

## Argentina

Serious problems continue to beset Argentina's criminal justice system. These include police abuses, prison overcrowding, torture of detainees, and degrading conditions of detention in police lockups. Under strong public pressure to deal more effectively with violent urban crime, the government of President Néstor Kirchner passed laws in 2003 increasing the use of pretrial detention and lengthening jail sentences for violent offenders.

On a positive note, the Kirchner government continues to press for accountability for human rights violations committed during Argentina's period of military rule (1976-1983). At this writing, roughly one hundred former military and police officers had been detained, and several key trials were underway.

### **Police Abuses**

Police frequently fail to observe international norms concerning the use of lethal force and, as a result, the death rate in confrontations with suspects is high. Extrajudicial executions and torture by police are also serious problems, although the true number of extrajudicial executions is hard to gauge. According to official figures, twenty-five people, including four minors, were killed in 2003 during armed clashes involving federal police officers in the city of Buenos Aires. In 2004, victims included fifteen-year-old Héctor David Herrera, who was killed on April 16, reportedly shot at close range by members of the federal police.

The March 2004 kidnapping and murder of twenty-three-year-old Axel Blumberg led his father, Juan Carlos Blumberg, to initiate a high-profile public campaign against impunity for violent crimes. In response to demonstrations by thousands of people, the government rushed through laws that lengthened sentences for armed robbery and for arms offenses. The new laws increase the maximum length of cumulative sentences for violent crimes to fifty years, drastically restricts the possibility of provisional release for the accused, and bars convicts from early release. In addition, a bill approved by the Buenos Aires city legislature in September modified the city's misdemeanor code by increasing penalties for many misdemeanors to a maximum of sixty days of detention, a period longer than that contemplated in the Criminal Code for some crimes. The Center for Legal and Social Studies (Centro de Estudios Legales y Sociales, CELS), a nongovernmental human rights group, criticized the Buenos Aires law as "manifestly repressive" and in breach of the Argentine Constitution and international human rights treaties.

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## **Detention Conditions**

The Argentine prison system is seriously overstretched, and torture and mistreatment of detainees is widespread. In October 2004, the Committee against Torture of the Provincial Commission of Memory (of Buenos Aires province), after analyzing 3,500 criminal complaints against officials of the Buenos Aires prison system, published dramatic findings indicating that abuse is systemic.

Due to prison overcrowding, 5,441 people were being held awaiting trial in police lockups in the province of Buenos Aires as of July 2004. According to a report by CELS, there were up to ten detainees each crammed into cells measuring 1.8 by 2.5 meters—with no beds, ventilation or natural light—requiring detainees to take turns sleeping on the floor. At this writing, a collective *habeas corpus* petition lodged by CELS in 2001 on behalf of detainees held in police lockups was still pending before the Supreme Court. In August 2004, Human Rights Watch, the International Commission of Jurists, and the World Organization against Torture co-presented an *amicus curiae* brief to the court in support of the position taken by CELS.

The detention and mistreatment of juveniles in police stations in the province of Buenos Aires continues to be a serious problem. In a report published in December 2003, CELS revealed that many children are held illegally with adults on police premises but do not appear in official statistics. In October 2004, the press reported that three hundred juveniles were being held illegally in police lockups in the province.

## **Reproductive Rights**

Argentina has taken important steps toward guaranteeing women's right to reproductive health, most notably through the implementation of a national program on "reproductive health and responsible procreation" in 2002. However, women continue to face multiple obstacles in their access to contraception and to information on reproductive health care. Some of these obstacles constitute violations of international human rights standards: denial of access to voluntary tubal ligation; pervasive domestic violence without effective recourse; deliberate dissemination of misinformation or withholding of information on contraceptive methods in the public health care system; and severely limited access to abortion, even where not punishable by law. These violations are exacerbated for low income women by grossly inadequate services in some areas and a seriously overburdened public health care system.

## **Accountability for Past Abuses**

Following the congressional annulment in August 2003 of the "full stop" and "due obedience" laws—which had obstructed prosecutions of those responsible for human rights abuses committed during military rule—human rights trials continue to advance. The Minister of Defense, José Pampuro, stated in June 2004 that since the current president entered office, ninety-seven former military officers had been detained for past human rights abuses. Among the most high-profile prosecutions are those involving fifteen former agents of the Navy Mechanics School (ESMA), including Alfredo Astiz, and thirty former officers of the First Army Corps. In September 2004, Judge Jorge Urso indicted nineteen former military officials, including ex-junta leader Gen. Jorge Videla, for involvement in Operation Condor, a

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collaborative venture of the military regimes of the Southern Cone countries in the 1970s to arrest, torture, and “disappear” dissidents located in each others’ territory.

