

# VENEZUELA 2012 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Venezuela is formally a multiparty constitutional republic. On October 7, voters reelected Hugo Chavez as president. Domestic election observers cited few irregularities on election day. Some groups noted the incumbent's use of state resources created an unlevel electoral playing field. The process leading to the election heavily favored the candidacy of incumbent President Chavez. The Union of South American Nations (UNASUR) electoral "companion" mission described the elections as free and fair. In regional elections on December 16, voters elected 23 governors in elections that domestic election observers characterized as relatively free of widespread fraud but again noted the use of state resources for government candidates. There were some instances in which elements of the security forces acted independently of civilian control.

The principal human rights abuses reported during the year included corruption, inefficiency, and politicization in the judicial system; government actions to impede freedom of expression; and harsh and life-threatening prison conditions. The government did not respect judicial independence or permit judges to act according to the law without fear of retaliation. The government used the judiciary to intimidate and selectively prosecute political, union, business, and civil society leaders who were critical of government policies or actions. The government harassed and intimidated privately owned television stations, other media outlets, and journalists throughout the year, using threats, fines, property seizures, targeted regulations, and criminal investigations and prosecutions. Failure to provide for due process rights, physical safety, and humane conditions for inmates contributed to widespread violence, riots, injuries, and deaths in prisons.

In addition, the following human rights problems were reported by nongovernmental organizations (NGOs), the media, and in some cases the government itself: unlawful killings, including summary killings by rogue police elements; torture and other cruel, inhuman, or degrading treatment; inadequate juvenile detention centers; arbitrary arrests and detentions; corruption and impunity in police forces; political prisoners; interference with privacy rights; corruption at all levels of government; threats against domestic NGOs; violence against women; anti-Semitism in the official media; trafficking in persons; violence based on sexual orientation and gender identity; and restrictions on workers' right of association.

The government sometimes took steps to punish lower-ranking officials who committed abuses, but there were no investigations or prosecutions of senior officials for alleged corruption or abuses.

## **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

### **a. Arbitrary or Unlawful Deprivation of Life**

Although the government reported no statistics on arbitrary or unlawful killings, NGOs received numerous reports that such killings occurred. According to the human rights NGO Committee for the Families of Victims of February 1989 (COFAVIC), national, state, and municipal police entities, as well as the armed forces, were involved in 392 extrajudicial killings during the year, compared with 173 deaths in the preceding 12 months. In 2010 the government acknowledged 3,492 killings committed by police but classified those killings as “resistance to authority.”

Prosecutors occasionally brought cases against such perpetrators. Sentences frequently were light, and convictions often were overturned on appeal.

During a November 1 hearing before the Inter-American Commission on Human Rights (IACHR), Ministry of Foreign Affairs official German Saltron reported there were no extrajudicial killings committed in Venezuela. However, since 2006 COFAVIC reported cases of what it defined as extrajudicial killings in 20 states committed by rogue elements within local and state police forces. COFAVIC reported that these rogue groups systematically and arbitrarily detained and killed individuals (mainly young people from lower social classes) without any recourse or proper investigation by the government.

There was no information available on the numbers of public officials prosecuted or sentenced to prison for involvement in extrajudicial killings.

On September 3, the Inter-American Court of Human Rights (IA Court) ruled that the government was responsible for the 2001 extrajudicial killing of Nestor Uzcategui. The court ordered the government to investigate and prosecute the police officials responsible and provide reparations to Uzcategui’s family for the continued harassment they endured following Uzcategui’s death.

On March 16, Scientific, Penal, and Criminal Investigative Corps (CICPC) personnel shot and killed Karen Berendique, the daughter of the honorary Chilean

consul in Maracaibo, Zulia State. According to the press, Berendique was traveling in a car with her brother when they reached a CICPC checkpoint, allegedly manned by armed, plainclothes CICPC personnel. The brother reported fearing it was an illegal checkpoint and did not stop as ordered. The CICPC personnel shot at the car, killing Berendique. The Public Ministry detained 12 CICPC members for their alleged role in her death, and on May 2, the Public Ministry indicted four of the 12 on felony charges, including premeditated and attempted murder, and indicted the remaining eight as collaborators. On July 14, the Fourth Control Court of Zulia ordered all 12 individuals to trial. At year's end the court had not set a trial date, and the 12 defendants remained in detention pending trial.

Also on March 16, CICPC officials allegedly killed Jose Gregorio Rojas Duran, a 20-year-old construction worker, along with two others in the El Cipres neighborhood of the Macarao section of Caracas, according to relatives of the victims. They claimed that the CICPC officials arrived in El Cipres, apprehended Rojas along with several other youths, confiscated their personal documents, and killed Rojas and two others. Rojas's sister claimed her brother was found naked and without his documents at the Miguel Perez Carreno Hospital.

Six CICPC officers charged with intentional homicide and cruel treatment in the May 2011 deaths of three detainees at the El Rosal detention facility in Caracas remained imprisoned pending trial.

The government continued to prosecute individuals connected with the 1989 killings in Caracas known as the "Caracazo," in which the Public Ministry estimated 331 individuals died, and the 1988 El Amparo massacre, in which government security forces allegedly killed 14 persons.

**Caracazo:** On May 21, the Supreme Court reversed a 2006 decision and reopened criminal proceedings against army officers Pedro Colmenares Gomez, Carlos Miguel Yanez Figueredo, and Jesus Francisco Blanco Berroteran for their alleged involvement in the death of Crisanto Mederos, one of the Caracazo victims. On February 1, the Public Ministry formally charged the former governor of the Federal District (now Capital District), Virgilio Avila Vivas, with intentional homicide.

**El Amparo:** On July 20, the NGO Venezuelan Program for Education/Action on Human Rights (PROVEA) criticized President Chavez's designation of former navy captain Ramon Rodriguez Chacin as the vice president for the Los Llanos

region of the progovernment United Socialist Party of Venezuela (PSUV) and as a spokesperson for the president's reelection campaign. PROVEA alleged that Rodriguez Chacin had been a member of the Jose Antonio Paez Special Command responsible for the El Amparo massacre. PROVEA requested a Public Ministry investigation and reiterated its request for a meeting with the Prosecutor General's Office; the government did not respond.

There were no developments during the year regarding the 1986 Yumare massacre, in which nine persons were killed, and the 1982 Cantaura massacre, in which armed forces and intelligence service members allegedly killed 25 persons.

In 2011 the Public Ministry established a special commission pursuant to the October 2011 Law to Punish Crimes, Disappearances, Torture, and Other Human Rights Violations for Political Reasons in the Period 1958-1998 (Law against Forgetting). During the year the commission conducted 23 investigations, 73 interviews, and exhumations.

#### **b. Disappearance**

There were no substantiated reports of politically motivated disappearances.

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

Although the constitution states that no person shall be subjected to cruel, inhumane, or degrading punishment, there were credible reports that security forces tortured and abused detainees.

The Public Defender's Office did not publish statistics for 2012 regarding allegations of torture by police; however, the Network of Support for Justice and Peace reported treating 21 cases of torture during the year. The NGO reported that some members of security forces, particularly the CICPC and the military, hit or kicked victims, and used death threats, electricity, and plastic bags to simulate suffocation to punish, obtain information, or scare victims.

COFAVIC reported 43 victims of torture and "cruel, inhuman, and degrading treatment" during the year, compared with 20 victims between October 2010 and September 2011. PROVEA defines "torture" as methods used to extract information from victims and "cruel and inhuman treatment" as methods used by to punish or intimidate victims.

Human rights groups continued to question the commitment of the prosecutor general and the public defender to conduct impartial investigations. No data were available on convictions in cases of alleged torture. According to the Network of Support for Justice and Peace, no government official had been prosecuted in connection with any of the 263 claims of torture reported between January 2003 and June 2012.

Press and NGO reports of beatings and humiliating treatment of suspects during arrests were common and involved various law enforcement agencies and the military. Torture and other cruel, inhumane, or degrading treatment or punishments of prisoners were reported during the year. A common method of torture or degrading treatment was the denial of medical care by prison authorities.

On June 7, eight Colombian nationals reported being tortured while in Venezuelan custody. The eight were among 10 Colombians arrested by the Venezuelan armed forces for alleged guerrilla ties following a May 20 conflict along the border that left 12 Colombian soldiers dead. According to press reports, one victim claimed that two plainclothes captains wearing black caps with yellow letters bearing the initials for the Directorate General of Military Intelligence kicked and hit the detainees in the chest and stomach, placed plastic bags filled with insecticide over their heads, submerged them in water, and applied electric shocks to their genitals. The eight were released without charges and deported to Colombia.

### **Prison and Detention Center Conditions**

Prison conditions were harsh and life threatening due to poorly trained and allegedly corrupt prison staff; violence and alleged extortion by guards and inmates, some gang related and fueled by trafficking in arms and drugs; severe overcrowding in most prisons; lack of adequate medical care; and shortages of food and potable water. NGOs and the press frequently claimed that prison gang leaders, rather than government authorities, controlled the prisons.

Physical Conditions: The Ministry of Penitentiary Services reported that during the year, there were 48,262 inmates in the country's 32 prisons and penitentiaries. The NGO Venezuelan Observatory for Prisons (OVP) reported that approximately 6 percent (2,948) of inmates were women and estimated that prisons nationwide held more than three times their estimated capacity of 14,500 inmates. Pretrial detainees and convicted prisoners were held in the same facilities. Women and men generally were held in separate prison facilities. The OVP stated that

women's facilities were generally less violent than those for men. Security forces and law enforcement authorities often held minors together with adults, even though separate facilities existed. Because reform institutions were filled to capacity, hundreds of children accused of infractions were confined in juvenile detention centers where they were reportedly crowded into small, unsanitary cells.

The National Guard and the Ministry of Interior and Justice have responsibility for prisons' exterior and interior security, respectively. The government failed to provide adequate prison security. The OVP reported 591 prisoner deaths during the year, compared with 560 in 2011, an increase of 5.5 percent. Most such deaths and injuries resulted from prisoner-on-prisoner violence, riots, fires, and generally unsanitary and unsafe conditions. The OVP also reported 1,132 prisoner injuries during the year, compared with 1,457 in 2011.

During the year there were almost constant prison riots that resulted in inmate deaths and injuries. According to the OVP, between February 26 and 29, three inmates were killed and 128 were injured following inmate-organized knife fights, commonly known as the "coliseum," which occurred in the Uribana Penitentiary in Lara State.

During an April 27-May 17 riot at the La Planta Penitentiary in downtown Caracas, nine inmates were killed and at least seven seriously injured in exchanges of gunfire between the authorities and inmates. The shootout also injured four bystanders outside the prison. The government subsequently closed La Planta and relocated 1,963 inmates to other prisons in the country.

At least 17 inmates were killed and 35 injured during a 26-day riot that began on July 2 at the Central Penitentiary of the Andean Region in Merida State. At least eight other non-inmates were injured during the riots, among them five soldiers and one prison ministry official.

According to the OVP, HIV/AIDS, tuberculosis, and a lack of medical care accounted for approximately 10 deaths in prison during the year. A 2011 study by the NGO Solidarity Action found that prison rules regarding the classification of inmates resulted in the isolation of those with HIV/AIDS in "inadequate spaces without food and medical attention."

At least six prison officials were killed as a result of prison violence during the year. For example, on May 24, two men intercepted, shot, and killed Roxanne Paola Molina Avila, the prison director, as Molina was leaving the prison.

According to Lisandro Alfonzo, the head of the CICPC in Merida State, a prison gang leader (pran) arranged the killing with outside gunmen because Molina was an “obstacle to the freedoms they used to enjoy in the prison...with a director who was [previously] there on a temporary basis.”

