

ATTACKS ON JUSTICE – VENEZUELA

Highlights

The country's political polarization has not spared the judiciary. Both sides frequently criticize judges for their alleged partiality. The judiciary's inefficiency, politicization, corruption and lack of security of tenure have worsened over the past two years and government action has further undermined its independence. The changes introduced in a new organic law concerning the number of Supreme Court Judges and the terms of their removal have jeopardized the guarantees of judicial independence enshrined in the Constitution. The vast majority of Venezuelan judges have been appointed on a 'provisional' basis and consequently lack security of tenure. The independence and impartiality of the Attorney General's Office has also been called into question by civil rights organizations.

BACKGROUND

Over recent years the political climate has become increasingly polarized. Regular mass protests by supporters of President Chávez and the opposition have occasionally turned into violent clashes with the security forces. The military's involvement in maintaining public order, its increasing contributions to public policy deliberations, and the participation of both active and retired military officers in the Chávez administration raise concerns that the country is becoming militarized.

A strike launched on 9 April 2002 led to wide-scale political violence, culminating in a short-lived *coup d'état* against Chávez on 11 April 2002. In an attempt to reorganize the three branches of government, provisional President Pedro Carmona Estanga removed, among others, the Supreme Court judges, the Ombudsman and the Attorney General by means of the so-called "*Carmona decree*". Constitutional order was restored on 14 April when Chávez returned to power. At least 50 people died and many more were wounded during these events.

The opposition umbrella organization, Democratic Co-ordination (*Co-ordinadora Democrática*), launched a nation-wide strike lasting from 3 December 2002 until 3 February 2003. Enjoying the support of the important oil industry, it had a crippling effect on the country's economy. Negotiations to help settle Venezuela's political crisis, facilitated by a tripartite working committee made up of the Organization of American States (OAS), the Carter Center and the United Nations Development Program (UNDP), resulted in an agreement dated 29 May 2003 providing for a "constitutional, peaceful, democratic and electoral" solution.

A presidential recall referendum was held on 15 August 2004. The Constitution allows such a referendum to be requested after the President has served half of his term as long as 20 per cent of the electorate have signed the petition. President Hugo Chávez won the referendum with 59 per cent of the votes. Although international observers from the OAS and the Carter Center accepted the results, opposition forces

continue to claim that there was massive electoral fraud (Carter Center: Elections 2004). After rejecting several petitions of *amparo* (injunctions for the protection of constitutional rights) requesting that the referendum results be annulled, on 6 October the Supreme Court (*Tribunal Supremo de Justicia, TSJ*) admitted an action for various breaches of electoral law. However, it has not yet ruled on the issue. The local elections on 31 October consolidated Chávez in power, with his allies winning control of the capital Caracas and 21 of the country's 23 states.

The country's political polarization has not spared the judiciary. Both sides frequently criticize judges for their alleged partiality. Although the problems facing the judiciary, such as inefficiency, politicization, corruption and lack of security of tenure, pre-date the current administration, they have got worse over the past two years and government action has further undermined the judiciary's independence, in violation of both the Venezuelan *Constitution* and international law.¹

The country's general human rights situation has worsened considerably. Freedom of expression has come under threat not only from frequent attacks on journalists but also as a result of several articles in the country's *Penal Code* which criminalize "disrespect for state authorities" (known as insult laws, *leyes de desacato*), the constitutionality of which was confirmed by a TSJ [ruling](#) of 15 July 2003. In the same ruling, the Supreme Court reiterated its opinion that the State was not bound by the decisions and recommendations of international human rights bodies, stating that their enforcement should be determined by assessing their constitutionality. The [partial reform of the Penal Code](#), which entered into force on 16 March 2005, broadens the range of state authorities that can make use of the insult laws, thus effectively criminalizing criticism of the government. Human rights organizations and scholars have severely criticized the reform for taking away procedural guarantees and the possibility of benefiting from alternatives to custody in the case of certain offences, in particular those related to treason (see below under [Judicial reform](#) for an example). The authorities have taken no action to address the threats and attacks targeted at human rights defenders. Moreover, the government has tried to undermine the legitimacy of human rights organizations by making unfounded allegations that they have links with foreign governments. According to a TSJ ruling of 21 November 2000, organizations that receive grants from abroad or have foreigners on their board are not part of civil society.²