In March 2004, a federal court in La Plata sentenced Miguel Etchecolatz and Jorge Berges, a former police commissioner and doctor, respectively, to seven years of imprisonment for concealing the identity of the baby daughter of Aída Sanz, who was abducted by the security forces in 1977 when nine months pregnant and “disappeared.” Berges personally had handed the baby over to a civilian couple who raised her under a false name. It was the first time that a court in La Plata has convicted anyone of human rights violations, although up to two thousand people are said to have “disappeared” there during military rule.

A final judicial decision on the constitutionality of the annulment of the “full stop” and “due obedience” laws was still pending at this writing. In October 2003, the Supreme Court referred the case to the Criminal Cassation Panel. The same panel also was due to rule on whether the reopening of the ESMA case violated Argentina’s prohibition on double jeopardy.

In August 2004, the Supreme Court rejected an appeal by a former Chilean agent who had argued that the life sentence he received for the 1974 assassination of Chilean army commander Gen. Carlos Prats should be thrown out because the statute of limitations had elapsed. In a landmark decision, the court ruled that, as a crime against humanity, the murder was not subject to a statute of limitations.

In a symbolic event commemorating the twenty-eighth anniversary of the March 24, 1976, military coup, President Kirchner ordered portraits of two leaders of the military juntas that ruled the country until 1983 removed from the walls of the Military College. Kirchner also visited the ESMA and signed an agreement with the city government to turn the building into a “museum of memory.”

### ***Freedom of Expression***

Although Argentina has a free and vibrant press, progress on bills to extend rights of free expression and access to information remain disappointingly slow. Press freedom groups have lobbied Congress to adopt legislation to make defamation of public officials punishable only by civil damages, as opposed to criminal sanctions. A bill to this effect introduced into the Senate in October 2002 is still bogged down in the legislative process. Also held up in the Senate is a bill, already approved in the lower house in May 2003, that would give Argentine citizens the right to information held by public bodies.

Journalists in some Argentine provinces face threats and physical attacks for their reporting. The perpetrators of such crimes are rarely prosecuted.

### ***Key International Actors***

Recently declassified U.S. government documents reveal the strong support given by former Secretary of State Henry Kissinger to the Argentine military junta in 1976, at a time when the junta was responsible

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for massive human rights abuses. According to a record of a conversation between Kissinger and Argentina's then-Foreign Minister, Adm. César Augusto Guzzetti, Kissinger told Guzzetti: "[I]f there are things that have to be done, you should do them quickly. But you should get back quickly to normal procedures." The documents show how Kissinger undermined efforts by the U.S. Congress and the U.S. ambassador in Argentina to press the Argentine military to stop the abuses.

Trials continue in Spain of ESMA agents Adolfo Scilingo and Ricardo Miguel Cavallo, the latter of whom was extradited from Mexico in June 2003. Courts in other countries, such as Germany, continue investigating crimes committed during the "dirty war" against their nationals. In November 2003, a Nuremberg court issued international warrants for the arrest of former president Jorge Rafael Videla and two other former military officials for the murder of two German students in 1976 and 1977. All three suspects were already under house arrest in Argentina on other human rights charges.

## Brazil

Egregious abuses in the criminal justice system—including extrajudicial killings and torture by police and prison authorities—remain Brazil’s most pressing human rights problem, but in 2004 there were new threats to freedom of expression. A foreign correspondent was nearly expelled from Brazil for an article that President Luiz Inácio Lula da Silva considered offensive, and the government took steps to create regulatory bodies for the country’s film, broadcast, and print media.

Socially and economically marginalized populations are among those hardest hit by long-standing and systemic weaknesses of the criminal justice system. The problems of forced labor and human trafficking, as well as rural violence and land conflicts, also target the country’s poorer citizens. As in the past, perpetrators of human rights abuses enjoy impunity in the vast majority of cases.

