rangel released a press statement referring to the owners of a business involved in a labor dispute as being "of Jewish nationality," although they were citizens of the country. Anti-Semitic leaflets also were available to the public in an office waiting room at the Ministry of Interior and Justice.

On May 27, small explosive devices went off near two Mormon churches. Damages were slight, and there were no injuries. Anti-Mormon propaganda pamphlets were found at each site.

In November, CICPC officers investigating the killing of prosecutor Danilo Anderson searched the Hebrew Center of Caracas, just as a school on the site was opening. Jewish community leaders expressed outrage and indicated doubt regarding the authorities' explanation for the search.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice, although there were numerous reports that persons were denied passports and other official documents by government agencies for having signed the petition for the recall of the President. There were also reports that those whose identification numbers appeared on a list of petition signers had to pay exorbitant bribes to receive their documents.

A judge issued an order preventing the departure from the country of a lawyer representing former National Assembly workers in a corruption suit against the former President of the National Assembly.

The Constitution prohibits forced exile, and the Government did not use it.

Both the Constitution and the Organic Refugee Law provide for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution.

In February, the Government began granting refugee status to a small number of applicants. As of December, 3,800 persons had applied for refugee status to the National Refugee Commission (NRC), which was constituted in August 2003. The NRC approved 207 persons and denied 200 persons. The U.N. High Commissioner for Refugees (UNHCR) worked with the NRC to investigate cases to speed the Commission's work.

Persons who applied formally for refugee status received a 90-day renewable identification card allowing them to work, attend public school, or receive public health services. As of September 13, approximately 300,000 Colombians along the border were naturalized or granted residency through a government campaign that began in February. There were no statistics on how many of those naturalized or given residency were refugees, because it was common for Colombians fleeing across the border to blend into local communities where they had familial or ethnic ties rather than apply for formal refugee status. The NRC and UNHCR assumed that many Colombians chose to be naturalized rather than apply for refugee status because the process was quicker, required minimal documentation, and offered greater protection under the law.

Few undocumented aliens found at security checkpoints along the border were deported unless an investigation revealed a criminal background. In late May, some 300 indigenous Wayuu fled into the country from Colombia and received temporary protective status.

Section 3 Respect for Political Rights: The Right of Citizens to Change their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right through periodic elections held on the basis of universal suffrage. The Constitution provides for the direct election of the President and

unicameral National Assembly, as well as of state governors, state legislative councils, and local governments. The Constitution also permits citizens to request recall referenda after the mid-point of the term of any elected official. Political parties organize and their candidates are allowed to run for office freely and to seek the support of voters. The President has extensive powers, and the legislature appoints the members of the Supreme Court and the Citizen Power Branch consisting of the Ombudsman, Public Prosecutor, and Comptroller General. In August 2003, after the National Assembly failed to do so, the Supreme Court appointed a transitional five-member CNE, which included two members and a president generally known to be pro-government.

Opponents of the President have sought to remove him from power since 2002. Following a national strike from December 2002 to February 2003, government and opposition representatives signed an agreement in May 2003 that committed both sides to follow the Constitution and laws and acknowledged the constitutional right to hold a recall referendum if legal criteria were met. At the end of November 2003, opponents of President Chavez gathered sufficient signatures for the recall referendum. Opposition and pro-government parties also collected signatures to recall 70 National Assembly deputies. In February, the CNE disallowed more than 1 million of the approximately 3.7 million signatures collected for a presidential recall, on what appeared to be political rather than legal grounds. The opposition subsequently obtained sufficient signatures to activate the presidential recall referendum through the appeals process (reparos) in which nearly 1.2 million signers were asked to appear again to confirm their signatures.

The Carter Center found that signature collections during the reparo period were conducted in "an atmosphere mostly free of violence...and with mostly clear and transparent procedures"; however, MVR Deputy Luis Tascon placed the names and national identification numbers of all those persons who had signed the petitions on his webpage. The information was used to discriminate against those who had signed, some of whom lost their government jobs, and many more of whom were denied government services, such as passports and identity cards. There were numerous reports that persons were intimidated by government officials not to ratify their signatures or to withdraw them, threatening loss of jobs, scholarships, pensions, and even denial of medical treatment.