In December 2005, parliamentary elections will take place and President Chavez's Fifth Republic Movement is expected to win by a land slide, given the excessive coverage of the government in the media, the impact of social programs (such as *Misión Robinson* and *Misión Barrio Adentro*) that have been financed as a result of high oil prices, and the inability of the opposition to put up a coordinated response. The slim parliamentary majority of 86-79 that President Chavez currently has is therefore very likely to change in his favour, thus consolidating the National Assembly's power over the legislature and the other branches of government.

¹ See Human Rights Watch, Report, June 2004, "[Rigging the Rule of Law: Judicial Independence under Siege in Venezuela](#)", hereinafter HRW report.

² For further information, see [Inter-American Commission on Human Rights Report on the Situation of Human Rights in Venezuela, 2003](#) and [Inter-American Commission on Human Rights, February 2005, Follow-Up report on Compliance by the State of Venezuela with the Recommendations Made by the IACHR in its 2003 Report](#), hereinafter IACHR report 2005.

I. Latest Developments

JUDICIARY

Judicial reform

With the fight against terrorism becoming a priority issue after the killing of prosecutor Danilo Anderson (see [Prosecutors](#) below), on 22 November 2004 the Judicial Commission of the Supreme Court, which is made up of six judges, conferred sole jurisdiction for dealing with terrorist acts on three courts and two appeal courts in order to prevent such cases from being delayed. However, since the offence of terrorism does not yet exist in the Venezuelan *Penal Code* and a new law establishing it as an offence is currently under discussion in the National Assembly, opposition forces and academics have criticized these courts as having excessive freedom to determine whether the offences in question are terrorist acts or not and fear that they might be abused to prosecute political opponents.

The partial reform of the *Penal Code* contains certain references to terrorist groups. For example, article 128 on the offence of treason states that foreigners and nationals who help foreign enemies, terrorist groups, paramilitaries or insurgents to conspire against Venezuela's territorial integrity or state institutions will face a prison term of between 20 and 30 years and be deprived of procedural guarantees and alternatives to custody.

A bill against organized crime that contains several provisions relating to terrorism and a draft special law on the prevention and punishment of terrorist acts are currently pending before the National Assembly. They are to be supplemented by a bill on counter-terrorism which was submitted by the executive on 3 April 2003 and is also still under discussion in the National Assembly. The purpose of the counter-terrorism bill is to define acts and omissions of a terrorist nature in order to guarantee respect for the constitutional order, peace and public health and to protect the integrity of democratic institutions.

On 23 October 2003, the Supreme Court's Judicial Commission issued a resolution ordering the First Administrative Court (*Corte Primera de lo Contencioso Administrativo, CPCA*) to be replaced by two new courts, the First and Second Administrative Courts. The CPCA was the country's second highest court and competent to hear cases involving alleged unlawful acts committed by public officials. In the past, the CPCA had issued several rulings that ran counter to government interests. President Chávez and his supporters had severely criticized the judges in public statements, accusing them of serving opposition interests. After the CPCA ruled in August 2003 that Cuban doctors sent as volunteers to participate in government health projects should only be allowed to practice in Venezuela following a review of their qualifications, the President announced that he was going to request the Supreme Court to open an investigation into the judges. In a letter to President Chávez dated 17 October 2003, the ICJ expressed its concerns at these verbal attacks

The Caracas Bar Association (*Colegio de Abogados de Caracas*) criticized the Judicial Commission's resolution, arguing that it did not have the legal power to dissolve the CPCA. The Restructuring Commission subsequently dismissed the judges sitting in the CPCA (see [Cases](#) below). Consequently, the country's second highest court ceased operation until July 2004 when the new judges for the First and Second Administrative Courts were appointed and sworn in. The new judges only have "provisional" status. When swearing in the judges on 19 July 2004, the President of the TSJ, Iván Rincón Urdaneta, accused the former CPCA judges of being at the service of certain political and economic groups.