### **Police Violence**

Both civil and military police forces are frequently responsible for serious abuses, including torture, extrajudicial executions, “disappearances,” and acts of racism. In the first six months of the year, the state police ombudsman for São Paulo reported 109 homicides by police. Although high, the figure represented a 73 percent decrease from that of the previous year, when police killings reached an eleven-year high. In Rio de Janeiro, the only state to publish such data monthly, police killed 593 people during the first eight months of 2004, representing a 25 percent decline from the previous year’s figure. Despite these decreases, unofficial estimates have placed the total number of police killings in Brazil at around 3,000 annually. Indeed, the death toll may be even higher as many states do not record such figures correctly and some do not record them at all.

Complaints of police abuse tend to cite brutality, murder, corruption, and a lack of interest in maintaining order in certain areas. In October 2004, rights groups accused the Rio police of sitting on the sidelines in the *favela* of Vigário Geral while rival drug gangs engaged in deadly gun battles, endangering the lives of the area’s residents.

### **Free Expression**

Brazil tarnished its record of respect for freedom of expression in May 2004 when it took steps to expel a foreign correspondent for commenting on the president’s alleged drinking habit. In response to an article published in the *New York Times*, the government canceled Larry Rohter’s visa, stating that it was “inconvenient” for him to stay in the country. The government later changed course and allowed him to remain.

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With the introduction of legislation to create a National Journalists' Council just three months later, the government cast further doubt on its commitment to press freedom. The draft law, still pending at this writing, would empower the council to "orient, discipline and monitor" journalists and their work and require all journalists to register with the body. A violation of the council's rules could result in fines or even dismissal from the official registry. Critics of the proposed measures, among them the country's main journalism, film, and television associations, called the draft law the worst affront to press freedom since censorship under the military dictatorship.

Also widely criticized is draft legislation that would establish a National Cinema and Audiovisual Agency. The agency would have the power to conduct prior review of programming and could veto certain programs if they were judged not to meet standards of "editorial responsibility."

In a related move, the government has also proposed legislation, passed by the Senate on June 29, 2004, to "register, regulate and control" nongovernmental organizations (NGOs). Federal funding to these organizations would be conditioned on their registry, and they would be required to report annually on all private and public funding they receive, including donations.

### **Detention Conditions**

According to the federal Ministry of Justice, the number of inmates in Brazilian prisons rose from 114,000 in 1992 to 300,000 in 2004. Severe overcrowding and institutionalized violence—such as beatings, torture and even summary executions—are chronic and widespread in Brazilian prisons. In April 2004, a riot in Urso Branco prison in the northwestern state of Rondonia left nine inmates dead, two of whom were decapitated in front of shocked onlookers. According to press reports, the prison was designed to hold 350 inmates, but housed some one thousand more than capacity at the time of the riots. In a step toward greater transparency, the government recently announced the creation of a System of Penitentiary Information (Infopen), which it says will make data on prison conditions available online, and will be updated regularly by state officials.

Children are vulnerable to abuses in the juvenile justice system. Although they are promised special protection under Brazilian and international law, children in Brazil are routinely detained in abusive conditions, where they face violence at the hands of other youths or prison guards, and are unnecessarily confined to their cells for lengthy periods of time. As of early 2004, the Justice Ministry reported that 13,489 under-eighteen-year-olds were in detention, half of them in the state of São Paulo alone, exceeding the capacity of the country's juvenile detention centers, which are designed to hold 11,199. In May 2004, rights groups called for more transparency in cases of abuse, following public allegations that a new body within São Paulo's state juvenile detention system charged with investigating such abuses had thrown out 94 percent of the cases that came before it in its first year of operations. According to these groups, official sources counted ten deaths in custody and twenty-six riots in São Paulo juvenile facilities in the same period.

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### ***Impunity and Access to Justice***

The vast majority of human rights crimes in Brazil go unpunished, reflecting widespread corruption and other factors. Lack of access to justice—especially for the poorest and most vulnerable sectors of society—is a major problem, even according to Brazil’s own Secretariat for Human Rights. Though the federal government created a Public Transparency and Anti-Corruption Council in September 2004, additional efforts are necessary to increase transparency and to ensure that human rights abusers are punished adequately.

The Brazilian government has yet to pass federal laws to criminalize a number of serious human rights offenses. Such laws, if enacted and enforced, would contribute significantly to improving the country’s poor record of allowing abusers to go free.