Following the CNE's June 3 decision to allow the referendum, the Government engaged in a massive naturalization and identification effort that took place in a few months. The Government claimed that the intention was to redress years of unjustified delays in granting citizenship and identity documents to poor citizens. CNE employees whose loyalty to the Government was unclear were reportedly not allowed to work in the units responsible for changes in the registry. Opposition supporters were denied any opportunity to observe the process, and the electoral registry grew by more than 1.4 million. Many of these voters had no addresses. Additional unexplained changes in voter addresses occurred just before the referendum, making it impossible for some persons to vote.

On August 15, the country held its first-ever referendum to recall a president. The OAS found that irregularities and pro-government bias marked the process leading up to the vote. Because of delays reportedly related to the implementation of an untried electronic voting and fingerprint system, the CNE allowed the polls to stay open an extra 8 hours. On August 16, some 3 hours after the polls closed, the CNE announced that President Chavez had won the vote. International observers declared that the CNE results were compatible with their findings. Chavez opponents challenged the CNE results, alleging irregularities, including that the vote count had been manipulated electronically and that the Government had illegally registered more than 1 million new voters. There were widespread media reports of intimidation, forced retractions, and threats of government retaliation against those who signed the petition or intended to vote to recall the President. Neither the CNE nor the Supreme Court found merit in the opposition's challenges, the Carter Center concluded that the automated machines worked well, and the CNE announced that the Government had received 59 percent of the nearly 10 million votes recorded. The OAS "found no element of fraud in the process," although the Carter Center observers noted that the process "suffered from some irregularities, politicization, and intimidation." The OAS and the Carter Center stated that the official results were compatible with their own quick count and "reflected the will of the electorate," and the OAS Permanent Council passed a resolution that acknowledged the referendum results.

There was a popular perception of widespread corruption among all levels of the Government. The Comptroller General's office was largely inactive, except to accuse the Government's opponents of corruption. Journalists reported several cases of apparent corruption implicating high-level government officials, but none were investigated. The National Office of Identification and Immigration, the agency responsible for issuing identity cards and passports, was corrupt, a fact openly acknowledged by officials.

The Constitution provides for citizens' access to government information and forbids censoring. Human rights groups reported that the Government routinely ignored this requirement, and did not make information available.

On September 24, in response to a lawsuit by the NGO PROVEA, the Human Rights Ombudsman's office defended its right to refuse to release information on human rights abuses on the grounds that it was protecting the privacy rights of victims and that it had no legal responsibility to give information to PROVEA.

Women and minorities participated fully in government and politics. The National Assembly's Family, Women, and Youth Committee promoted political opportunities for women. In the 2000 elections, women won 20 seats in the 165-seat Assembly. There were 3 women in the 21-member cabinet and 8 women among the 32 Supreme Court justices.

Indigenous people traditionally have not been integrated fully into the political system due to low voter turnout, geographic

isolation, and limited economic and educational opportunities. The Constitution reserves three seats in the National Assembly for indigenous people, and these seats were filled in the 2000 election. There were no indigenous members in the cabinet. One of the vice presidents of the National Assembly was an indigenous person.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of independent domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were occasionally responsive to their views. However, during the year, NGOs complained that a 2000 Supreme Court ruling that restricts the rights of NGOs that receive funding from foreign sources was being used to prosecute some NGOs (see Section 2.b.).

On February 15, President Chavez accused the electoral NGO SUMATE of treason for accepting funding from a foreign source. Prosecutors subsequently began an investigation of four principal members of the NGO and, in August, charged SUMATE with conspiracy to destroy the country's republican form of government. Following a Supreme Court ruling that the prosecution had violated procedures, the case was suspended pending the gathering of testimony from overseas. Prosecutors also opened an investigation of the leader of the education reform NGO Assembly of Educators for receiving money from a foreign source.