Legal reforms

The legally independent judiciary in Venezuela is increasingly under threat from government actions that are apparently designed to ensure that President Chávez can control the judiciary. On 18 May 2004, the National Assembly adopted a Supreme Court Law (*Ley orgánica del Tribunal Supremo de Justicia, LOTSJ*), which allows the government to purge the Supreme Court and add judges who favour its own interests. The LOTSJ, which entered into force on 20 May, expands the number of Supreme Court judges from 20 to 32 on the grounds that the Court's workload is increasing. However, in light of the LOTSJ's provisions on the subject of appointments, civil society organizations fear that the law's main purpose is to enable the government to use its slim majority in the legislature to add new pro-Chávez judges, which in turn could tip the delicate balance of pro- and anti-Chávez judges sitting in the courts, some of whom have indeed ruled against the President's interests in the past.

The LOTSJ authorizes the National Assembly to appoint judges by simple majority vote if a nominee fails to receive the traditional two-thirds majority in the first three votes. Venezuelan jurists disagree as to whether the traditional two-thirds majority is required by the Constitution or not. On 13 December 2004, twelve additional Supreme Court judges, five Supreme Court judges to fill the vacancies left by judges who had been dismissed or retired during that year, and 32 substitutes were elected by a simple majority vote of the National Assembly. Civil society organizations and political opponents criticized the election as being a political deal that resulted in the Supreme Court being packed with judges sympathetic to the government. Two of the judges elected were sitting members of parliament for the government majority. The first judgments handed down by the new Supreme Court were criticized as being biased in favour of the government, including, for example, its decision of 11 March 2005 to quash the August 2002 acquittal of four military officers for their participation in the April 2002 coup (see below).

The changes made by the LOTSJ with regard to the removal of Supreme Court judges jeopardize the guarantees of judicial independence contained in the Constitution. Under article 265 of the Constitution, Supreme Court judges may be removed by a two-thirds majority of the National Assembly only if the civic power (*Poder Ciudadano*), a fourth power introduced by the 1999 Constitution that consists of the Attorney General, the Ombudsman and the Comptroller General, has determined that the judge in question has committed a serious offence (*falta grave*). The types of offences categorized as 'serious' are very subjective and include acting in a manner that brings the judiciary into disrespect. Article 23 of the LOTSJ creates two new

mechanisms for removing judges that circumvent this requirement. Firstly, it allows a judge to be automatically suspended pending a vote in the National Assembly to confirm his or her removal if the civic power, after determining that the judge has committed a serious offence, unanimously recommends dismissal. As with other similar deadlines set by law, the requirement established in the LOTSJ that the President of the National Assembly should call for a hearing and an impeachment vote within ten days is likely to be disregarded. Thus, a judge could remain suspended indefinitely if the Assembly does not address the issue. Secondly, the law authorizes the National Assembly to revoke a judge's appointment by a simple majority vote if the judge provided false information at the time of selection, if the judge's public stance has damaged the dignity or prestige of the TSJ or any of its members, or if the judge has jeopardized the functioning of the TSJ or the judiciary. The latter two circumstances are highly subjective and vague. The only remedy available to a Supreme Court judges to prevent their appointment from being revoked is to file a motion to vacate (*recurso de nulidad*). The LOTSJ potentially gives the government control over the judiciary throughout the country since the TSJ appoints and removes all judges. The constitutionality of this law has been challenged in several appeals. In a letter to the President, the ICJ expressed its concerns over the new law, arguing that it undermines the independence of the judiciary in breach of Venezuela's obligations under international law. In June 2004 the National Assembly used its new power to revoke the appointment of a Supreme Court judge (see [Cases](#) below). In its [February 2005 report](#), the IACHR urged the Venezuelan State to amend the clauses of the LOTSJ that compromise the independence and impartiality of the Court.