### ***Forced Labor and Trafficking in Human Beings***

More than a hundred years after slavery was formally abolished in Brazil, a modern-day version of this hateful practice continues to thrive in rural areas. In 2004, the Labor Ministry made progress toward addressing the issue of forced labor through a national campaign conducted in partnership with the International Labor Organization. As of September 2004, mobile inspections teams had freed 2,078 people in situations of forced labor. Worryingly, however, three inspectors and their driver were killed on January 28, 2004, in Unaí, Minas Gerais, as they were investigating forced labor on ranches in the region.

The Brazilian Ministry of Justice, in partnership with UNODC, launched a program in May 2004 against human trafficking. According to the U.N., most victims of such trafficking in Brazil are women, who are trafficked through international prostitution networks. A U.S. Congressional report estimated that between eight hundred and nine hundred women are exported for these purposes each year.

### ***Rural Violence and Land Conflict***

Though urban violence in Brazil grabs the most attention, the problem of rural violence is extremely serious. The Pastoral Land Commission has reported that 1,349 people were murdered in rural areas between 1985 and 2003. Only seventy-five cases have gone to court, however, and, of these, forty-four resulted in acquittal. In 2003 alone, seventy-three rural laborers were murdered, the highest number since 1990 and up nearly 70 percent from the previous year.

In January 2004, twenty-nine illegal diamond miners were killed on the Roosevelt reservation, home of the Cinta-Larga indigenous peoples in the state of Rondônia. Members of the tribe claimed responsibility for the massacre, stating they were acting to protect their land, which has been the site of violent clashes and invasions by miners for decades.

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### ***Key International Actors***

The U.N. special rapporteur on the right to adequate housing, Miloon Kothari, visited Brazil in May and June 2004. He expressed concern regarding the removal of indigenous communities from ancestral lands in Alcântara, Maranhão—due to expansion of an aeronautical missile launch base—urging that such removals be carried out only with the consent of the populations facing displacement.

In an official visit to Brazil in early October, U.S. Secretary of State Colin Powell praised the country's role in supplying peacekeeping troops to Haiti, a country suffering from political turmoil and natural disasters.

## Chile

Chile has made significant progress in recent years in prosecuting former military personnel accused of committing grave human rights violations during the dictatorship of Gen. Augusto Pinochet (1973-1990.)

A new code of criminal procedure, in force all over the country except Santiago (where it will be introduced in 2005), has strengthened due process guarantees for criminal defendants and greatly reduced the incidence of torture. Yet special procedures that violate due process rights are still being used in prosecutions of members of the Mapuche indigenous community, charged under terrorism laws for attacks on farms and pine plantations in the Araucanía region. A still unresolved legacy of the Pinochet era is the problem of military court jurisdiction over crimes involving police.

### ***Prosecutions for Human Rights Violations under Military Rule***

According to the Catholic Church's Vicariate of Solidarity, 311 former military personnel, including twenty-one army generals, had been convicted or were facing charges for human rights violations by mid-2004. In early January 2004, the Santiago Appeals Court upheld the conviction of Gen. Manuel Contreras, former head of the Directorate of National Intelligence (DINA, or Pinochet's secret police), and three lower-ranking DINA agents, for the 1975 "disappearance" of detainee Miguel Angel Sandoval Rodríguez. In November, the Supreme Court dismissed a final appeal against the conviction, ruling that the crime of kidnapping was not covered by an amnesty law enacted by the military government in 1978.

In recent years, the courts have deemed the 1978 amnesty to be inapplicable in "disappearance" cases since a "disappearance" must be considered a kidnapping—an ongoing crime—unless the victim's remains have been found and the courts have thereby established his or her death. Following the Supreme Court verdict, the government announced that a building on an army base would be adapted as a special prison for human rights offenders.

In a surprise ruling, the Santiago Appeals Court stripped Pinochet of his immunity as a former head of state in May 2004, allowing him to face trial for the "disappearance" of twenty people in the 1970s. The Supreme Court narrowly affirmed the decision in August. The crimes form part of "Operation Condor," a clandestine scheme by the military regimes of Chile, Argentina, Brazil, Uruguay, and Paraguay to kidnap and "disappear" dissidents from each other's countries. As of December 1, 2004, the investigating judge in the case was assessing reports on Pinochet's medical condition before deciding whether to indict him. In December Pinochet lost his immunity again, this time to face possible

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prosecution for the 1974 assassination in Buenos Aires of former army commander Gen. Carlos Prats and his wife, Sofía Cuthbert.