Administration: The government’s recordkeeping on prisoners was inadequate. From October to December 2011, the Ministry of Penitentiary Services conducted a nationwide census of prisoners to determine who was in pretrial detention, who was already convicted, and who was eligible for conditional parole.

Prison authorities did not maintain accurate counts of inmates. On September 9, the press reported the National Guard had stopped doing daily counts in a number of prisons. It cited Ministry of Penitentiary Services officials, who claimed that guards at several prisons and detention centers were not performing the daily counts and, in some prisons, relied on the “prans” for information on the number of inmates. According to press reports, the last correct daily counts at the General Penitentiary of Venezuela and the La Planta Penitentiary occurred in July 2009 and October 2010, respectively.

The NGO A Window to Freedom reported that at least 1,000 prisoners escaped in the first half of the year, and the OVP reported 90 others “evaded” incarceration with complicity of public officials. On September 9, the press quoted a source in the Ministry of Penitentiary Services as saying, “The records of those who have escaped and those who have evaded during the last two years are not in the situation room of the Ministry of Penitentiary Services because, during the transition from the Ministry of Interior and Justice and to the Ministry of Penitentiary Services, all the statistics were lost.”

On June 12, President Chavez enacted a reform of the code of criminal procedures (COPP) that establishes municipal courts to handle “less serious” crimes, i.e., those involving imprisonment of less than eight years. Under the reform the municipal courts can levy penalties that include community service for three to eight months. Besides diverting some “less serious” crimes to the municipal courts, the reform also permits individuals accused of “lesser crimes” to ask the courts to conditionally suspend their trials in exchange for their admission of responsibility, commitment to provide restitution “in a material or symbolic form,” community service, and any other condition imposed by the court.

During the year prisoners conducted hunger strikes and violent uprisings to protest administrative delays and harsh prison conditions. The government did not

respond to most requests from independent organizations to investigate these conditions. For example, the Public Ministry responded to 68 (17 percent) of 222 requests to investigate prison violence that the OVP submitted during the year. The Ministry of Penitentiary Services did not respond to any of the 11 requests it received regarding inmates from the OVP.

According to the OVP and press reports, Minister of Penitentiary Services Iris Varela did not respond to inmates' and relatives' demands to meet to discuss prison conditions. For example, during the three-week riot at the La Planta Penitentiary, relatives repeatedly sought information from the prison and ministry officials regarding the welfare and location of the inmates. On May 4, Varela publicly claimed that there had been a dialogue between the government and the inmates and that the relatives were being allowed access to the prison. However, relatives denied her assertions. One relative claimed, "We know nothing, no one has given us information, no one has come." On May 23, the government rejected calls from the IACHR to investigate the events at La Planta (see section 1.c.).

Prisoners and detainees were permitted religious observance and had access to visitors, but in some cases prison officials allegedly harassed or abused visitors.

Monitoring: Human rights observers continued to experience lengthy administrative delays and restricted access to prisons and detention centers. The International Committee of the Red Cross (ICRC) did not have access to prisons except for the two for security detainees controlled by the Bolivarian Intelligence Service (SEBIN) and the military.

During the year the IACHR issued two statements calling on the government to investigate specific prison riots, improve prison conditions, and adopt measures to prevent outbreaks of violence. On January 6, the IACHR expressed concern over the violent deaths of five inmates on January 2 at the Western Penitentiary Center in Tachira State, and it urged the government to investigate the deaths and punish those responsible, as well as ensure that similar events were not repeated. On May 22, in response to a three-week standoff between armed inmates and authorities at the La Planta Penitentiary, the IACHR called on the government to investigate the events, punish those responsible for bringing weapons into the prison, inform the IACHR about the transfer of the La Planta inmates to other prisons, and adopt relevant measures to guarantee the life and safety of the prisoners who were transferred.

The IA Court continued its review of Venezuelan penitentiaries pursuant to its 2006 decision regarding the need for improvement of prison conditions. An August IACHR statement expressed concern with the deaths of at least 25 persons at the Capital Region Penitentiary Center (Yare Prison) in the state of Miranda on August 19. The commission urged the government to implement the provisional measures granted by the IA Court in its 2006 decision to protect inmates at Yare Prison.

Improvements: On July 27, Minister Varela announced that in one year, the government had installed 17 bakeries, 11 farms, three poultry farms, nine textile mills, five blacksmiths, two soap factories, three pottery workshops, and two hair salons in the prison system.

#### **d. Arbitrary Arrest or Detention**

The constitution prohibits the arrest or detention of an individual without a judicial order; provides for the accused to remain free while being tried, except in specific cases where state law or individual judges may supersede this provision; and provides that any detained individual has the right to immediate communication with family members and lawyers who, in turn, have the right to know a detainee's whereabouts.

On December 29, the Fifth Circuit Criminal Trial Court of Caracas conditionally released four former directors of the stock brokerage Econoinvest, who had been arrested and charged in 2010 with "illegal commercialization of hard currency" and conspiracy. As a condition of their release, the former executives must periodically report to court authorities every 30 days, cannot leave the country, and cannot speak publicly about their cases.

Former judge Maria Lourdes Afiuni remained under house arrest for her 2009 decision to release imprisoned banker Eligio Cedeno. On December 19, the 17th Trial Court of Caracas suspended Afiuni's trial in response to a request by her lawyers to nullify the case against her. The trial proceeding against Afiuni began on November 28 "in absentia" because Afiuni refused to enter the courtroom. Afiuni continued to refuse to participate in the trial because of the alleged lack of impartiality of the judicial proceedings; the trial remained pending at year's end.

On December 18, a criminal court in Vargas state found Afiuni's lead attorney, Jose Amalio Graterol, guilty of "obstruction of justice" in an unrelated case and

sentenced him to six months in prison. He remained free at year's end while appealing the decision.

### **Role of the Police and Security Apparatus**

The National Guard, a branch of the military that reports to both the Ministry of Defense and the Ministry of Interior and Justice, is responsible for maintaining public order, guarding the exterior of key government installations and prisons, conducting counternarcotics 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 SEBIN, which collects intelligence within the country and is responsible for investigating cases of corruption, subversion, and arms trafficking. The police include municipal, state, and national police forces. Mayors and governors oversee municipal and state police forces. The CPNB reports to the Ministry of Interior and Justice and had 14,478 officers at year's end. The CPNB largely focused on policing one Caracas municipality and had a minimal presence in eight of the country's 23 states. During the year, the CPNB also began to protect Caracas-area highways, railways, metro system, and diplomatic missions. On its Web site, the CPNB self-reported that since its 2009 inception, crime had decreased by 33 percent in the areas where it operated.

Corruption, inadequate police training and equipment, and insufficient central government funding, particularly for police forces in states and municipalities governed by opposition officials, reduced the effectiveness of the security forces. There were continued reports of police abuse and involvement in crime, including illegal and arbitrary detentions, extrajudicial killings, kidnappings, and the excessive use of force. PROVEA registered 10 complaints of missing persons allegedly seized by police or military personnel in 2011, compared with 39 such complaints in 2010.

The public defender's 2011 annual report noted complaints that agents of the former Metropolitan Police were involved in kidnappings and robberies committed at fraudulent police checkpoints. On September 10, the Public Ministry charged one member of the National Guard, along with four others, for the alleged August 21 kidnapping of a 10-year-old in Barquisimeto, Lara State.

Impunity remained a serious problem in the security forces. The Public Ministry is responsible for initiating judicial investigations of security force abuses. The ministry's annual report for 2011 cited 7,269 cases of human rights violations by

presumed police and military officers, of which 226, or approximately 3 percent, resulted in indictments; the remainder were either dismissed or suspended. The Public Defender's Office did not provide information regarding human rights violations committed by police and military officers.

State and municipal governments also investigate their respective police forces. By law, national, state, and municipal police forces have a Police Corps Disciplinary Council, which takes action against security officials who commit abuses. The National Assembly can investigate security force abuses. The General Police Council has developed policies and reforms in response to systematic abuses.

According to the NGO Network of Support for Justice and Peace, the lack of sufficient prosecutors made it difficult to prosecute police and military officials allegedly involved in human rights abuses. In addition, NGOs reported the following problems contributed to an ineffective judicial system: long procedural delays, poor court administration and organization, lack of transparency in investigations, and impunity of government officials.

During the year the government at both the local and national level took some actions to sanction officers involved in abuses. For example, on April 23, the Public Ministry successfully sought the detention of six Cojedes State police officers for their alleged role in a quadruple homicide that occurred on February 4 in San Carlos, Cojedes State. Charges against the six officers included premeditated murder, conspiracy, and obstruction of justice. On July 13, the Public Ministry tried Rafael Bautista Noguera, an Anzoategui State police officer, and Jose Luis Torres, a sergeant in the Bolivarian National Guard, for forging documents related to an investigation into drug trafficking in Nueva Esparta State; the court sentenced them to four to six years in prison. On August 9, the Public Ministry successfully sought the detention of one Lara State police officer for his presumed responsibility in the death of a student at the Pedagogical Experimental Libertador University in Barquisimeto, Lara; the officer allegedly shot several times at a vehicle carrying the student and his family, who were rushing his pregnant sister to the hospital.

On June 15, President Chavez approved, pursuant to his decree authority, the Organic Law on the Scientific, Penal, and Criminal Investigative Corps and the National Institute of Forensic Medicine and Sciences. Vice President Elias Jaua claimed the law would allow for the "reestablishment of the CICPC to restore its forensic character" and strengthen the fight against crime. Critics claimed the

separation of the Institute of Forensic Medicine and Sciences from the CICPC would complicate and delay criminal investigations.

The National Experimental University for Security (UNES), inaugurated in 2010 to professionalize law enforcement training for CPNB and other state and municipal personnel, had centers in Caracas and five other cities, with an enrollment of 12,616 students as of September. UNES requires human rights training as part of the curriculum for all new officers joining the CPNB, state, and municipal police forces. In September UNES graduated its first class (8,262 students), whose members were deployed to the CPNB. Additionally, as of April, 44,163 members of the CPNB, state, and municipal police forces had enrolled for continuing education and higher learning opportunities as part of the Special Plan of Police Professional at UNES.

Societal violence remained high and continued to increase. The NGO Venezuelan Observatory of Violence reported 21,692 homicides nationwide during the year (a rate of 73 killings per 100,000 inhabitants), compared with 18,850 in 2011. Criminal kidnappings for ransom were widespread in both urban centers and rural areas; kidnappings included both “express kidnappings,” in which victims were held for several hours and then released, and traditional kidnappings. According to the press (using police data) kidnappings in Caracas during the first half of the year increased 67 percent compared with 2011, when 1,150 kidnappings were reported for the entire year. NGOs and police noted that many victims did not report kidnappings to police or other authorities.

On June 20, President Chavez announced a new initiative, For All Life, to reduce the country’s high and rising crime rate. The initiative includes such elements as educational, sports, and cultural programs; prison, judicial, and police reforms; and victims’ assistance and was to be directed initially to the 79 municipalities with the highest homicide rates (which accounted for 86 percent of the nation’s homicides). The independent daily newspaper *Ultimas Noticias* calculated the mission’s total budget at Bs 2.9 billion (approximately \$680 million). There were no authoritative accounts of the initiative’s activities or outcomes by year’s end.

### **Arrest Procedures and Treatment While in Detention**

A warrant is required for an arrest or detention. A detention is possible without an arrest warrant when the individual is caught in the act of committing a crime. Individuals were sometimes apprehended without warrants from judicial authorities. Detainees must be brought before a prosecutor within 12 hours and

before a judge within 48 hours to determine the legality of the detention. The law requires that detainees be promptly informed of the charges against them, and the requirement was generally met in practice.