On 16 October 2003, after two years of deliberations, the National Assembly adopted the *Code of Ethics for Venezuelan Judges (Código de Ética del Juez Venezolano o Jueza Venezolana)* provided for in article 264 of the 1999 Constitution to establish the disciplinary regime for judges. However, it was vetoed by the President and sent back to the National Assembly where it is still pending. Set up by the 1999 Constitution, the Commission for the Operation and Restructuring of the Judiciary (*Comisión de Funcionamiento y Reestructuración del Poder Judicial*, hereinafter Restructuring Commission) continues to exercise disciplinary control over judges as long as the Code of Ethics does not exist. The need to replace this transitional disciplinary regime with a permanent constitutional regime was reiterated by the IACHR in its [February 2005 report](#).

Security of tenure

The vast majority of Venezuelan judges have only temporary or 'provisional' status and consequently lack security of tenure. Although this problem pre-dates the current administration, it has become more serious and widespread since the process of judicial re-structuring began in 1999.³ According to the IACHR, about 80 per cent of judges have only provisional status. It states that, out of 1,772 judges, only 183 enjoy security of tenure, 1,331 are provisional, meaning that they can be removed at any time, and 258 judges only act on a temporary basis in that they are only used as substitutes.⁴ In its [February 2005 report](#), the IACHR states that this "high percentage of provisional judges undermines the right of the citizenry to the proper

³ [Attacks on Justice 2002](#)

⁴ See [Inter-American Commission on Human Rights Report on the Situation of Human Rights in Venezuela, 2003](#)

administration of justice, and vitiates the right of magistrates to tenure in their position as a guarantee of their independence and autonomy”.

In March 2003, the Supreme Court decided to suspend the public competitive recruitment examinations provided for in article 255 of the Venezuelan Constitution so that the process, which had been criticized for being subjective and biased, could be improved. Instead, judges are now appointed on a ‘provisional’ basis by either the Judicial Commission of the Supreme Court, the Executive Directorate of the Magistracy (*Dirección Ejecutiva de la Magistratura, DEM*), the body within the Supreme Court responsible for administration of the judiciary, or the Restructuring Commission. All three bodies have dismissed judges, in particular judges who have made rulings contrary to government interests, without granting them a preliminary hearing (see [Cases](#) below). This practice demonstrates the risk to judicial independence created by the fact that most judges do not have security of tenure. In June 2003, the Judicial Commission confirmed that its discretionary power to remove temporary judges was unlimited and not subject to review.⁵

Executive interference

Following the Supreme Court’s controversial 11 to 8 decision on 14 August 2002 that there were no grounds to prosecute four high-ranking military officers accused of participating in the April 2002 coup against President Chávez, protestors attacked the National Guard protecting the building. The Supreme Court’s deliberations had been accompanied by occasionally violent demonstrations. President Chávez condemned the Supreme Court decision as part of a strategic plan to destroy the Bolivarian revolution and on 24 August 2002 reportedly participated, together with his Vice-President and several ministers, in a protest march against the ruling involving tens of thousands of people. On 22 August 2002, government supporters in the National Assembly set up a commission to investigate the TSJ and other judges on the grounds that they had allegedly presented false documents during the selection process. Following the removal of Judge Arriechi (see below), eight Supreme Court judges complained in a press conference on 10 December 2002 about the campaign of intimidation against them being conducted by the government and parliament. At the request of the Attorney General (*Fiscal General*), on 11 March 2005 the Supreme Court’s Constitutional Division [quashed](#) the August 2002 decision determining that the Constitution had been violated, thus opening the way for proceedings against the military officers to be re-started. Lawyers and opposition forces criticized the new judgment for violating the doctrine of *res judicata*.