It is the third time that the Chilean courts have cleared the way for Pinochet to be prosecuted for human rights violations. His first prosecution ended in July 2002, when the Supreme Court ruled that the eighty-eight year-old former dictator suffered from moderate dementia, making him unfit to stand trial. Pinochet also faces a criminal investigation and a tax office probe after a United States Senate investigation revealed in July 2004 that a Washington, D.C., bank held millions of dollars in secret deposits for Pinochet while he was in detention on human rights charges in London.

### ***Confronting the Past***

Chile has been confronting human rights violations of the past in other important ways. On November 28, President Lagos presented on television the report of the National Commission on Political Imprisonment and Torture (Comisión Nacional sobre Prisión Política y Tortura), which he had established in 2003 to receive testimonies from victims of torture under military rule and recommend reparation measures.

The report was based on testimony from 35,000 people, many of whom had never testified before about the abuses they had suffered. It concluded that torture had been a systematic state practice and recommended various reparation measures, including that victims receive a state pension of about 112,000 pesos a month (approximately U.S.\$190). Human Rights Watch criticized the government's decision to keep the testimonies secret for fifty years, and urged that it send information about alleged perpetrators to the courts for investigation.

The dramatic findings of the report prompted a national debate in the news media. Prior to the report's release, the army's commander-in-chief acknowledged for the first time the army's institutional responsibility for human rights violations during military rule. Until his statement, the army's position had always been that human rights violations were solely the responsibility of individual officers. The other branches of the armed forces accepted the findings of the report, but insisted that responsibility for the abuses was individual rather than institutional.

### ***Due Process and Police Abuses***

The introduction of the new Code of Criminal Procedure in all parts of Chile except the capital has helped reduce complaints of torture and mistreatment by the uniformed police (Carabineros). The new code requires a judge to review all detentions within twenty-four hours in a public hearing at which the defendant, his or her defense lawyer, and the prosecutor are present. Confessions must be ratified by the defendant in court to be admissible in criminal proceedings. The Public Defender's Office, created under the new code as an independent body under the supervision of the Ministry of Justice, provides free expert legal counsel to those unable to hire a lawyer. These and other measures have greatly strengthened due process protections for defendants.

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### ***Unfair Trials of Mapuche***

Not all Chileans have benefited equally from the new code, however. During 2004, twelve members of Chile's largest indigenous community, the Mapuche, as well as a non-Mapuche sympathizer, were tried on terrorism charges for crimes committed in the context of land conflicts with private owners and forestry companies. Several provisions of Chile's antiterrorism law restrict the due process rights of the accused.

The government claimed that arson attacks by Mapuche on farmhouses, woods, and fields in the Araucanía region in southern Chile were orchestrated acts of terrorism, intended to generate fear in the groups affected and to pressure them to abandon their properties. In a report published in October 2004, Human Rights Watch argued that the terrorism charges were an exaggerated and inappropriate response to the disorder, which was directed mainly against property and had not claimed any lives. The Chilean antiterrorism law allows the identity of witnesses to be withheld from defendants, permits the prosecution to conduct investigations in secret for up to six months, and allows defendants to be held for months in preventive detention prior to the issuance of a formal indictment.

In a trial in Temuco in October 2004 of eight Mapuche defendants facing charges of illicit terrorist association, the prosecution presented at least ten witnesses who appeared in court behind screens and spoke through voice-distorting microphones. The practice of concealing from defendants the identity of their accusers breaches due process rules established in the International Covenant on Civil and Political Rights. To the credit of the Public Defender's Office, whose lawyers provided free legal counsel to the Mapuche, the court unanimously acquitted the defendants in early November.

The police reportedly mistreat and insult inhabitants of Mapuche communities, including women, children, and the elderly, when police make arrests or conduct searches. Complaints of such abuse are investigated by military tribunals that have a near-perfect record of ruling in favor of police. Acts of violence by civilians against the police are also dealt with by military tribunals, in clear breach of international fair trial standards. Human Rights Watch has urged the Chilean government to introduce legislation limiting the jurisdiction of military courts to military offenses.