Although there is a functioning system of bail, it is not available for certain crimes. Bail also may be denied if a person is apprehended in the act of committing a crime or if a judge determines there is a danger that the accused may flee or impede the investigation. The law requires that detainees be given access to counsel and family members, and the requirement was generally met in practice. A person accused of a crime may not be detained for longer than the possible minimum sentence for that crime or for longer than two years, except in certain circumstances, such as when the defendant is responsible for the delay in the proceedings.

Arbitrary Arrest: On June 29, the press reported that 14 SEBIN officials detained Ana Maria Abreu, a physician who worked for 12 years in a building across from the Miraflores presidential palace, on suspicion of leaking sensitive information. Abreu was taken into custody without an arrest warrant. On July 18, the Public Ministry indicted Abreu on charges of leaking “political or military secrets concerning the security of Venezuela” from 2010 to 2012, an offense punishable by seven to 10 years’ imprisonment. Abreu’s relatives noted that she did not handle documents relating to state security as part of her work. Abreu is the sister-in-law of Rocio San Miguel, the director of the NGO Control Ciudadano, who claimed the government’s actions against Abreu were intended to intimidate her.

Pretrial Detention: Pretrial detention was a serious problem. In its 2012 report, the OVP reported that 63 percent of prisoners had not been sentenced. The NGO Citizen Observatory of the Penal Justice System attributed trial delays to the shortage of prosecutors and penal judges (4.7 penal judges per 100,000 inhabitants in 2010). The Public Ministry’s 2012 annual report indicated that it had 776 prosecutors, of whom 683 processed criminal cases. The Public Ministry reported that it processed 700,987 cases during the year, of which 698,138 were criminal investigations.

According to the Public Ministry’s 2012 annual report, approximately 1 percent of the 390,799 cases involving common crimes actually went to trial. The Public Ministry reported that it closed 365,996 of those total cases but did not indicate the final outcomes. Prisoners reported that a lack of transportation and the disorganization of the prisons reduced their access to the courts and contributed to trial delays.

### **e. Denial of Fair Public Trial**

While the constitution provides for an independent judiciary, there was evidence that the judiciary lacked independence. There were credible allegations of corruption and political influence throughout the judiciary. On June 22, Supreme Court (TSJ) President Luisa Estela Morales reported that 80 percent of all judges had provisional appointments. TSJ justices, elected by the National Assembly, sat on the TSJ's Judicial Committee that was responsible for hiring and firing temporary judges, which it did without cause or explanation. Provisional and temporary judges, who legally have the same rights and authorities as permanent judges, allegedly were subject to political influence from the Ministry of Interior and Justice and the prosecutor general. PROVEA reported that between October 2010 and October 2011, the TSJ rejected 82 percent of the 88 judicial cases publicly reported against the main organs of government (the Presidency, National Assembly, Comptroller General, National Electoral Council, and Prosecutor General's Office), including all 20 legal actions against President Chavez.

During a televised interview on April 18, several weeks after the National Assembly voted to remove him from the Supreme Court because of his presumed ties to an alleged narcotrafficker, former justice Eladio Aponte Aponte asserted there was no judicial independence in Venezuela and that senior government officials, "from the president on down," regularly told judges how to handle cases coming before their courts (see section 4). He alleged that senior government officials held regular meetings in which they would review the docket for the coming weeks and determine how specific cases should be handled "according to the political landscape."

For example, during the week of June 4, the Supreme Court issued separate decisions handing control of two political parties (Podemos and Fatherland for All) to small, progovernment factions. Both parties had endorsed opposition presidential candidate Henrique Capriles Radonski (see section 2.b.).

### **Trial Procedures**

Defendants are considered innocent until proven guilty. The law requires that detainees be promptly informed of the charges against them, and the requirement was generally met in practice. The law provides for open, public, and fair trials with oral proceedings for all individuals. The reformed COPP eliminated trial by jury. Defendants have the right to consult with an attorney. Public defenders are

provided for indigent defendants, but there continued to be a shortage of such attorneys. The August bulletin of the Public Defender's Office reported that during the first half of the year, state-paid attorneys represented 89 percent of prisoners and that 908 public defenders handled 103,485 cases, or approximately 114 cases per public defender, during the first half of the year.

Defendants and their attorneys have the right to access government-held evidence, but in practice this access often did not occur. Under the reformed COPP, defendants can request no less than 30 days and no more than 45 days to prepare the defense. Defendants have the right to question witnesses against them and present their own witnesses. By law defendants cannot be compelled to testify or confess guilt. Defendants and plaintiffs have the right of appeal. Trial delays were common. The COPP permits trials "in absentia" in certain circumstances, although opponents of the reforms claimed the constitution prohibits such trials. The law also says the trial will proceed with the defense attorney, or in his absence, with a public defender whom the court designates. The COPP gives judges discretion to hold trials behind closed doors if a public trial could "disturb the normal development of the trial." The reform also eliminates "mixed" trials, which included the participation of a judge and two jurors. According to the reform, civilian oversight of trials will instead be exercised by the "organized community," such as community councils.

The law provides that trials for military personnel charged with human rights abuses after 1999 be held in civilian rather than military courts. In addition, under the Organic Code of Military Justice, an individual can be tried in the military justice system for "insulting, offending or disparaging the National Armed Forces or any related entities." NGOs expressed concern with the government trying citizens under the military justice system for protests and other actions not under military jurisdiction.

### **Political Prisoners and Detainees**

At year's end NGOs and analysts variously listed between 11 and 18 individuals as political prisoners, most of whom were either convicted for their alleged actions during the 2002 coup or charged for alleged financial crimes. During the year the government used the judiciary to intimidate and selectively prosecute individuals who were critical of government policies or actions.

In some cases political prisoners were held in SEBIN installations and the Ramo Verde military prison. Authorities permitted the International Committee of the Red Cross access to these individuals.

On April 9, agents from the Directorate of Military Intelligence ordered imprisoned general Raul Baduel to 30 days of solitary confinement after Baduel released a 12-minute video, which was broadcast on opposition-oriented Noticias 24, in which he identified himself as a “prisoner of conscience by order of Hugo Chavez and instructions from his mentor Fidel Castro.” Baduel, a former minister of defense and former ally of President Chavez, was sentenced in 2010 to seven years and 11 months in prison on corruption-related charges.

### **Civil Judicial Procedures and Remedies**

There are separate civil courts that permit citizens to bring lawsuits seeking damages. There are no procedures for individuals or organizations to seek civil remedies for human rights violations. Like all courts in the country, the civil courts remained subject to strong executive control.

### **Regional Human Rights Court Decisions**

On February 20, the Inter-American (IA) Court of Human Rights determined that the government had not fulfilled its obligation to inform the court about its measures to provide reparations to victims of the 1988 Amparo massacre pursuant to the court’s 1996 decision. The court ordered the government to present a timeline with planned actions to provide reparations and to investigate and prosecute those responsible for the massacre.

On July 24, President Chavez instructed his foreign minister to withdraw from the IA Court, following the court’s July 21 decision finding the government responsible for the “inhumane” conditions of confinement of Raul Diaz Pena, convicted in the 2003 bombings of the Spanish embassy and Colombian consulate in Caracas. On September 10, Organization of American States (OAS) Secretary General Jose Miguel Insulza announced that the Venezuelan government had officially notified the OAS that it was denouncing the American Convention on Human Rights, effectively beginning the one-year process of withdrawing from the IA Court. On September 27, a group of Venezuelan human rights NGOs filed an action with the Supreme Court against the president’s decision to withdraw from the court. The Supreme Court assigned the case to Justice Francisco Carrasquero Lopez, but no further action was taken by year’s end.

A November 2011 IA Court decision found the government responsible in a case in which Aragua State police agents allegedly killed seven members of the Barrios family. The family publicly complained of police abuse in 1998 and had been under an IACHR protection order since 2004, which called for the government to place permanent guards at the homes of the family members and report to the court every two months on the measures taken. There was no reported government action by year's end.

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

The constitution provides for the inviolability of the home and personal privacy, but in some cases government authorities infringed on citizens' privacy rights by searching homes without judicial authorization, seizing properties without due process, or interfering in personal communications.

### **Section 2. Respect for Civil Liberties, Including:**

#### **a. Freedom of Speech and Press**

The law provides for freedom of speech and press; however, the combination of laws and regulations governing libel and media content, as well as legal harassment and physical intimidation of individuals and the media, resulted in practical limitations on these freedoms. National and international groups, such as Reporters without Borders, the Inter American Press Association, and the Committee to Protect Journalists, condemned government efforts throughout the year to restrict press freedom and create a climate of fear and self-censorship.

The Press and Society Institute (IPYS) reported that the government committed 200 violations of freedom of expression during the year. Transparency Venezuela reported that during the year the judicial branch ruled against all seven pending cases of violations of freedom of expression submitted by the Pro Access Coalition, a group composed of NGOs advocating the right to access public information.

Freedom of Speech: The law makes insulting the president punishable by six to 30 months in prison without bail, with lesser penalties for insulting lower-ranking officials. Comments exposing another person to public contempt or hatred are punishable by one-to-three-year prison sentences and fines starting at Bs 55 (\$13).

The government took reprisals against individuals who publicly expressed criticism of the president or government policy. For example, on February 24, Petroleos de Venezuela (PDVSA) employee Egilda Gomez said she had been threatened with dismissal because of the political views of her husband, journalist Vladimir Villegas, a former government supporter turned critic. On February 28, the PDVSA fired Gomez following the February 28 publication of her husband's opinion in the opposition-oriented daily newspaper *El Nacional* in which he accused the government of "labor harassment, political persecution, witch hunts, and the sowing of fear as daily elements of 'revolutionary' management." According to Villegas, Gomez had been subject to harassment during the previous two years in "political retaliation as a consequence of my positions critical of the government of President Hugo Chavez Frias." In response to Gomez's firing, on March 7, Wills Rangel, the president of the government-affiliated Unitary Federation of Oil Workers, publicly claimed that "whoever wants to advocate against our industry or against the commander president, we are going to fight."

In mid-March the national government threatened two governors for publicly raising concerns over the quality of drinking water in their states. On March 12, in an interview on opposition-oriented Globovision television, Jose Gregorio Briceno, Monagas State governor and then member of President Chavez's PSUV party, criticized the national government's response to the February 4 oil spill in Monagas, which left residents of the state without running water for more than a month. He publicly opposed the government's plan to reopen a pumping station as long as the river water remained contaminated. On March 14, then vice president Elias Jaua accused Briceno of repeated ethical violations and expelled him from the PSUV. President Chavez said that "Briceno got what was coming to him" and called him a "traitor to the people." On March 14, opposition Carabobo State Governor Henrique Salas Feo denounced the pumping of sewage into potable water pipes serving Caracas and Aragua, Carabobo, Miranda states. He accused the government-managed water utility Hidrocentro of "slowly poisoning three million inhabitants of Carabobo and Aragua by repumping sewage to the population." On March 16, President Chavez warned Salas Feo against making statements that "border on the criminal."

On August 9, the National Assembly postponed an inquiry into the corruption allegations against the wife of opposition deputy Julio Montoya. In October 2011 the National Assembly designated a subcommission to investigate alleged corruption related to a 2006 construction contract by Montoya and his wife. Many observers considered the investigation to be in retaliation for Montoya's criticism of the government's plans to repatriate its gold reserves abroad and his charges that

senior government and military officials were linked to the activities of alleged narcotics trafficker Walid Makled.