President Chavez and NGOs have not met to discuss human rights problems since 1999. However, NGOs developed relationships with specific government bodies such as the Ministry of Education, the Ministry of Foreign Affairs, and the National Assembly. The CNE designated the nonpartisan NGO Electoral Eye as the only national observation group for the August 15 referendum.

Several human rights NGOs received threats and intimidation by government representatives and supporters. Throughout the year, COFAVIC received e-mail and telephone threats from persons who identified themselves as Chavez supporters. The Metropolitan Police provided bodyguards for the COFAVIC director and protection in and around COFAVIC's office, in fulfillment by local authorities of an IACHR protective order. In February, the Government complied with a December 2003 IACHR order to pay \$1.56 million (2,496 million bolivars) to compensate relatives of the victims of the Caracazo riots and killings of 1989.

In June, police harassed the leader of a local human rights NGO on two occasions, and presumed government supporters spread threatening material near his home.

Police stated that they suspected Colombian paramilitaries killed human rights activist Joe Luis Castillo in 2003 (see Section 1.a.).

In June, HRW criticized the new Organic Law of the Supreme Court and the politicization of the justice system. The Government responded with a personal attack on the HRW Executive Director, but did not address the substance of HRW's concerns (see Section 1.e.).

PROVEA reported that, in December, the president of Corpozulia (a government-owned and controlled regional development corporation in the State of Zulia) and a Ministry of Energy and Mines official accused an environmental activist of being an agent of a foreign government and a terrorist. The activist was protesting potentially environmentally destructive coal mining operations.

The Ombudsman is responsible for ensuring that citizens' rights are protected in a conflict with the state; however, human rights NGOs claimed that the Ombudsman's office acted on only a small number of cases presented to it. COFAVIC claimed that the Ombudsman and the Attorney General's office were not independent of the Executive Branch and therefore were unable to carry out effective investigations. During the year, the Ombudsman's office repeatedly defended the Government when accusations of human rights violations were made against it. In February and March, while recognizing the excesses of the security forces, the Ombudsman's office justified the repression against demonstrators by stating that protesters violated citizens' rights to work, travel, and education. The Ombudsman's office played no role in protesting the CNE's lack of openness and partisan decisions in the run-up to the presidential recall referendum.

The National Assembly's Sub-Commission on Human Rights played an insignificant role in the national debate on human rights and released no public reports.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution prohibits discrimination on the basis of politics, age, race, sex, creed, or any other condition, and the law prohibits discrimination based on ethnic origin, sex, or disability; however, the Government did not protect women adequately against societal and domestic violence and did not ensure persons with disabilities access to jobs and public services, nor did it safeguard adequately the rights of indigenous people during the year.

Women

Violence against women continued to be a problem, and women faced substantial institutional and societal prejudice with respect to rape and domestic violence. Domestic violence and rape often were not reported to the police. According to the Center for Women's Studies at the Central University of Venezuela (CEM), there were 900 reported rape cases as of June, compared with 2,100 such cases throughout 2003. There were 8,000 cases of reported domestic violence from January 2003 to June 2004. Police generally were reluctant to intervene to prevent domestic violence, and the courts rarely prosecuted those accused of such abuse. The law requires police to report domestic violence and obligates hospital personnel to notify the authorities when they admit patients who are victims of domestic abuse cases. Women generally were unaware of legal remedies and had little access to them. Few police officers were trained to assist rape victims. Only 1,500 of the 11,000 women who reported rape or abuse in 2003 and the first half of the year filed formal charges. In August, Linda Loaiza, the victim of brutal mistreatment and torture, staged a 6-day hunger strike to protest that her alleged aggressor had not been brought to trial in 2 years and thus could be released.

Rape was difficult to prove largely because a medical examination was required within 48 hours of the crime. The Penal Code also provides that an adult man guilty of raping an adult woman with whom he is acquainted can avoid punishment if, before sentencing, he marries the victim. If the rape victim is a prostitute, the rapist must serve only one-fifth of the sentence if convicted, a rule that applies to any crime committed against a prostitute. Prostitution is not illegal.