### ***Restrictions on Freedom of Expression***

For the second consecutive year, Congress in 2004 dragged its feet on legal reforms to protect freedom of expression. In December 2003, the lower house of Congress approved a bill to amend the Criminal Code and Code of Military Justice to remove provisions that penalize strongly-worded criticism of the president, military officers, and members of Congress and the higher courts, a type of law known as *desacato*. Delaying the bill's approval, senators insisted on linking *desacato* reform to broader proposals to protect the privacy and reputations of those in the public eye. A bill hurriedly approved by the lower house in December 2003, which could subject media that comment on politicians' private lives to

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crippling damage awards, was discussed at length in the relevant Senate committee in 2004. As of November 1, 2004, however, neither bill had been submitted to a vote.

## Colombia

Colombia's forty-year internal armed conflict continues to be accompanied by widespread violations of human rights and international humanitarian law. All actors in the conflict—guerrillas, paramilitary groups, and the armed forces—commit serious violations, such as massacres, assassinations, and kidnappings.

In 2004, while pursuing an aggressive military offensive against guerrilla groups, the government engaged in peace negotiations with paramilitary groups. The negotiations may result in the demobilization of several thousand individuals who claim to have been members of paramilitary groups. At the same time, however, paramilitaries have been flouting the OAS-monitored ceasefire they agreed to at the start of negotiations, while consolidating their control over vast areas of the country. And the demobilization process continues to lack sufficient safeguards to ensure that paramilitaries responsible for the commission of atrocities are brought to justice.

The government has yet to take credible action to break ties between the military and paramilitary groups. Impunity, particularly with respect to high-level military officials, remains the norm.

### ***Negotiations with Paramilitary Groups***

The Colombian government has been negotiating the demobilization of paramilitary groups since early 2003. The negotiations have been mired in controversy: an initial demobilization of several hundred individuals in late 2003 is now widely viewed as a failure because many of those who demobilized were in fact criminals posing as paramilitaries, and because of reports that, of those who were not impostors, many have continued to engage in paramilitary activities. In addition, the paramilitaries have not adhered to the ceasefire agreement that they initially announced in November of 2002. A report by Colombia's Public Advocate released in October 2004 stated that in the first eight months of the year it had received complaints involving 342 apparent paramilitary breaches of the ceasefire, including kidnappings, forced displacement, extortion, targeted homicides, and massacres.

A significant obstacle to a full and effective paramilitary demobilization is the lack of a legal framework to govern the demobilization process and the benefits to be provided to those who demobilize. A draft bill initially proposed by the administration of President Alvaro Uribe in 2003 would have allowed cooperative paramilitary leaders responsible for atrocities to go virtually unpunished. After an international and domestic outcry, the proposed law was modified. However, a new version of the bill circulated in April 2004 still contains serious flaws—a failure to provide for thorough investigations of paramilitary crimes and illegal assets, and a loophole allowing those convicted of atrocities to entirely

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avoid incarceration—that make the effective demobilization and dismantling of paramilitary structures unlikely.

In November 2004, the government announced a schedule for the demobilization of three to four thousand paramilitary troops by the end of the year, applying similar procedures to those that were used in the Cacique Nutibara demobilization.

### ***Military-Paramilitary Ties***

Paramilitary groups maintain close ties with a number of Colombian military units. The Uribe administration has yet to take effective action to break these ties by investigating and prosecuting high-ranking members of the armed forces credibly alleged to have collaborated with paramilitary groups.

Credible reports indicate that some of the territories from which the military has ejected the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) are now under the control of paramilitary groups, which continue to carry out indiscriminate attacks on the civilian population.

### ***Impunity***

The Attorney General's Office continues to make little progress in prosecuting commanding military officers against whom there are credible allegations of human rights violations. Prosecutors appear to lack the political will necessary to take on such high-ranking and well-connected suspects.

In 2004, for example, Attorney General Luis Camilo Osorio announced that he would not file charges against General Rito Alejo del Río. Del Río had been under investigation for allegedly supporting paramilitaries who had attacked villages, executed local civic leaders, and provoked mass displacement and severe hardship for thousands of people in northern Colombia between 1995 and 1997. The evidence against Del Río was compelling enough to prompt then-President Andrés Pastrana to dismiss Del Río in 1998. The U.S. government cancelled his visa to the United States in July 1999, on the ground that there was credible evidence that implicated him in “international terrorism,” among other crimes.