Freedom of Press: The law provides that inaccurate reporting that disturbs the public peace is punishable by prison terms of two to five years. The requirement that media disseminate only “true” information was undefined and open to politically motivated interpretation. As of August 20, the IPYS reported 194 violations of freedom of the press.

The reformed Law of Social Responsibility for Radio and Television (RESORTE) and the amended Organic Law for Telecommunications, which went into effect in 2010, prohibit all media from disseminating messages that incite or promote hate or intolerance for religious, political, gender-related, racial, or xenophobic reasons; incite, promote, or condone criminal acts; constitute war propaganda; foment anxiety in the population or affect public order; do not recognize legitimate government authorities; incite homicide; or incite or promote disobedience to the established legal order. Penalties range from fines to the revocation of licenses.

The law declares telecommunications a “public interest service,” thereby giving the state greater authority to regulate the content and structure of the radio, television, and audiovisual production sectors. The law provides that the government can suspend or revoke licenses when it judges such action necessary to the interests of the nation, public order, or security. The telecommunications law empowers the government to impose heavy fines and cancel broadcasts for violations of its norms, and the National Telecommunications Commission (CONATEL) oversees the law’s application.

On November 21, according to press reports, progovernment radicals attacked Radio Libertad FM, funded by the Merida State Catholic Archdiocese, and destroyed the radio tower and transmission system. According to media sources, the attackers were motivated by the station’s interview of former PSUV governor and then gubernatorial candidate Florencio Porras who was running against President Chavez’s handpicked gubernatorial candidate, Alexis Ramirez. The Venezuelan National Guard was investigating the incident at year’s end.

On March 6, the Supreme Court rejected privately owned cable news station Globovision’s request for an injunction against the payment of the Bs 9.3 million (approximately \$2 million) fine imposed by CONATEL for its reporting of the June-July 2011 El Rodeo prison riot. Globovision said the station would not pay the fine until it exhausted all its legal appeals. On June 28, the Supreme Court

ordered the seizure of approximately Bs 24 million (approximately \$5.6 million) in Globovision's assets pending payment of the fine. On June 19, Globovision paid the fine "under protest" after the TSJ issued an executive decision without allowing Globovision to exhaust its legal appeals. According to Globovision, it feared the potential impact of the seizure on its ability to continue operating. On July 3, the court suspended the embargo. CONATEL had six other administrative investigations pending against Globovision at year's end.

The law requires that practicing journalists have journalism degrees and be members of the National College of Journalists, and it prescribes jail terms of three to six months for those practicing illegally. These requirements are waived for foreigners and opinion columnists.

Violence and Harassment: Senior national and state government leaders continued to harass and intimidate privately owned and opposition-oriented television stations, media outlets, and journalists throughout the year using threats, property seizures, administrative and criminal investigations, and prosecutions. Government officials, including the president, used government-controlled media outlets to accuse private media owners, directors, and reporters of fomenting antigovernment destabilization campaigns and coup attempts.

The NGO Public Space reported that the government was responsible for 61 percent of the 248 reported violations of freedom of expression during the year. Violations included physical attacks, threats and intimidation, censorship, verbal and judicial harassment, and administrative restrictions. The NGO IPYS reported 200 violations of freedom of expression, in which 204 victims suffered physical attacks, between May 2010 and December 2011. According to the IPYS, seven of 10 offenders were linked to the government. Notable examples of such attacks included:

On March 4, armed assailants threatened a Globovision journalist, her cameraman, and her assistant who had captured on videotape the violent attack by progovernment supporters during opposition presidential candidate Henrique Capriles Radonski's campaign event in the Caracas neighborhood of Cotiza (see section 3). According to the press, the assailants pursued the news team, who sought refuge in a nearby home, threatened them with firearms, and confiscated their camera, film, and other equipment. On March 5, Minister of Interior and Justice Tareck El Aissami accused the opposition of instigating the violence and vowed the perpetrators would be brought to justice; there was no public information about the investigation by year's end.

On August 10, the NGO IPYS reported that individuals identified with Chavez's PSUV party assaulted news teams from the independent Televen and Venevision television networks who were covering protests by opposition students in San Cristobal, Tachira State. Televen reported that the attackers sabotaged their recording and verbally abused its news team. Venevision claimed the attackers assaulted and kicked their cameraman, his assistant, and a correspondent. There was no public information about any government investigation of the alleged attacks.

There were no new developments reported in the apprehension or prosecution of Gabriel and Jesus Rafael Prieto Araujo, sought in connection with the May 2011 killing of Wilfredo Ojeda Peralta, an *El Clarin* columnist and opposition political activist.

Censorship or Content Restrictions: The government exerted pressure on the independent media through administrative, financial, and legal means to affect their editorial positions. Members of the independent media privately said they regularly engaged in self-censorship due to fear of government reprisal.

While the country's major newspapers were independently owned, some print media tended to exercise caution to secure government advertising. Two national newspapers, *Diario Vea* and *Correo del Orinoco*, received direct financial support from the government. The Caracas newspaper *Ciudad CCS* was run by the presidentially appointed Capital District vice president and received funding from the mayor of the Libertador municipality of Caracas.

A March 21 Public Ministry injunction requires that when reporting on water quality, television and print media present only information supported by a technical report and backed by the relevant government entity. On March 22, Prosecutor General Luisa Ortega Diaz claimed the injunction was necessary following allegations of water contamination by two governors, whom she claimed were "trying to generate a matrix of negative opinion... and generate conflict, chaos" (see section 2.a.). Ortega denied the injunction violated the public's right to information and claimed it ensured that the media "complied with their responsibility" and that the population received information that was "objective, truthful, and timely."

Dinorah Giron and Leocenis Garcia, the director and editor, respectively, of the opposition-oriented weekly newspaper *Sexto Poder*, remained on conditional

release pending trial on charges of instigating hatred, insulting public officials, and committing violence against women for the newspaper's August 2011 photos and accompanying article, which alleged that the government put on a "cabaret" to distract the public from real issues.

The government also exercised control over content through licensing and broadcasting requirements. CONATEL acted selectively on applications from private broadcasters for renewal of their broadcast frequencies. During the first three months of the year, CONATEL closed 35 privately owned FM radio stations, charging that they were pirate stations operating illegally or had not complied with administrative or tax obligations. Some station owners publicly denied those allegations and charged that the government had not shut down pirate stations with a progovernment editorial line. The press reported that more than 1,100 pirate stations continued to operate. The NGO Public Space reported that many station owners requested renewed licenses but "CONATEL does not respond in a timely manner and then punishes the radio stations." The press quoted the president of the Venezuelan Chamber of Radio Broadcasting as saying that "requesting does not give you the right [to operate]. That is outside the law."

On April 27, local press quoted privately owned cable station RCTV's legal adviser Oswaldo Quintana as charging that CONATEL continued to deny RCTV's application to register as a national audiovisual producer and thereby resume its cable and satellite broadcasts. Quintana claimed that "we go there practically every week to register the station. We go and say that we came to submit the technical information and the registration as a national audiovisual producer and they ask us what station we are representing. When we say RCTV, they say the registry is closed." Cable operators had ceased broadcasting RCTV in 2010 after CONATEL reclassified it from an "international" to a "national" audiovisual producer. CONATEL then alleged that RCTV violated the requirement of national producers to provide live coverage of mandatory government broadcasts (cadenas), including most speeches by President Chavez.

Libel Laws/National Security: The government sought to exercise control over the press through the Center for National Situational Studies (CESNA), established in 2010. This government entity, under the jurisdiction of the Ministry of Interior and Justice, is responsible for "compiling, processing, and analyzing" both government-released and other public information with the objective of "protecting the interests and objectives of the state." On March 22, the Supreme Court admitted a complaint filed by the NGO Public Space, the National Journalists Association, and the National Union of Press Workers in 2010 seeking the

annulment of the presidential decree establishing CESNA. The organizations expressed concern about the potential for abuse and censorship on national security grounds by CESNA. The court held a hearing on October 11 and listened to testimony by NGOs but took no further action.

Nongovernmental Impact: The widespread violence in the country made it difficult to determine whether attacks against journalists resulted from common criminal activity or were specifically directed against members of the media.

### **Internet Freedom**

There were no government restrictions on access to the Internet, and individuals and groups could engage in the expression of views via the Internet, including by e-mail. However, the reformed RESORTE law subjects Internet providers to government regulations. The law prohibits the dissemination of messages or information that could incite violence, promote hatred and intolerance, lead to crime or murder, foment anxiety in the populace or disturb public order, or be considered disrespectful of public offices or officeholders. It puts the burden of filtering electronic messages on service providers, provides that CONATEL can order them to block access to Web sites that violate these norms, and sanctions them with fines for distributing prohibited messages. Human rights and media freedom advocates complained that the law limited freedom of expression.

During the year some NGOs, members of the opposition, and government critics expressed concern that the government monitored e-mails and Web searches. The NGO Public Space reported that the social networking sites, e-mails, and Web sites of political figures, civil society activists, writers, journalists, and newspapers were hacked during the year. According to the NGO, social network identities were usurped, and personal communications and messages were broadly disseminated, some in government-controlled media.

There were multiple cyberattacks, particularly hacking, against Web sites and Twitter or Facebook accounts of political officeholders and candidates that appeared politically motivated. The government took no action to investigate or punish those responsible for these incidents. The International Telecommunication Union reported that 41 percent of individuals used and 16 percent of households had access to the Internet during the year. According to CONATEL, new Internet user registrations increased 12 percent in the final three months of the year.

### **Academic Freedom and Cultural Events**

There were some government restrictions on academic freedom and cultural events. University leaders and students alleged that the government retaliated against opposition-oriented autonomous universities by allocating budgets for those universities significantly below the annual 22.5 percent inflation rate.

Government supporters sometimes disrupted university classes, marches, and rallies and used violence and intimidation to protest university policies and to discourage opposition students from political participation.

The press reported that on June 7, masked individuals violently assaulted approximately 30 students at the Central University of Venezuela (UCV) as they were preparing logistics for a June 10 march in support of opposition presidential candidate Henrique Capriles Radonski. Student leader Hilda Ruby Gonzalez, secretary general of the Federation of University Centers of UCV, claimed the masked individuals doused one of the students with gasoline and attempted to set the student on fire. Gonzalez also claimed several students jumped through windows to escape and were severely beaten. The press reported that 12 students were injured, two with broken ankles, one with a spinal fracture, and one with a broken nose.

According to press reports, on July 3, armed individuals, led by a known progovernment UCV student, attacked professors, university students, and university workers during their march to the National Assembly to protest budget shortages. The assailants reportedly shouted progovernment slogans and threw sticks and stones, injuring four of the marchers. Victor Marquez, director of the UCV Professors Association, claimed the attacks occurred “with the complicity of the state security agencies.”

## **b. Freedom of Peaceful Assembly and Association**

### **Freedom of Assembly**

The constitution provides for freedom of assembly, and the government generally respected this right in practice.

Human rights groups continued to criticize the 2005 penal code revision for its strict penalties on some forms of peaceful demonstration.

During the year government security forces used tear gas, water hoses, and rubber bullets to suppress peaceful protests. According to press reports, on May 1, officials from the CPNB threw two tear gas canisters at the female relatives of inmates incarcerated in the El Paraiso Prison in Caracas. The women had attempted to block traffic on the adjacent highway to protest the planned transfer of inmates to other prisons. On August 18, the CPNB used rubber bullets to disperse an estimated crowd of 1,260 PDVSA contract workers who were outside the Miraflores presidential palace demanding that the government convert them into permanent employees. On August 23, the press reported that the CPNB used tear gas to disperse a protest at a shelter in Caracas by a group of 2010 flood victims who were demanding permanent housing.