The government has been increasingly using the judicial system to harass opponents, including trade union leaders, dissident military officers, opposition politicians, journalists, lawyers and civil society organizations.⁶ For example, after being mentioned by President Chávez during a TV program broadcast on 15 February 2004 as one of the Venezuelan non-governmental organizations (NGOs) which should be investigated for receiving financial aid from private US bodies, the directors of the Venezuelan NGO *Súmame* were charged in June 2004 with “conspiracy to destroy the Republic” on the grounds they had received money from the US National Endowment

⁵ See June 2004 [HRW report](#)

⁶ See [IACHR, February 2005 report](#)

for Democracy (NED). *Súmate* had been one of the organizations leading the petition for a recall referendum. According to government opponents, this judicial repression has been further reinforced by legal repression involving the enactment of new laws to criminalize criticism of the government, such as the Law on Social Responsibility in Radio and Television or the partial reform of the Penal Code. The tendency to use the law and the judiciary to silence opponents is also illustrated in numerous recent newspaper articles which indicate that over 200 people have been investigated for politically-motivated offences, including participation in the abortive 2002 coup.

Internal independence

The decision by the Electoral Council (*Consejo Nacional Electoral*) not to validate the signatures collected for the recall referendum led to a clash between the Supreme Court's Electoral and Constitutional Divisions during the spring of 2004. On 17 March, the Constitutional Division quashed the Electoral Division's decision of 15 March 2004 requesting the Electoral Council to validate the signatures. After the Electoral Division had re-affirmed its competence on 30 March, the Constitutional Division ruled on 31 March that, whenever constitutional rights are at stake, it has hierarchical superiority over the other divisions. Nonetheless, on 12 April the Electoral Division re-issued its order but the Electoral Council refused to comply and asked the Constitutional Division for clarification. On 23 April, the Constitutional Division re-iterated its judgment quashing the Electoral Division's decision. As the signatures were not validated, enough signatures in favour of the referendum were only obtained after allowing a period for objections (*reparos*) to give citizens the opportunity to confirm or deny that they had signed.

Cases of harassment against the judiciary

On 22 September 2003, a driver working for Judge Perkins Rocha Contreras from the First Administrative Court (*Corte Primera de lo Contencioso Administrativo, CPCA*) was arrested and accused of retaining and hiding public documents when, at the request of Judge Rocha, he was transferring files to an external adviser working with the court. In an unprecedented move, the political police searched the courthouse next day. After defending the driver against these charges, both Judge Rochas and the President of the CPCA, Juan Carlos Apitz, were suspended by the Re-structuring Commission (resolution 117 on **9 October 2004**). An investigation was opened against them. On 23 October 2003, the Supreme Court's Criminal Division [ruled](#) that the driver had not committed any offence and ordered his release.

On **27 October 2003**, the Re-structuring Commission dismissed four out of the five judges sitting in the First Administrative Court (CPCA) on the grounds that the Supreme Court had determined in May of that year that the CPCA had committed an "inexcusable error" in a judgment dating back to 2002. The fifth judge had already retired. The TSJ rejected various appeals against the decision filed by judges Juan Carlos Apitz and Perkins Rocha Contreras. In a letter to the government, the ICJ expressed its concerns that the judges' removal without due process guarantees constituted an attack against the independence of the judiciary in violation of international law.

After drafting the Supreme Court's controversial decision not to lift the immunity of the four high-ranking military officers who had allegedly participated in the coup against Chávez (see below), **Judge Arrieche** was removed by the National Assembly in **December 2002** for having allegedly presented false credentials during his selection process. An injunction (*medida cautelar*) issued by the Supreme Court on 10 December 2002 at his request allowed him to remain in office while his petition for the protection of fundamental rights (*amparo*) was pending. However, the National Assembly removed him on 15 June 2004 by applying the LOTSJ. On 22 June 2004, the Supreme Court ruled that the injunction issued in December 2002 could not be extended to the decision taken by the National Assembly in June 2004 and definitively rejected Arrieche's petition for *amparo*. Arrieche announced that he would recognize neither the parliament's decision nor the Supreme Court ruling and condemned the LOTSJ as being contrary to the Venezuelan Constitution.