Sexual harassment in the workplace was a common problem but is not a criminal offense.

Women accounted for approximately half the student body of most universities and worked in many professions, including medicine and law. They were underrepresented in leadership positions and, on average, earned 30 percent less than men. Women attended military academies and served as officers in the armed forces.

Women and men are legally equal in marriage. The Constitution provides for sexual equality in exercising the right to work. The Labor Code specifies that employers must not discriminate against women with regard to pay or working conditions, must not fire them during pregnancy or for 1 year after giving birth, must grant them unpaid leave and benefits for 6 weeks before the birth of a child and 12 weeks after, and must provide them with 10 weeks of unpaid leave if they legally adopt children under 3 years of age. According to the Ministry of Labor and the CTV, these regulations were enforced in the formal sector.

The National Institute for Women, a government agency, had two programs to assist women in need and enhance the economic independence of women. The Women's Bank provided approximately 40,000 women with business and empowerment training and small-scale financing for micro-enterprises managed by women. During the year, the Women's Shelters Program opened its first shelter to receive, care for, and rehabilitate women in distress.

There were at least 10 NGOs in Caracas concerned with domestic violence, sex education, and economic discrimination. However, the recommendations of these groups were not implemented widely by the police or other concerned government agencies. Political differences created division among women's organizations, decreasing their effectiveness in advancing women's rights.

Children

The Organic Procedural Law on Adolescents and Children establishes legal protection of children under the age of 18, regardless of nationality; however, the law was not fully implemented. The Constitution provides that the State is to provide free education up to the university-preparatory level, and the law provides for universal, compulsory, and free education; however, an estimated 57 percent of children left school before the ninth grade. The Ministry of Education, Culture, and Sports provided a public school feeding program for some children to promote school access and attendance through the high school level. Primary and secondary education was chronically underfunded.

There were numerous government health care programs provided for boys and girls on the basis of equal access. UNICEF reported that the under-5 mortality rate was 21 per 1,000 and that the Government financed the expanded program of immunization.

Reports of child abuse were rare due to a fear of entanglement with the authorities and societal ingrained attitudes regarding family privacy. According to UNICEF and other NGOs working with children and women, child abuse often included incest. The judicial system, although slow, ensured that in most situations children were removed from abusive households once a case had been reported; however, public facilities for such children were inadequate and had poorly trained staff.

UNICEF and CECODAP estimated that approximately 15,000 children lived on the street. Authorities in Caracas and several other jurisdictions tried to cope with the phenomenon of street children by imposing curfews for unsupervised minors. Reform institutions were filled to capacity, so hundreds of children accused of infractions, such as curfew violations, were confined in inadequate juvenile detention centers (see Section 1.c.).

Trafficking in Persons

The Constitution prohibits trafficking in persons, although there is no implementing law specifically for prosecution of all forms of trafficking in persons; however, there were reports that the country was a source, destination, and transit country for trafficked men, women, and children.

Trafficking may be prosecuted under laws against forced disappearance and kidnapping (punishable by 2 to 6 years' imprisonment) and, in the case of children, under the Organic Law to Protect Children and Adolescents (which carries a fine of 1 to 10 months' income for trafficking in children). The Law of Migration and Immigration, published on May 24, makes human smuggling punishable by 4 to 8 years in prison.

In January, the Ministry of Foreign Affairs inaugurated an interdepartmental working group to develop plans to combat trafficking in persons. The working group designed but has yet to implement an informational campaign.

The Government did not arrest or prosecute any individuals for trafficking in persons during the year, and no figures on trafficking were available from either government or NGO sources. CICPC's Interpol Division worked on two human trafficking cases involving seven women trafficked to Mexico and Spain. The two women lured to Mexico for sexual exploitation with false offers of employment were repatriated, but, despite cooperation with Spanish law enforcement, the five women trafficked to Spain had not been repatriated by year's end.