On July 7, a detachment of 40 CPNB officers, dressed in full riot gear, together with a few dozen supporters of President Chavez, formed a barricade to prevent presidential candidate Capriles and several hundred supporters from marching through the historically pro-Chavez neighborhood of La Vega in Caracas. After an hour of attempting to negotiate with the police, Capriles announced that he would not confront the officers. The director of the CPNB claimed that some of Capriles' supporters were armed and that the CPNB was forced to intervene to prevent violence. On July 8, Chavez criticized the opposition for campaigning in a "highly revolutionary territory."

### **Freedom of Association**

While the constitution provides for freedom of association and freedom from political discrimination, the government only partially respected this right. Although indicating that professional and academic associations generally operated without interference, the associations complained that the National Electoral Council (CNE), which is responsible for convoking all elections and establishing dates and procedures for them, and the Supreme Court repeatedly interfered with their attempts to hold internal elections.

During the week of June 4, the Supreme Court issued separate decisions handing control of two political parties (Podemos and Fatherland for All), which had both endorsed opposition presidential candidate Henrique Capriles Radonski, to small, progovernment factions. The Supreme Court ruled that former Aragua State governor Didalco Bolivar would replace opposition leader Ismael Garcia as the "temporary" head of the Podemos party; Bolivar had fled the country in 2009 to avoid corruption charges but returned in 2011 under an apparent agreement with the government. The Supreme Court annulled the October 2011 internal elections

of the Fatherland for All party and gave temporary leadership to a faction that supported President Chavez's reelection.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

### **Protection of Refugees**

Access to Asylum: The constitution recognizes the right to asylum and refuge, and laws provide for the granting of asylum or refugee status. The government has established a system for providing protection to refugees. In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

Refugee Abuse: While no official statistics were available, a local women's shelter reported that gender-based violence and trafficking of refugee women was a problem. Also see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

## **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage.

## **Elections and Political Participation**

Recent Elections: On February 12, opposition political parties held nationwide primary elections, open to all voters, to select a single presidential candidate for the October 7 presidential election as well as gubernatorial and mayoral candidates for the December 16 regional elections and the rescheduled July 14, 2013, municipal elections. Voter participation reached 17 percent in the primary elections.

Although there were few incidents of voter intimidation at the polls, election observers and the press reported that the government threatened to terminate public employees who voted for the opposition. They also claimed the Supreme Court had attempted to intimidate opposition voters by prohibiting the destruction of the voter registries and requiring they be given to the CNE. The opposition had pledged to destroy the voter registries to protect the identity of voters and had already done so by the time an injunction was issued.

On October 7, voters elected Hugo Chavez Frias as president. Domestic observer groups and the Carter Center's "study mission" noted the high voter turnout (80.5 percent) but also some irregularities on election day and claimed the process leading to the election heavily favored the candidacy of incumbent President Chavez. The study mission expressed concern with President Chavez's illegal use of public financing for campaign propaganda and voter mobilization; use of state-owned media; and increased public spending during the election season. The UNASUR electoral "companion" mission commended Venezuelans for holding a free and transparent election.

One CNE rector, opposition political parties, and two accredited domestic election observation groups cited elements in the process leading to the election that the CNE heavily favored the candidacy of incumbent President Chavez by adopting regulations that imposed obstacles to voter registration by presumed opposition-oriented voters: not locating voter registration booths in opposition-oriented areas; imposing unconstitutional requirements for voters seeking to register abroad; and failing to establish an alternative voting center in Miami following the government's decision in January to close its Miami consulate, thus obliging voters from the Miami consular district to travel to New Orleans to vote.

These groups also stated that the CNE failed to guarantee equal media access for the candidates. CNE regulations restricted paid campaign advertising, but state-owned media provided almost continuous pro-Chavez programming and only limited and distorted coverage of the campaign of opposition candidate Henrique

Capriles Radonski. The Capriles campaign reported that President Chavez used 43 hours for mandatory broadcasts (cadenas) on all national television and radio stations from July 1 to September 21. On August 2, President Chavez defended his use of cadenas as a means of satisfying the country's "right to be informed."

Both campaigns charged that militants instigated violence to deter campaign events. For example, progovernment supporters alleged that Capriles supporters engaged in violence during a July 8 campaign event in Maturin, the capital of Monagas State. They claimed that several people wearing pro-Capriles shirts attacked them with knives and bottles. The state-run National Radio of Venezuela Web site reported that 10 Chavez supporters were injured in the attack, at least two of whom required medical attention.

On September 29, presumed pro-Chavez supporters shot and killed two Capriles supporters during a Capriles campaign event in Barinas State. On October 1, the Public Ministry charged Enmanuel Reyes, Jonathan Ocana, and Jose Nieves with the killing of Omar Fernandez and Jason Valero and the wounding of a third person. The court ordered Reyes to be detained; the other two suspects were conditionally released pending trial. There was no information regarding any of the investigations by year's end.

Political Parties: Opposition political parties operated in a restrictive atmosphere, which was characterized by intimidation, the threat of prosecution or administrative sanction on questionable charges, prohibitions against receiving resources from any non-Venezuelan person or entity, and restricted media access (see section 2.a.). Opposition National Assembly deputies regularly criticized the refusal of the National Assembly's progovernment leadership to schedule hearings on their proposed legislation, such as their draft law to guarantee access on a nonpartisan basis to the government's social welfare programs, known as "missions." Throughout the year government officials and the National Assembly opened or threatened to open investigations against leading opposition political figures, including opposition governors Henri Falcon, Henrique Salas Feo, Morel Rodriguez, and Cesar Perez Vivas, as well as Jose Gregorio Briceno, a government supporter turned critic, on charges ranging from corruption to money laundering.

On April 24, in a televised press conference, Justice and Interior Minister Tareck El Aissami alleged that Carabobo State Governor Henrique Salas Feo and Nueva Esparta State Governor Morel Rodriguez could be involved in a money-laundering ring involving as much as approximately Bs 43 million (\$10 million). El Aissami suggested that Salas Feo "could be" the director of a front company for the ring in

Carabobo and that Rodriguez used one of the companies as a principal contractor in his state (see section 1.e.).

On May 31, the progovernment majority in the National Assembly initiated three investigations against the opposition governor Henri Falcon for alleged budget irregularities and corruption in several tenders issued in the previous three years. On October 31, Falcon testified and presented documents to the Committee of Comptroller in the National Assembly to affirm his innocence. The National Assembly and Public Ministry had opened an investigation against Falcon on similar charges in September 2011. Falcon claimed the government sought to disqualify him administratively from running for reelection. Falcon had left the progovernment PSUV to join an independent party in 2010; he officially joined the opposition in 2012.

According to the Office of the Comptroller General, as of September the comptroller general had administratively disqualified 11 individuals from holding public office during the year; 247 individuals in total were subject to administrative disqualifications at year's end.

On January 24, Leopoldo Lopez, a candidate in the opposition's presidential primary elections, announced his withdrawal from the campaign because his 2008 administrative disqualification left doubts among voters about his electoral viability. In October 2011, following an IA Court ruling that administrative disqualification absent a trial and conviction violated the American Convention on Human Rights, the TSJ president stated that Lopez could "register and participate freely in elections" but not necessarily hold public office if elected.

On July 30, CNE Vice President Sandra Oblitas ordered the removal of television advertisements created by NGO Active Citizenship for violating the Organic Law of Electoral Processes. Oblitas claimed the advertisements, which criticized President Chavez's use of cadenas and other public resources for campaign purposes, amounted to electoral propaganda in favor of opposition presidential candidate Capriles Radonski and that Active Citizenship was not an authorized entity to campaign on behalf of Capriles (see section 4). On September 11, Oscar Lucien, president of Active Citizenship, asked the Supreme Court to issue an injunction against the CNE. The court did not respond to Lucien's request.

In the week of June 4, the Supreme Court issued separate decisions handing control of two political parties (Podemos and Fatherland for All) to small,

progovernment factions. Both parties had endorsed opposition presidential candidate Capriles Radonski (see section 2.b.).

Participation of Women and Minorities: In the National Assembly that took office on January 5, a total of 26 of 165 deputies were women. During the year women headed three of the five branches of government (judicial, electoral, and citizen) and occupied 12 of the 31 cabinet positions. There were 14 women among the 32 justices on the TSJ.

The constitution reserves three seats in the National Assembly for indigenous persons. Three deputies were elected for these seats in the 2010 elections. There was one indigenous member in the cabinet.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials; however, the government did not implement the law effectively, and the press reported that officials sometimes engaged in corrupt practices with impunity. The government frequently investigated and prosecuted its political opponents selectively on corruption charges to harass, intimidate, or imprison them.

The Comptroller General's Office is responsible for investigating and administratively sanctioning corruption by public officials. The Public Ministry investigates and criminally prosecutes individuals and entities in the public and private sectors for corruption. The National Assembly can order the Public Ministry to undertake investigations. The Public Ministry and the Public Defender's Office investigate abuses by police and military officials.

The NGO Transparency Venezuela reported that between 2004 and 2010, the government had fulfilled four recommendations and made some progress on 12 of the 113 others that the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption had made to improve government transparency and fight corruption. The NGO reported no progress on the remaining 97 recommendations. Transparency International's 2011 report reflected a perception that the public sector was highly corrupt based on factors such as lack of enforcing anticorruption laws and restrictive access to information.

The comptroller general's annual report, presented to the National Assembly on March 29, acknowledged some administrative irregularities and mismanagement of public resources, paralysis in public works projects and the government's health-

care program, the loss or deterioration of state-owned property, expired medications, and minimal accountability over the funds transferred from the national government to community councils.

During the year the acting comptroller general sanctioned 790 public officials for alleged corruption: Of those sanctioned, 444 were administratively disqualified from holding public office, 255 were suspended without pay, 14 were removed, and 77 were dismissed and disqualified from holding public office.

During the year the Public Ministry reported that it had taken action on 7,475 cases involving corruption and closed 6,985 of those cases but did not indicate the final outcomes. In 490 other cases, the ministry had taken “other actions,” of which, 53 percent of the 490 were dismissed. Of the total 7,475 cases, only 1.3 percent resulted in judgments.

The Public Ministry and the Public Defender’s Office also investigate abuses by police and military officials. Corruption was a major problem in all police forces, whose members were generally poorly paid and minimally trained. Impunity for corruption, brutality, and other acts of violence were major problems explicitly acknowledged by some government officials (see section 1.d.). There was no information publicly available about the number of investigations, prosecutions, and convictions of police and military officials during the year.

One example of high-level corruption involved Supreme Court Justice Eladio Aponte Aponte. On March 20, upon the recommendation of the constitutionally established Moral Council (consisting of the Supreme Court president, the prosecutor general, and the comptroller general), the National Assembly unanimously voted to remove Aponte from the Supreme Court for his alleged links to narcotics trafficker Walid Makled (see section 2.a.). During a televised interview on April 18, after having fled the country, Aponte claimed there was no judicial independence in Venezuela and that senior government officials, “from the president on down,” regularly told judges how to handle cases before their courts. On April 26, Prosecutor General Luisa Ortega Diaz said her office did not intend to investigate Aponte’s “delusional” claims of judicial corruption. However, on April 28, the press reported that as many as 40 judges linked to Aponte had been removed, transferred, or dismissed. Two of the judges, Leivis Azuaje and Fabiola Vega of the Criminal Circuit Court of Caracas, had been involved in the Afiuni and Mazuco cases. On September 7, Supreme Court President Luisa Estela Morales refused to deny Aponte’s claims that she had requested that he manipulate cases, telling reporters that “I do not want to answer that question.” By year’s end the

government had not opened any investigations against Aponte or any of the government officials he implicated.