In the context of the frequently violent demonstrations that took place between 27 February and 4 March 2004, the security forces detained at least 500 people and reportedly subjected a number of them to ill-treatment and torture. In most cases, judges granted requests for court orders from the security forces to prolong their detention pending prosecution. **Judges Petra Jiménez, María Trastoy and Miguel Luna** were dismissed by the Judicial Commission on **2 March 2004** after ordering the immediate and unconditional release of those brought before their courts on the grounds that there was no evidence warranting their continued detention. In violation of their due process rights, the Judicial Commission failed to either substantiate the reasons for their dismissal or grant them a preliminary hearing. Miguel Luna was reinstated following his appeal for reconsideration (*recurso de reconsideración*), but since then he has been dismissed again. The two other judges have never received a response to their appeals.⁷

During **July 2004**, the plenary of the Supreme Court approved the early retirement of four Supreme Court judges. Two of them were facing possible dismissal by the National Assembly after the civic power (*poder ciudadano*) decided in May 2004 that they had committed a serious offence as a result of ruling that signatures for the recall referendum were valid.

On **2 December 2004**, the Public Prosecutor's Office (*Fiscalía General*) opened criminal proceedings against **Judge Mónica Fernández** for having authorized on 12 April 2002 a search of the home of the Minister of the Interior and Justice, Ramón Rodríguez Chacín, who had been dismissed the day before in the midst of the coup and was subsequently arrested following the house search. Rodríguez's lawyers challenged the judge's actions and, in February 2005, an appeal court ruled that Mónica Fernández had committed an inexcusable judicial error and declared her actions void. She eventually resigned in order to concentrate on her own defence.

On **4 February 2005**, the Judicial Commission suspended four judges who had lifted an injunction prohibiting several individuals indicted in connection with the April 2002 coup from leaving the country.

⁷ See June 2004 [HRW report](#).

LEGAL PROFESSION

Lawyers involved in politically-sensitive cases or human rights issues have been harassed and threatened by the authorities, for example, by following them, questioning them or searching their property (see cases below). Lawyers have reportedly been denied full access to their clients' files in politically-charged cases.

The Inter-American Commission of Human Rights, in its 2005 report, expressed its concerns about the risks and stigmatization that human rights defenders and civil society organizations are currently facing. The situation is critical, especially for human rights lawyers who attend hearings of the Commission (see the case of Carlos Ayala) and those working in border areas.

Cases of attacks on lawyers

On **27 August 2003**, **Joe Luis Castillo Gonzáles**, a lawyer and human rights activist working with indigenous communities and refugees in the area bordering Colombia, was killed in the border town of Tinaquillo de Machiques. Two individuals reportedly rode by on a motorcycle and shot at him 13 times when he was in his car with members of his family who were wounded.

On **18 June 2004**, **Carlos Nieto Palma**, a lawyer and university professor working for a Venezuelan NGO that protects and promotes the rights of prisoners, was summoned to the public prosecutor's office where he was questioned about the funds his organization receives from abroad. He had previously been visited and questioned by the political police. On 20 June 2004, he found a leaflet in his letterbox threatening him with death. Provisional measures issued by the Inter-American Court of Human on 9 July 2004 requested the Venezuelan Government to take the necessary steps to protect Carlos Nieto and his family and to investigate the incidents.

After accusing former National Assembly President William Lara, who is a member of President Chávez's Fifth Republic Movement, of corruption and of violating the fundamental labour rights of workers in the National Assembly, on **10 February 2005** lawyer **Tulio Alvarez** was sentenced to two years and three months' imprisonment for defamation. The Supreme Court's Constitutional Division threw out his appeal on 15 April 2005. An outspoken critic of President Chávez, Tulio Alvarez has been viewed as a lawyer for the opposition and has in the past defended journalists and social communicators who have been harassed by the government. He has also questioned the results of the recall referendum and the constitutionality of the LOTSJ and repeatedly brought actions against President Chávez for fraud and corruption.