PROVEA received complaints that women were trafficked to Europe for purposes of prostitution. Undocumented or fraudulently documented Ecuadorian and Chinese nationals transited the country and reportedly were forced to work off the cost of their transportation in conditions of servitude. Organized criminal groups, possibly including Colombian drug traffickers, Ecuadorian citizens, and Chinese mafia groups, reportedly were behind some of these trafficking activities. The Ombudsman's office continued to investigate whether some of the children separated from their parents in the 1999 flooding in Vargas State may have been trafficked.

An underdeveloped legal framework, corruption among immigration authorities, and the ease with which fraudulent passports, identity cards, and birth certificates could be obtained created favorable conditions for trafficking.

There were small specially trained CICPC sections devoted to prostitution and the protection of women.

Government efforts to prevent trafficking are the responsibility of the Public Prosecutor's Family Protection Directorate and the National Institutes for Women and Minors. NGOs such as CECODAP and the Coalition Against Trafficking in Women also were involved in activities to combat trafficking; however, no details on their work were available.

Persons with Disabilities

According to local advocates, persons with disabilities encountered discrimination in many sectors, including education, health care, and employment. Persons with disabilities had minimal access to public transportation, and ramps were practically nonexistent, even in government buildings. The law requires that all newly constructed or renovated public parks and buildings provide access and prohibits discrimination in employment practices and in the provision of public services; however, the Government had not made a significant effort to implement the law, inform the public of it, or to change societal prejudice against persons with disabilities.

There were no reports of discrimination against persons with mental disabilities.

Indigenous People

Although the law prohibits discrimination based on ethnic origin, members of the country's indigenous population suffered from inattention to and violation of their rights. There were approximately 316,000 indigenous people in 27 ethnic groups, many of whom were isolated from modern civilization and lacked access to basic health and educational facilities. High rates of cholera, hepatitis B, malaria, and other diseases plagued their communities. The Government included indigenous people in its literacy campaigns, in some cases, teaching them to read and write in their own languages as well as in Spanish.

The Constitution creates three seats in the National Assembly for indigenous deputies and also provides for "the protection of indigenous communities and their progressive incorporation into the life of the nation." Nonetheless, local political authorities seldom took account of the interests of indigenous people when making decisions affecting their lands, cultures, traditions, or the allocation of natural resources. Few indigenous people held title to their land, and many did not want to do so because most indigenous groups rejected the concept of individual property. Instead, they called on the Government to recognize lands traditionally inhabited by them as territories belonging to each respective indigenous group.

There were no developments in the May 2003 case of the Yaruro indigenous group in Apure State who complained to the human rights group PROVEA that ranchers and others had invaded their lands, adversely impacting the area's natural resources on

which the indigenous community depended. The Yaruro had also demanded compliance with Articles 120 and 129 of the Constitution requiring that any exploitation of natural resources within an indigenous group's territory only be undertaken after consultation with the effected group.

Section 6 Worker Rights

a. The Right of Association

Both the Constitution and the Labor Code recognize and encourage the right of workers to organize; however, the Government continued to violate the right of association. According to the Constitution, all workers, without prejudice or need of previous authorization, have the right to form and join unions of their choice. The Labor Code extends this right to all private and public sector employees, except members of the armed forces. Approximately 10 to 12 percent of the 12-million-member national labor force was unionized.

The Constitution provides that labor organizations are not subject to intervention, suspension, or administrative dissolution, and workers are protected against any discrimination or measure contrary to this right. Labor organizers and leaders may not be removed from their positions during the period of time or under the conditions in which they exercise their leadership functions. The CNE has the authority to administer the internal elections of labor confederations, which contravenes International Labor Organization (ILO) Conventions 87 and 98. A 2002 law gives the CNE a technical advisory role in elections, which has proven to be the general practice. However, labor groups complained that the CNE is still empowered to certify union election winners, nullify elections, and adjudicate disputes.