Public officials, as well as all directors and members of the board of private companies, are required to submit sworn financial disclosure statements pursuant to the Organic Law on the Comptroller General of the Republic and the National Fiscal Control System (LOCGR) and the Law against Corruption. According to the LOCGR, the comptroller general of the republic; the comptroller general of the Bolivarian National Armed Forces; the comptrollers of the states, districts, metropolitan districts, and municipalities; and the Central Bank are responsible for ensuring compliance with this requirement. Under the Law against Corruption, the Public Ministry and competent criminal courts can require statements from any other persons when circumstantial evidence arises during an investigation. In 2011 the acting comptroller general referred five cases of public officials who allegedly submitted false sworn financial disclosure statements or engaged in illicit enrichment or influence peddling to the Public Ministry for investigation.

The law provides for citizen access to government information. However, human rights groups reported the government routinely ignored this requirement. The law requires a government agency to respond to a petition within 20 days of filing free of charge. The agency must also notify the applicant within five days of any missing information needed to process the request. Government agencies are sanctioned if they do not respond to a request. If the agency rejects the petition, an individual can file another petition or appeal at higher level within the government agency. The agency must respond to the appeal within 15 days. On August 10, the Pro Access Coalition, composed of NGOs advocating the right to access public information, denounced difficulties in accessing public information. It reported that between August 2010 and August 2012 it submitted 316 requests to various government entities for public information, 96 percent of which received no response.

On March 29, a Caracas area court ruled that a September 2011 petition brought by the NGO Public Space against the CICPC was “inadmissible” because the CICPC was not the competent entity to provide the requested information relating to the crime rates from 2008 through the first half of 2011 or the number of homicides for the first half of 2011.

On July 30, the CNE prohibited opposition-oriented Globovision television from continuing to broadcast three television advertisements produced by the NGO Active Citizenship (see section 3). Two advertisements highlighted article 68 of

the Law against Corruption, which establishes prison terms of one to three years for public officials, including the president, who abuse their positions or public media “to favor or hurt for electoral purposes” a candidate. The third publicized article 76 of the Law on Electoral Processes, which prohibits public officials from hanging campaign propaganda in public buildings. The CNE ruled that the advertisements violated the electoral law because Active Citizenship was not registered with the CNE as a political organization authorized to disseminate campaign propaganda. On July 31, Globovision appealed the decision to the CNE but received no relief.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A variety of independent domestic and international human rights groups generally operated with some government restrictions. Major domestic human rights NGOs conducted investigations and published their findings on human rights cases. Government officials were not cooperative or responsive to their views.

Many domestic NGOs reported government threats and harassment against their leaders, staff, and organizations. In a June 1 press release, the Forum for Life, a partnership of NGOs advocating constitutional rights and liberties, reported that on May 30, four armed men robbed Hernan Antonio Bolivar, the husband of Marianela Ortiz, the OVP legal coordinator. According to the press release, the assailants forced Bolivar into his car and threatened to retaliate against him, Ortiz, and their children if Ortiz continued to denounce prison conditions. Forum for Life requested that the authorities investigate and punish the individuals responsible and guarantee the lives of Ortiz, her family, and other OVP members; the government did not respond to this request. OVP personnel had previously been subjected to threats. In June 2011 OVP Director Humberto Prado received multiple threats against his life after Minister of Interior and Justice El Aissami and government-affiliated media publicly blamed him for fomenting the riot at the El Rodeo Penitentiary (see section 1.c.).

The COPP includes provisions eliminating the right of human rights NGOs to represent victims of human rights abuses in legal proceedings. COPP articles 123 and 124 provide that only the public defender and private individuals can file complaints in court or represent victims of alleged human rights abuses committed by public employees or members of the security forces. In a June 30 opinion piece in the local press, the president of the NGO COFAVIC asserted that the new

provisions would “deepen impunity [for police violence] and the helplessness” of victims who could not afford private attorneys.

The government threatened NGOs with criminal investigations for allegedly illegal receipt of foreign funds. The 2010 Law on the Defense of Political Sovereignty and National Self-Determination prohibits individuals, political organizations, or organizations involved in the defense of “political rights” from receiving resources from any non-Venezuelan person or entity and stipulates monetary penalties and/or a potential five- to eight-year disqualification from running for political office. The law defines political organizations as those involved in promoting citizen participation, exercising control over public offices, and promoting candidates for public office. Organizations involved in the defense of political rights include those that “promote, disseminate, inform, or defend the full exercise of the political rights of citizens.” The law also prohibits foreign nationals sponsored by Venezuelan individuals or political organizations from “issuing opinions that offend the institutions of the state and its high officials or go against the exercise of sovereignty.”

As in 2011 the government did not investigate or sanction any organization pursuant to this law during the year. However, on May 16, the president of the legislature’s oversight commission announced the commission’s decision to open an investigation into alleged foreign funding of two NGOs, Transparency Venezuela and Legislative Monitor. This decision followed Legislator Monitor’s publication of a highly critical “report card” on the individual performance of the National Assembly deputies, which concluded that only 13 percent of the deputies had fulfilled more than half their legislative duties. Progovernment National Assembly deputy Erick Mago alleged that the plan of the NGOs was “to destabilize” the country through such reports. In a statement released on May 18, Legislative Monitor rejected the accusations and defended its and Transparency Venezuela’s activities as being in accordance with their constitutional rights. The National Assembly had not initiated an investigation at year’s end.

UN and Other International Bodies: During the year the government was hostile toward international human rights bodies (see section 1.e.). The government refused to permit a visit by the IACHR, which has not visited the country since 2002. During a June 3-4 unofficial visit, Gabriel Knaul, the UN special rapporteur for the independence of judges and lawyers, expressed concern about the lack of independence among the branches of government and also met with Judge Maria Lourdes Afiuni (see section 1.d.).

The IACHR's annual report for 2011 identified Venezuela as a country meriting special attention. The report expressed concern about freedom of expression; lack of judicial independence; due process violations; harassment of human rights defenders, journalists, and opposition leaders; prison overcrowding and violence; the high level of social violence; and the Enabling Law, which it considered "incompatible" with the American Convention on Human Rights (see section 3). The country's OAS delegation denounced the IACHR's interference in the country's internal affairs."

During the March 12 plenary session of the UN Human Rights Council, the government accepted 97 and rejected 51 of the 148 recommendations made during the October 2011 Universal Periodic Review (UPR) of Venezuela. It accepted recommendations related to police, prisons, and social services, and it rejected recommendations made by certain delegations regarding respect for the independence of the judiciary, freedom of expression, and civil society.

Government Human Rights Bodies: Although the public defender, appointed by the National Assembly, is responsible for ensuring that citizen rights are protected in a conflict with the state, human rights NGOs claimed that the Public Defender's Office was not independent and rarely acted on public interest cases. Reports or recommendations issued by the office were not widely available. According to its 2011 annual report, the Public Defender's Office considered 31,962 complaints during that year, of which 12,503 related to human rights.

The National Assembly's subcommission on human rights played an insignificant role in human rights debates.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The law prohibits discrimination based on race, gender, sexual orientation, disability, language, or social status; however, discrimination against women, persons with disabilities, and indigenous persons and discrimination based on sexual orientation were problems.

### **Women**

Rape and Domestic Violence: The law criminalizes rape, including spousal rape, making it punishable by a prison term of eight to 14 years. However, cases often were not reported to the police due to fear of social stigma and retribution, particularly in light of widespread impunity. There were no reliable statistics on

the incidence of, or prosecutions or convictions for, rape. A man may avoid punishment by marrying the person he violated before he is sentenced. Women faced substantial institutional and societal prejudice with respect to reporting rape and domestic violence. Article 488 of the COPP allows authorities to consider alternative forms of punishment, including work release, for those convicted of various crimes, including rape, if they have completed three quarters of their sentence.

The law criminalizes physical, sexual, and psychological violence in the home, the community, and at work. The law punishes perpetrators of domestic violence with penalties ranging from six to 27 months in prison. The law requires police to report domestic violence to judicial authorities and obligates hospital personnel to notify the authorities when admitting patients who are victims of domestic abuse. Police generally were reluctant to intervene to prevent domestic violence. The law also establishes women's bureaus at local police headquarters and tribunals specializing in gender-based violence. As of September there were 70 prosecutors with exclusive responsibility for dealing with such crimes; as of July, there were 47 judges specializing in gender-based violence, eight of whom were in Caracas. On September 13, Maryelith Suarez, the director of the Public Ministry's Directorate for the Defense of Women, announced that the directorate had closed 44,689 cases in the first eight months of the year, 4,295 of which had resulted in the filing of formal charges. Suarez said the directorate relied on 107 offices nationwide to prosecute cases of violence against women: 58 were specialized in the defense of women and 49 were part of the Directorate of Common Crimes.

However, violence against women continued to be a serious and underreported problem. During a television interview on April 24, Judith Lopez, the vice president of the National Institute of Women, said the institute received an average of 5,000 calls daily, the majority related to psychological violence, followed by assault, harassment, and physical and sexual violence. In its 2012 annual report, the Public Ministry reported that it had taken action on 73,599 cases of gender violence (only 0.5 percent resulted in judgments) and closed 6,985 cases without indicating their final outcomes. On July 10, Supreme Court Justice Yolanda Jaimes, the president of the National Commission of Gender Justice, said that, of the 104,000 cases of violence against women filed in Caracas since 2008, 56,000 (46 percent) had been resolved. She noted that the Caracas-area courts specializing in violence against women averaged 13,000 cases annually.

Sexual Harassment: Sexual harassment is illegal and punishable by a prison sentence of one to three years. The Organic Labor Law, enacted on April 30,

establishes a fine of between 30 and 60 tax units (approximately \$628-\$1,256) for employers who engage in sexual harassment. Although allegedly common in the workplace, sexual harassment cases were rarely reported.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of children and had the information and means to do so free from discrimination. Access to information on contraception and skilled attendance at delivery and in postpartum care were widely available. Women and men were generally given equal access to diagnostic services and treatment for sexually transmitted infections.

Discrimination: Women enjoy the same legal status and rights as men under the constitution. Women and men are legally equal in marriage, and the law provides for gender equality in exercising the right to work. The law specifies that employers must not discriminate against women with regard to pay or working conditions. The law also prohibits the requirement of a pregnancy test to qualify for a job and provides six weeks of maternity leave prior to birth. The Organic Labor Law extends the period of maternity leave after birth from 12 to 20 weeks and prohibits an employer from firing either parent for two years after the birth. According to the Ministry of Labor and the Confederation of Workers, regulations protecting women's labor rights were enforced in the formal sector, although according to the World Economic Forum, women earned 36 percent less than men on average for comparable jobs.

The Ministry of Women worked to protect women's rights but did not make statistics publicly available.

The law provides women with property rights equal to those of men. In practice, however, women frequently waived these rights by signing over the equivalent of power of attorney to their husbands.

## **Children**

Birth Registration: Citizenship is derived by birth within the country's territory. According to UNICEF, 92 percent of children under five were registered at birth.

Child Abuse: According to UNICEF and NGOs working with children and women, child abuse, including incest, occurred but was rarely reported. According to a National Institute for Statistics (INE) survey, 5 percent of victims of sexual abuse were children. According to a report released in July by Cecodap, an NGO

dedicated to the defense of children and adolescents, 469 children and adolescents were victims of sexual violence in 2011, a 43 percent increase compared with 2010. The report, which relied on cases reported in the media, stated that 373 of the cases involved rape and that 150 of the victims were between the ages of seven and 12. According to the Public Ministry, a total of 67 prosecutors were assigned to handle cases specializing in the protection of children. Although the judicial system acted to remove children from abusive households, the press reported that public facilities for such children were inadequate.