On **5 April 2004**, lawyer and President of the Andean Commission of Jurists, **Carlos Ayala Corao**, was summoned to the Attorney General's Office to testify in an ongoing investigation involving him and other members of the opposition, including Cecilia Sosa. He was not informed of the charges and learned from newspaper articles that the Attorney General's Office was investigating his alleged involvement in the drafting of the [Carmona decree](#) during the coup in April 2002. Even though the main action taken by the well-known human rights lawyer during the abortive coup was to protect the rights of parliamentarian William Saab, who had been detained by security

forces, he was charged with conspiracy on **14 April 2005** for his alleged involvement in drafting the decree. In a letter to the Attorney General on 13 April 2005, the ICJ considered that, in the light of the circumstances of the proceedings against Carlos Ayala and the threatening climate against lawyers and human rights activists, the investigation against Mr. Ayala constituted an act of intimidation that sought to interfere with his work as a human rights lawyer.

From the start of the investigations, access to prosecution documents was constantly denied, witnesses for the defence were rejected and other measures preventing adequate access to justice and the right of defence were taken. In addition, in a press release dated 20 July 2005⁸, the General Prosecutor, Isaías Rodríguez, when rebutting a statement issued by the Andean Commission of Jurists regarding the current state of the administration of justice in Venezuela, said that, in his view, there was serious evidence suggesting that Carlos Ayala and Cecilia Sosa were involved in drafting the Carmona decree. Such a statement jeopardizes the impartiality of a supposedly on-going investigation and the provision of fair trial guarantees.

PROSECUTORS

The independence and impartiality of the investigating authorities, in particular the Attorney General's Office and the Scientific, Penal and Criminal Investigation Unit (*Cuerpo de Investigaciones Científicas, Penales y Criminalísticas, CICPC*), looking into the numerous human rights abuses that occurred during the demonstrations of February-March 2004 has been called into question by civil rights organizations on the grounds that the investigations have been slow and ineffective by contrast with the energetic response those same authorities make when it comes to prosecuting opposition activists allegedly involved in violence.⁹

The actual independence of the Attorney General's Office has also been questioned because it is headed by Julián Isaías Rodríguez, an active member of President Chávez's Fifth Republic Movement who is also former Vice-President. In politically-sensitive cases, such as the investigations into the April 2002 events, prosecutors have been replaced without any explanation.

One of the main problems is the large number of prosecutors across the country whose status is "provisional" and who have been assigned directly by the General Prosecutor, without complying with legal requirements. As a consequence of the latter, they can be removed at any time and relieved of their duties without due cause, thereby contributing to legal instability and subservience to the policies of the General Prosecutor and endangering the independence required to carry out criminal investigations.

No progress has been made in the investigations of the human rights abuses committed in the context of the April 2002 coup. A special commission that had been set up inside the Public Prosecutor's Office to investigate the killings committed at that time was dismantled and most prosecutors were replaced by less experienced

⁸ See <http://www.fiscalia.gov.ve/Prensa/A2005/prensa2007II.htm>

⁹ See *US Department of State, Country Reports on Human Rights Practices 2004, Venezuela*.

ones. Efforts to establish a truth commission remain stalled in the fractious National Assembly. So far the only trial that has taken place has been that of four members of the Fifth Republic Movement who were accused of firing on demonstrators from the Puente Llaguno on 11 April 2002. However, on 22 October 2004 they were acquitted by final decision of the TSJ.

Cases of the harassment of prosecutors

Theresly Malavé Wadskier and Américo Gloria Mota, two prosecutors who had allegedly been present during the search of the headquarters of President Chávez's Fifth Republic Movement during the coup in April 2002 were removed from office after disciplinary proceedings were opened against them in early 2004. Considering the disciplinary proceedings to be a form of retaliation, the two prosecutors complained that their rights to due process had been violated in that the events in question were subject to the statute of limitations, that they had been denied access to case files and that they had never received an answer to their inquiries. The Public Prosecutor's Office opened criminal proceedings against them in **August 2004**.