The Inter-American Regional Organization of Workers and International Confederation of Free Trade Unions (ICFTU) concluded that the Government seriously violated the right of association. The ILO repeatedly expressed concerns that the Labor Code violates freedom of association by requiring a high number of workers (100 workers) to form workers' trade unions and a high number of employers to form employer trade unions (10 employers). A constitutional requirement for alternation in union leadership leaves vague the right of unions to re-elect their leaders. The ILO noted the Government's intent to reform the Labor Code to address these deficiencies, although the legislation remained pending in the National Assembly.

The Government still refused to recognize the legitimacy of the CTV's elected leadership and refused to appoint the CTV Secretary General as labor's representative at the ILO's annual meetings in 2003 and during the year. The ILO determined that the CTV was the country's most representative labor confederation.

The Labor Code mandates registration of unions with the Ministry of Labor, but it limits the Ministry's discretion by specifying that registration may not be denied if the proper documents (a record of the founding meeting, the statutes, and membership list) are submitted. Nonetheless, the Ministry of Labor continued to deny registration to UNAPETROL, a union composed of oil workers who were later fired for participating in the December 2002–February 2004 national strike (see Section 6.b.).

The CTV filed a formal complaint with the ILO that, during the year, 1,200 public sector workers had been fired or forced to retire in retaliation for having signed the petition calling for a recall referendum on President Chavez. The CTV alleged that the total number of public sector workers removed from their positions was more than 5,000 (see Section 3).

b. The Right to Organize and Bargain Collectively

The Constitution provides that all public and private sector workers have the right to voluntary collective bargaining and to arrive at collective bargaining agreements. The Constitution directs the Government to ensure development of collective bargaining and to establish conditions favorable to collective relationships and the resolution of labor conflicts. The Labor Code stipulates that employers must negotiate a collective contract with the union that represents the majority of their workers. The ILO continued to object to this provision and requested that the Government amend it so that "in cases where no union organization represents an absolute majority of workers, minority organizations may jointly negotiate a collective agreement on behalf of their members."

The Government continued to show preference in collective bargaining agreements toward sympathetic unions and fostered the creation of parallel unions. CTV leaders claimed that the Ministry of Labor routinely rejected collective bargaining agreements negotiated by CTV affiliates on administrative grounds. CTV leaders further claimed that, in those sectors or firms where contracts were rejected, Ministry of Labor officials facilitated the rapid formation of parallel unions, which legally could force a vote among workers over which union would represent them. The CTV also complained that the Labor Ministry usually designated the parallel union as the one authorized to negotiate the contract.

The Constitution and the Labor Code recognize the right of all public and private sector workers to strike in accordance with conditions established by labor law; however, public servants may strike only if the strike does not cause "irreparable damage to the population or to institutions." Replacement workers are not permitted during legal strikes. The Labor Code allows the President to order public or private sector strikers back to work and to submit their dispute to arbitration if the strike "puts in immediate danger the lives or security of all or part of the population."

The status of approximately 19,000 employees of PDVSA who were fired during and in the aftermath of the December 2002-February 2003 national strike remained legally uncertain. The Government continued to deny the former workers severance and pension benefits as well as access to company housing, schools, and medical clinics. The Minister of Labor rejected a petition from the workers requesting compensation for what they claimed was an illegal firing. Although the ILO concluded in June that the PDVSA workers had engaged in a national strike, the Government permitted only a few employees to return to their jobs. The Government reportedly reinstated or compensated some workers who were on excused leave prior to or during the strike. The Government continued to pursue criminal charges against seven former PDVSA executives for alleged incitement to rebellion and sabotage of the oil industry.

There were unconfirmed reports that CTV President Carlos Ortega, who fled the country in March 2003, had returned but was in hiding. Prosecutors were seeking to try Ortega for civil rebellion and incitement to commit a crime for his participation in the national strike. The ILO recommended the Government lift the arrest orders against the strike leaders.

There were brief strikes throughout the year, including one in April-May in an important steel complex in Bolivar State.