Child Marriage: In general the legal minimum age for marriage is 18 for women and men, but with parental consent it is 14 for women and 16 for men.

Sexual Exploitation of Children: Under the law sexual relations with a minor under age 13 or an “especially vulnerable” person, or with a minor under age 16 when the perpetrator is a relative or guardian, are punishable with a mandatory sentence of 15 to 20 years imprisonment. The law prohibits the forced prostitution and corruption of minors. Penalties range from three to 18 months in prison and up to four years in prison if the minor is younger than 12 years old. If the crime is committed repeatedly or for profit, it is punishable by three to six years’ imprisonment. Prison sentences for forcing a minor into prostitution increase by up to five years if various aggravating circumstances occur. Penalties for several crimes relating to child prostitution do not apply if the perpetrator marries the victim. The law prohibits the production and sale of child pornography and establishes penalties of 16 to 20 years’ imprisonment. Article 488 of the COPP allows authorities to consider alternative forms of punishment, including work release, for those who have committed various crimes, including “offenses against the freedom, integrity and sexual security of children and adolescents,” once they have completed three-quarters of their sentence.

There was no publicly available information regarding the number of investigations or prosecutions of cases involving the commercial sexual exploitation of minors or child pornography. There were isolated press reports of commercial sexual exploitation of children during the year. For example, in March the Public Ministry sentenced a woman to 11 years in jail after she admitted to running a brothel where teenagers were exploited into prostitution in the Santa Teresa section of Caracas.

Displaced Children: The NGO For the Rights of Children and Adolescents estimated that 15,000 children lived on the streets. Authorities in Caracas and several other jurisdictions imposed curfews on unsupervised minors to attempt to

cope with this problem, but with institutions filled to capacity, hundreds of children accused of infractions, such as curfew violations, were confined in inadequate juvenile detention centers. On September 13, the president of the Mission Negra Hipolita reported that there were more than 3,000 street children in Caracas in 2011 but that, as a result of the coordinated work of the national social service system, “today, the presence of street children is minimal.” He reported the opening of six new treatment centers, raising the number to 39 centers located in 18 of the country’s 23 states. According to the public defender, there were 243 public and private institutions for children abandoned or removed from dangerous home situations. Observers said these institutions lacked specialized personnel and adequate space and materials.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

There were reports of societal abuses or discrimination based on religious affiliation, belief, or practice, including anti-Semitism.

There were an estimated 9,000 Jews in the country. Jewish community leaders publicly expressed concern about numerous anti-Semitic statements linked to the government, particularly related to opposition presidential candidate Capriles Radonski, a practicing Catholic with Jewish ancestry. For example, on February 15, President Chavez described Capriles as a “pig,” saying that “one of my tasks ... will be to take away the mask... because, as hard as you try to disguise yourself, ... you have the tail of a pig, you have the ears of a pig, and you snort like a pig, you are a pig.” Some in the Jewish community saw this as a thinly veiled anti-Semitic attack.

The state-owned media also regularly contained anti-Semitic statements, some directed at Capriles. For example on February 13, the government-owned National Radio of Venezuela Web site published an article, “The Enemy is Zionism: Misleading Electoral Promise Leading to Disaster,” which claimed that Zionism was an “ideology of terror” that “threatens the destruction of the planet.”

### **Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

## **Persons with Disabilities**

The law prohibits discrimination against persons with physical and mental disabilities in education, employment, health care, air travel and other transportation, and the provision of other state services, but the government did not make a significant effort to implement the law, inform the public of it, or combat societal prejudice against persons with disabilities. The law requires that all newly constructed or renovated public parks and buildings provide access, but persons with disabilities had minimal access to public transportation, and ramps were practically nonexistent. Online resources and access to information were generally available to persons with disabilities.

The National Commission for Persons with Disabilities (Conapdis), an independent agency affiliated with the Ministry for Participation and Social Development, and the Mission Jose Gregorio Hernandez advocate for the rights of persons with disabilities and provide medical, legal, occupational, and cultural programs. On March 14, the national director of the mission reported that since the mission's inception in 2009, the program had assisted a total of 336,270 persons with disabilities. He reported that, in its four years, the program had distributed, without charge, 1,000 prosthetic devices and 22,000 hearing aids. The Mission for the Children of Venezuela provides monthly subsidies of Bs 600 (\$140) to heads of households for each disabled child or adult they support.

## **National/Racial/Ethnic Minorities**

The constitution prohibits discrimination on the basis of race. The 2011 Organic Law Against Racial Discrimination aims to eliminate all forms of racial discrimination and provides for up to three years' imprisonment for acts of racial discrimination. By year's end the government had not formally established the National Institute against Racial Discrimination provided for under the law.

On August 8, the INE published the results of the 2011 national census, which, for the first time, included questions regarding racial and ethnic self-identification. The INE reported that 50 percent of the population identified as "brown," 42 percent as "white," 3 percent as "black," 3 percent as "indigenous, and 0.7 percent as Afrodescendent.

## **Indigenous People**

The law prohibits discrimination based on ethnic origin, and senior government officials repeatedly stated support for indigenous rights. The law provides for three seats in the National Assembly for deputies of indigenous origin and for “the protection of indigenous communities and their progressive incorporation into the life of the nation.” A member of the Yekuana indigenous group headed the Ministry for Indigenous Peoples, and the governor of Amazonas State is a member of the indigenous group Baniva.

However, many of the country’s approximately 300,000 indigenous persons were isolated from urban areas, lacked access to basic health and educational facilities, and suffered from high rates of disease. The government included indigenous persons in its literacy campaigns, in some cases teaching them to read and write in their native languages as well as in Spanish.

NGOs and the press reported that local political authorities seldom took account of indigenous interests when making decisions affecting indigenous lands, cultures, traditions, or the allocation of natural resources. Indigenous persons called on the government to recognize lands traditionally inhabited by them as territories belonging to each respective indigenous group. During the year the National Land Demarcation Commission, charged with implementing a land demarcation agreement reached after a violent 2008 land invasion, provided land titles in several communities, but indigenous groups called for faster implementation of the demarcation process.

Indigenous groups regularly reported violent conflicts with miners and cattle ranchers over land rights. For example, on June 22, Colombian contract killers, allegedly hired by local land owners, killed three indigenous Yukpa over a land dispute, according to the victims’ relatives, who claimed the killers had Colombian accents. The Yukpa called on the National Assembly’s Indigenous Commission to investigate. The investigation continued at year’s end.

On August 27, indigenous groups alleged that illegal miners crossed over from Brazil and massacred several dozen members of the Yanomami indigenous community. A government investigation, in which indigenous representatives participated, found no evidence of the massacre.

On January 20, four indigenous chiefs were arrested, under warrants issued by the military prosecutor, for having captured and disarmed 22 soldiers allegedly involved in illegal mining on indigenous lands in October 2011. The NGO

PROVEA denounced as unconstitutional the use of the military justice system against civilians. The trial remained pending at year's end.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

The constitution provides for equality before the law of all persons and prohibits discrimination based on sex or social condition. On this basis the TSJ has ruled that no individual may be discriminated against by reason of sexual orientation.

Violence against lesbian, gay, bisexual, and transgender (LGBT) communities reportedly occurred during the year, although nationwide statistics were unavailable. The media and leading advocates for the rights of LGBT persons noted that victims of hate crimes based on sexual orientation frequently did not report the incidents and were often subjected to threats or extortion if they did file official complaints.

In its 2011 report to the UN Human Rights Council in preparation for the UPR, the NGO Diversity and Sexual Equality claimed that, based on 750 interviews conducted in 2008, more than 50 percent of lesbians and gays reported suffering from societal violence or police abuse, and 83 percent of transgender persons reported having been victims of violence or other abuse. The report also stated that the government systematically denied legal recognition to transgender persons by preventing them from obtaining identity documents required for accessing education, employment, housing, and health care.

During the first six months of the year, the press reported that nine transgender persons were killed in Caracas, compared with 36 in all of 2011. On June 3, an unknown number of assailants shot and killed Lulu, a transgender woman in the Libertador Municipality of Caracas. The assailants reportedly drove around the corner where Lulu was standing several times before shooting her. On June 7, the IACHR condemned the killing and urged the government to investigate whether it was committed because of her gender or sexual orientation. The IACHR also urged the government to “take actions to prevent and respond to these human rights abuses and ensure that LGBT persons can effectively exercise their right to a life free from discrimination and violence, including the adoption of policies and public campaigns, as well as the necessary reforms to adapt its laws to the inter-American human rights instruments.” There was no known response from the government.

On April 12, Foreign Minister Nicolas Maduro used the homophobic slur “mariconson” to refer to opposition presidential candidate Capriles Radonski. On April 14, the NGO LGBTI Network denounced Maduro’s “homophobic” speech and claimed it showed a “rising homophobia in the government.” Following a public outcry, on April 16, Maduro apologized during a televised interview and declared that the government “constitutionally and beyond has always respected the LGBT community.”

### **Other Societal Violence or Discrimination**

According to the comprehensive study on “The Right to Non-Discrimination for HIV in Venezuela” by the NGO Solidarity Action, based on a 2010 survey of 1,332 persons diagnosed with HIV/AIDS, 82 percent of those polled reported “not receiving equal treatment” because of their HIV/AIDS status, and 22 percent claimed to have experienced acts of discrimination or violence, even in health centers. Only 22 percent reported filing complaints regarding this discrimination with government authorities. The study reported that 73 percent of HIV/AIDS patients had told only their doctor of their medical condition for fear of discrimination or harassment.

Prison rules regarding the classification of inmates resulted in the isolation of those with HIV/AIDS in “inadequate spaces without food and medical attention” (see section 1.c.).

Although the Supreme Court mandated in 1999 that the health system provide treatment for persons diagnosed with HIV/AIDS, health organizations cited flaws in the delivery of HIV/AIDS-related services, including shortages of antiretroviral drugs and laboratories for testing. According to the comprehensive report, “Venezuela: Two Years with Shortages of Antiretroviral Drugs and other Barriers to Care in HIV / 2009-2011,” prepared by the NGO Citizen Action Against AIDS, government corruption and inefficiencies, budget deficits, antiretroviral shortages, a lack of trained medical professionals, and an increase in the number of diagnoses all hampered the fight against the disease.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law, including related regulations and statutory instruments, provides that all private and public sector workers (except armed forces members) have the right to

form and join unions of their choice, and it protects collective bargaining and the right to strike. However, the law places several restrictions on these rights. Minimum membership requirements for unions differ based on the type of union. A minimum of 20 workers is required to form a company union; 40 workers in the same field to form a professional, industrial, or sectoral union in one jurisdiction; and 150 workers to form a regional or national union. Under law, employers may negotiate a collective contract only with the union that represents the majority of their workers. Minority organizations cannot jointly negotiate in cases where no union represents an absolute majority.

The law recognizes the right of all public and private sector workers to strike in accordance with conditions established by labor law. Under the Organic Labor Law, enacted on April 30, workers participating in legal strikes receive immunity from prosecution and their time-in-service may not be reduced by the time engaged in a strike. The law requires that striking workers be reincorporated and provides for prison terms of six to 15 months for employers who fail to do so. Replacement workers are not permitted during legal strikes.