Danilo Anderson, a prosecutor who had been investigating many cases brought against government opponents, including 400 people allegedly involved in the coup, was killed on 18 **November 2004** when his car was blown up by a bomb. On 23 and 25 November, the police killed two suspects, lawyer Antonio Lopez and Juan Carlos Sanchez, in a shootout. The authorities claimed they had found weapons and explosives in their homes as well as documents proving that they had been trained in the US. By the end of November, three suspects, including two former police officers, had been arrested. The police had killed two other suspects when trying to arrest them. The ICJ condemned the murder of Danilo Anderson, requesting the government to investigate his death without conducting a "witch hunt". On 29 November, the Attorney General's Office announced that it had received an anonymous letter threatening to kill the Attorney General, the Minister of the Interior and the Supreme Court President. According to a list published by the Attorney General's office after Anderson's death, public prosecutors and their families have been frequently attacked and harassed in connection with their work.

ACCESS TO JUSTICE

In August 2004, using the powers granted to it under articles 261, 267 and 269 of the Constitution, the Supreme Court issued *Resolution No. 2004-0009* establishing a new jurisdictional and administrative branch of the judiciary called the Military Criminal Judicial Circuit (*Círculo Judicial Penal Militar*). Under the new directive, special military courts are to be created in the cities of Caracas, Maracay, Maracaibo, San Cristóbal and Maturín. They will come under the direction of the President of the Court Martial and be functionally dependent on the Supreme Court's Judicial Commission and administratively dependent on the Ministry of Defence.

As a result of this resolution, the military justice system has become part of the ordinary justice system. Though this is a positive initiative and Venezuela is the first country in Latin America to merge the two systems, critics of the current system of justice in Venezuela have raised serious doubts about its impartiality and respect for

due process as well as about whether its powers comply with the Constitution and international standards.

Using article 123 of the *Organic Code of Military Justice* ([Código Orgánico de Justicia Militar](#)) which grants military courts jurisdiction over civilians accused of military offences, military prosecutors continue to investigate and bring charges against civilians, including retired soldiers, for criticizing the armed forces. For example, on 22 March 2004, journalist Patricia Poleo was charged with defamation and inciting rebellion after she presented a TV documentary showing the presence of Cubans in Venezuelan military bases. Her military trial is still pending. In its [February 2005 report](#), the IACHR calls on Venezuela to take immediate steps to transfer any cases involving the prosecution of civilians from the military courts to the ordinary courts.

LEGAL REFORMS DURING THE PERIOD

- 25 April 2002:** *Internal Rules of the Special Commission of the National Assembly to determine the facts and circumstances that gave rise to and influenced the events that took place on 11, 12, 13 and 14 April 2002.*
- 14 May 2002:** *Law approving the Convention on the Transfer of Sentenced Persons.*
- 24 October 2002:** *Organic Law on the Electoral Power.*
- 28 November 2002:** *Organic Law on National Security.*
- 20 March 2003:** *Law against Corruption.*
- 25 September 2003:** *Law approving the Inter-American Convention against Terrorism.*
- 16 October 2003:** *Code of Ethics for Venezuelan Judges.*
- 6 May 2004:** *Law approving the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.*
- 18 May 2004:** *Organic Law on the Supreme Court of Justice, increases the number of Supreme Court judges from 20 to 32, and allows for their appointment and removal by simple majority vote in the National Assembly.*
- 8 July 2004:** *Organic Law on the Ombudsman's Office, introduced by the civic power (poder ciudadano).*
- 16 March 2005:** *Law partially reforming the Penal Code (Gaceta Oficial N° 5,768 of 13 April 2005: 3 March 2005, adopted and entered into force on 16 March 2005. Criminalizes disrespect of the President and street blockades.*
- 5 May 2005:** *Law approving the United Nations Convention against Corruption.*