Labor law and practice are the same in the sole export processing zone of Punto Fijo, Falcon State, as in the rest of the country.

c. Prohibition of Forced or Compulsory Labor

The Labor Code states that no one may "obligate others to work against their will," and such practices generally were not known to occur; however, there were reports of trafficking in children for employment purposes (see Sections 5 and 6.d.).

d. Prohibition of Child Labor and Minimum Age for Employment

The law contains provisions to protect children from exploitation in the workplace. The Ministry of Labor and the National Institute for Minors enforced child labor policies effectively in the formal sector of the economy but less so in the informal sector. UNICEF's latest data reported that, as of 2001, 7 percent of children were in the labor market. A 2002 ICFTU report estimated that 1.2 million children were working in such areas as agriculture, domestic service, and street vending and that approximately 300,000 children worked in the formal sector.

The Labor Code allows children between the ages of 12 and 14 to work only if the National Institute for Minors or the Ministry of Labor grants special permission. It states that children between the ages of 14 and 16 may not work without the permission of their legal guardians. Minors may not work in mines or smelting factories; in occupations that risk life or health or could damage intellectual or moral development; or in public spectacles. The Constitution prohibits adolescents from working in jobs that will affect their development (see Section 5). The Criminal Code prohibits inducing the prostitution and corruption of minors. Persons convicted of these crimes may be sentenced to imprisonment from 3 to 18 months, and up to 4 years if the minor is younger than 12 years old.

Those under 16 years of age may by law work no more than 6 hours per day or 30 hours per week. Minors under the age of 18 may work only between 6 a.m. and 7 p.m. Children working in the informal sector, mostly as street vendors, generally worked more hours than permitted under the law. According to a 2003 Foundation for Social Action study, 63 percent of child street vendors worked 7 days a week. The Ministry of Education, Culture, and Sports ran educational programs to reincorporate school drop-outs and adults into the educational system; however, there was no independent accounting of the effectiveness of the programs.

e. Acceptable Conditions of Work

The Constitution provides workers with the right to a salary that is sufficient to allow them to live with dignity, and provides them and their families with the right to basic material, social, and intellectual necessities. The Constitution obliges the State to provide public and private sector workers with an annually adjusted minimum wage, using the cost of the basic basket of necessities as a reference point. Under the Labor Code, minimum wage rates are set by administrative decree, which the legislature may suspend or ratify but may not change. The national minimum wage did not provide a decent standard of living for a worker and family, although the Government in May raised the monthly minimum wage by 30 percent to \$167 (321,235 bolivars). Unions noted that a worker's income was often less than the cost of basic monthly food for a family of five, which, in June, was estimated by the Government's Central Office of Statistics and Information to be \$168 (322,088 bolivars). The figure did not include other necessities such as medical care, transportation, clothing, and housing. The Ministry of Labor enforced minimum wage rates effectively in the formal sector of the economy, but approximately 50 percent of the population worked in the informal sector where labor laws and protections generally were not enforced.

The Constitution stipulates that the workday may not exceed 8 hours daily or 44 hours weekly and that night work may not exceed 7 hours daily or 35 hours weekly. Managers are prohibited from obligating employees to work additional time, and workers have the right to weekly time away from work and annual paid vacations. Some unions, such as the petroleum workers' union, have negotiated a 40-hour week. Overtime may not exceed 2 hours daily, 10 hours weekly, or 100 hours annually, and may not be paid

at a rate less than time-and-one-half. The Ministry of Labor effectively enforced these standards in the formal sector.

The Constitution provides for secure, hygienic, and adequate working conditions; however, authorities have not yet promulgated regulations to implement the Health and Safety Law, which was not enforced. The Labor Code states that employers are obligated to pay specified amounts (up to a maximum of 25 times the minimum monthly salary) to workers for accidents or occupational illnesses, regardless of who is responsible for the injury.

The Code also requires that workplaces maintain "sufficient protection for health and life against sickness and accidents," and it imposes fines ranging from one-quarter to twice the minimum monthly salary for first infractions. However, in practice, Ministry of Labor inspectors seldom closed unsafe job sites. Under the law, workers may remove themselves from dangerous workplace situations without jeopardy to continued employment.