However, the new Organic Labor Law also prohibits striking workers from paralyzing the production or provision of essential public goods and services. The minister of labor and social security may order public or private sector strikers back to work and submit their disputes to arbitration if the strike “puts in immediate danger the lives or security of all or part of the population.” Other laws establish criminal penalties for the exercise of the right to strike in certain circumstances. For example, the law prohibits and punishes with a five- to 10-year prison sentence anyone who “organizes, supports, or instigates the realization of activities within security zones that are intended to disturb or affect the organization and functioning of military installations, public services, industries and basic [mining] enterprises, or the social-economic life of the country.” In addition, the law provides for prison terms of two to six years and six to 10 years, respectively, for those who restrict the distribution of goods and for “those ... who develop or carry out actions or omissions that impede, either directly or indirectly, the production, manufacture, import, storing, transport, distribution, and commercialization of goods.” Labor activists have been charged under these provisions as well as under provisions for “instigation to commit a crime,” “blocking public access,” and restriction of the “right to work.”

In June the International Labor Organization (ILO) reiterated its call on the government to amend the law to exclude from the definition of “essential services”

services “that are not essential in the strict sense of the term ... [and] so that in no event may criminal sanctions be imposed in cases of peaceful strikes.”

The law prohibits “any act of discrimination or interference contrary to the exercise” of workers’ right to unionize. The new Organic Labor Law bans the employment of contracted employees for jobs that are “of a permanent character, occur inside the business’s installations, and are directly related to the productive process.” The law also bans employers from hiring contractors to evade legal obligations to workers. Employers have three years to comply with the law’s provisions on contracted workers. However, the law also places a number of restrictions on unions’ ability to administer their activities. For example, the CNE has the authority to administer internal elections of labor unions, federations, and confederations. By law elections must be held at least every three years. If CNE-administered and -certified elections are not held within this period, the law prohibits union leaders from representing workers in negotiations or engaging in anything beyond administrative tasks.

The government did not enforce legal protections in the public sector. According to PROVEA, while “the National Institute for Prevention, Health, and Labor Security improved the inspection processes and has forced many private businesses to correct dangerous labor conditions, these demands were not made in a similar manner in enterprises and entities of the state.”

The government placed restrictions on the freedom of association and right to collective bargaining through administrative and legal mechanisms. Labor unions in both the private and public sectors noted long delays in obtaining CNE concurrence to hold elections and in receiving certification of the election results, which hindered unions’ ability to bargain collectively because union leaders were not permitted to represent workers in negotiations. The ILO noted that it repeatedly found cases of interference in trade union elections by the CNE. For instance, critics charged that the CNE delayed the union election at the state-owned iron ore company Ferrominera Orinoco until July 29 to allow for the registration of hundreds of new progovernment contract workers, which increased the number of eligible voters from 3,224 in 2008 to 5,617 in 2012. The press reported that some Ferrominera managers pressured workers to vote for the progovernment platform. Despite these tactics, the opposition candidate won reelection as head of the union.

In addition, the government was reportedly responsible for the creation of many “parallel” unions, which sought to dilute the membership and effectiveness of traditional, independent unions. In general these new unions were not subject to

the same government scrutiny and requirements regarding leadership elections. In November 2011 the government created a progovernment labor confederation, the Bolivarian Socialist Workers' Center, with more than 6,700 unions, many of which are new, "parallel" unions.

The government prosecuted and punished union leaders and members for peaceful protests in defense of their labor rights. On August 28, PROVEA reported that 120 union members were being prosecuted for demanding collective contracts, the right to strike, and union rights. For example, in June the ILO reiterated its call for the government to immediately release six PDVSA workers detained since 2009 for their participation in a strike and to drop the criminal charges against them. It called on the government to "not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association."

On August 8, PROVEA reported that members of the armed forces arrested five union members during a labor protest in Fort Murachi, Tachira State, against a construction company that had been contracted by the government to build housing in the fort as part of the government's "Great Housing Mission." The workers were seeking unpaid back pay that the Ministry of Labor had ordered be paid, as well as other social security, food, savings, and transportation benefits. The government charged the workers with disturbing a security zone, and threats and offenses against the armed forces; penalties could include prison terms ranging from six months to eight years. At year's end the workers were on parole pending trial before a military tribunal. PROVEA called for the case to be transferred to a civilian court.

On November 28, the court postponed hearings in the case of union leader Ruben Gonzalez, who was appealing his February 2011 conviction for his role in organizing a 2009 strike at the state-owned iron ore company Ferrominera Orinoco. The strike had been called to protest the company's alleged failure to pay overdue wages and comply with other elements of the collective agreement. The government conditionally released Gonzalez in March 2011 following protests by labor activists and students.

The government continued to refuse to adjudicate or otherwise resolve the cases of 19,000 PDVSA employees who were fired during and after the 2002-03 national strike. The Ministry of Labor continued to deny registration to UNAPETROL, a union composed of these workers.

Union leaders were subject to violent attacks. The Venezuelan Observatory for Social Conflict (OVCS) reported that, during the first eight months of the year, 65 union workers were killed, 85 percent of whom worked in the construction sector. It attributed these killings, in large part, to interunion disputes in competition over job contracts. However, the lack of effective investigations made determining the motive for the killings difficult. According to OVCS and PROVEA, most violent crimes between and against union workers were not investigated by the government and few were solved. PROVEA reported that “less than 5 percent of the cases have been investigated” or punished. In its report to the ILO Governing Body in June, the Committee on Freedom of Association urged the government to expedite investigations to identify and punish the instigators or accomplices of the 2009 murders of three officials of the Bolivarian Union of Workers in the Construction Industry.

On March 19, the court ruled that Rodney Alvarez would remain in custody for his alleged role in the June 2011 killing of progovernment unionist Renny Rojas. In August 2011 the government accused Alvarez of committing the homicide; Alvarez was reportedly affiliated with Ruben Gonzalez’s faction of the union (see above). Gonzalez publicly insisted that Hector Maican, a government supporter and the union’s secretary of finance, was responsible for Rojas’ death. Police initially detained Maican in connection with the shooting but subsequently dropped the homicide charge. At year’s end Alvarez remained detained pending trial.

According to PROVEA, “large sectors of national, state, and municipal public administrations and an important number of state enterprises continued to refuse to discuss collective agreements.” According to labor group Autonomous Front in Defense of Employment, Wages, and Unions (FADESS), there were more than 400 expired public sector union contracts nationwide. In 2011 PROVEA noted the public sector’s reliance on contracted employees, who are not covered by collective agreements, violated workers’ right to collective agreements.

#### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor. In January the government reformed the Organic Law against Organized Crime. Article 41 penalizes “forced labor and services” carried out by a member of an organized criminal group; however, under the law “organized criminal group” could be considered only one person, in effect prohibiting forced labor carried out by any person. The law is applicable to all persons, with harsher penalties for imposing forced labor on minors. There was no comprehensive information available

regarding the government's enforcement of the law, or on government efforts to prevent or eliminate forced labor during the year.

There were isolated reports of children, including Ecuadorian children, subjected to forced labor, particularly in the informal economic sector and in domestic servitude (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law sets the minimum employment age at 14 years. Children younger than 14 years may work only if the National Institute for Minors or the Ministry of Labor grants special permission. Such permission may not be granted to minors under 14 years to work in hazardous occupations that risk their life or health or could damage their intellectual or moral development. However, the ILO notes that the government has not listed what specific types of work are considered hazardous. Labor law before April 30 only allowed special permission to minors of at least 12 years, and explicitly prohibited minors from working in mining, welding, on ships, and in other dangerous activities. Children ages 14 to 18 may not work without permission of their legal guardians or in occupations expressly prohibited by the law, and may work no more than six hours per day or 30 hours per week. Minors under the age of 18 may not work outside the normal workday.

The law establishes fines on employers of 60 to 120 tax units (approximately \$1,256 to \$2,512) for each child employed under the age of 12 or for adolescents between 12 and 14 years employed without proper authorization. Anyone employing children under eight years is subject to a prison term of between one and three years. Employers must notify authorities if they hire a minor as a domestic worker. The law establishes sentences of one to three years' imprisonment for forced child labor.

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. There was no information available on whether or how many employers were sanctioned for violations. The Ministry of Education, Culture, and Sports ran educational programs to reincorporate school dropouts and adults into the educational system, and the government also continued to provide services to vulnerable children, including street children, working children, and children at

risk of working. However, there was no independent accounting of the effectiveness of these and other government-supported programs.

According to a 2009 UNICEF study, the most recent available, approximately 370,000 children between the ages of 10 and 17 worked in either the formal or informal sectors as of 2007; children between the ages of 10 and 13 constituted approximately 18 percent of this total. The ILO noted its concern about the lack of available statistics regarding the nature and extent of child labor, and noted that some estimated as many as 1.2 million children were working, including more than 300,000 in the informal economy. Most child laborers worked in the agricultural sector, street vending, domestic service, or in small to medium-sized businesses, most frequently in family-run operations. There continued to be isolated reports that children were exploited in domestic servitude.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

On April 7, President Chavez announced a 32.25 percent increase in the monthly minimum wage and in the salaries of all public sector employees, implemented in two stages, which raised the minimum wage to Bs 2,048 (approximately \$476) as of September 1. According to the INE, in July the monthly basic food basket cost Bs 1,822 (approximately \$424), although the NGO Workers' Center for Documentation and Analysis reported that, for the same month, a basic food basket cost Bs 3,685 (approximately \$857), 1.8 times the minimum wage.

The revised Organic Labor Law reduces the workweek from a maximum of 44 to 40 hours (35 hours for a night shift). The law establishes separate limits for "shift workers," who may not work more than an average of 42 hours per week over an eight-week period. Managers are prohibited from obligating employees to work additional time, and workers have the right to two consecutive days off each week. Overtime is paid at a 50 percent surcharge if a labor inspector approves the overtime in advance, and a 100 percent surcharge if an inspector does not give advance permission. The law establishes that after completing one year with an employer, the worker has a right to 15 days of paid vacation annually. In subsequent years, the worker has the right to an additional day for every additional year of service, up to a maximum of 15 additional days annually.

The law provides for secure, hygienic, and adequate working conditions. Workplaces must maintain “protection for the health and life of the workers against all dangerous working conditions.” Employers are required to report work-related accidents within 24 hours or face penalties between 76 and 100 tax units (approximately \$1,591 to \$2,093). The law obligates employers to pay workers specified amounts for workplace injuries or occupational illnesses (ranging from two times the daily salary for missed workdays to several years’ salary for permanent injuries).

The Organic Labor Law covers all workers, including temporary, occasional, and domestic workers. The Ministry of Labor enforced minimum wage rates and hours of work provisions effectively in the formal sector, but approximately half the population worked in the informal sector, where labor laws and protections generally were not enforced. There was no public information regarding the number of inspectors or the frequency of inspections to implement health and safety, minimum wage, or hours of work laws. There was no information whether penalties were sufficient to deter violations. Ministry inspectors seldom closed unsafe job sites.

On August 25, the government reported that a gas explosion at the state-owned petroleum company PDVSA’s Amuay refinery killed 41 people, including state workers, civilians, and military personnel. The local oil workers union blamed PDSVA for a lack of maintenance and poor safety conditions at the plant. According to its internal 2011 annual report, PDVSA had completed only six of 31 refinery maintenance operations companywide. According to an external report prepared March 5-8 by RJG Risk Engineering, in 2011, 222 incidents, including 100 fires, occurred at the Paraguana Refining Center, composed of the Cardon and Amuay refineries. Of those 222 incidents, the investigative committee completed nine investigations.

Official statistics regarding workplace deaths and injuries were not publicly available. The press reported that in the first half of the year, two workers died and more than a dozen others were injured in various accidents at PDVSA facilities. The press reported that, as of August 20, at least three construction workers died and at least six were injured as a result of various accidents while working at the government’s “Great Housing Mission” work sites. The press also reported that over the last five years, 31 workers died while working for state-owned companies outside the petroleum industry.