### ***Anti-terrorism Measures***

Colombia's Constitutional Court struck down on procedural grounds a constitutional reform, proposed by the Uribe administration and approved by Congress in 2003, that would have allowed the military to perform arrests and searches, and intercept private communications, without a warrant or any prior judicial review. The government is widely expected to reenact the reform in 2005, this time following the requisite legal procedures.

The government continues to carry out mass arrests of individuals suspected of collaborating with guerrilla groups, a tactic that has resulted in abuses by security forces and judicial authorities. Authorities have frequently based both individual and mass arrests on inadequate or unreliable information, in some

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cases obtained solely from secret informants or demobilized individuals in contexts in which authorities know or should know that the information is unreliable. Such arrests, even if wrongful, can turn individuals into targets for attack after their release. For example, university professor Alfredo Correa de Andreis was assassinated by unknown assailants shortly after being formally cleared of charges, based on allegations by a secret informant, that he was a FARC ideologue.

### ***Human Rights Monitors and Other Vulnerable Groups***

Colombia is an extremely dangerous place for human rights monitors, who have for years been threatened and attacked because of their work. The problem has recently been exacerbated by statements from government officials, who in 2003 and again in 2004 publicly accused human rights organizations as well as individual human rights monitors of being guerrilla collaborators or apologists for terrorism. After sustained international criticism, President Uribe and other government officials have started to conduct meetings with representatives of domestic and international human rights organizations.

Other particularly vulnerable groups include journalists, academics, labor union leaders, and members of indigenous groups. In August 2004, for example, three labor union leaders in Arauca were apparently killed by members of the armed forces.

The Kankuamo, like many other indigenous communities, has been repeatedly targeted by guerrilla and paramilitary groups who are fighting for control of traditional Kankuamo lands in Colombia's Sierra Nevada mountains. Assassinations and massacres have resulted in hundreds of Kankuamo deaths and the decimation of entire towns. In July 2004, the Inter-American Court of Human Rights told Colombia to adopt measures to protect the community. But the continued killing of Kankuamo leaders raises doubts about the government's willingness to comply with this decision.

### ***Violations by Guerrilla Groups***

While in retreat in some parts of the country, guerrillas continue to commit frequent and serious violations of international humanitarian law. Abuses include massacres, extrajudicial executions, and kidnappings for financial or political gain.

The Uribe administration expressed willingness in 2004 to negotiate the release of FARC members not convicted of committing atrocities, in exchange for the release of hostages held by the FARC. The FARC has refused this exchange, however, stating that the government should first establish a demilitarized zone where the exchange could occur.

### ***Child Recruitment***

At least one of every four irregular combatants in Colombia is under eighteen years of age. Of these, several thousand are under the age of fifteen, the minimum recruitment age permitted under the Geneva Conventions. Eighty percent of the children under arms belong to one of two guerrilla groups, the

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FARC or the National Liberation Army (Ejército de Liberation Nacional, ELN). The remainder fights for paramilitaries.

Many children join up for food or physical protection, to escape domestic violence, or because of promises of money. A few join under coercion or out of fear. Others are street children with nowhere to go. Children as young as thirteen are trained to use assault rifles, grenades, and mortars.

### ***Key International Actors***

The United States remains the most influential foreign actor in Colombia. In 2004 it provided more than U.S.\$700 million to the government, mostly in military aid. Although 25 percent of the security assistance included in this package is formally subject to human rights conditions, the conditions have not been enforced: the full amount of aid continues to flow to Colombia even though the government has failed to break ties between the military and abusive paramilitary groups.

The U.S. Congress has approved a doubling of U.S. troops and an increase in U.S. private contractors in Colombia for 2005. The troops and contractors are to provide logistical support and training to the Colombian military in counter-narcotics and counter-insurgency operations.

In February 2004, the Organization of American States (OAS) authorized the establishment of an OAS Mission in Colombia to “provide technical support to the verification of the ceasefire and cessation of hostilities, demobilization, disarmament, and reintegration initiatives.” The Mission has faced numerous obstacles, including lack of funding and refusal by paramilitary leaders to concentrate their forces in the demilitarized zone, which renders it impossible for the mission to perform its verification function. However, the OAS Mission has also been the subject of controversy, with critics charging that the Mission is becoming overly involved in the negotiations, improperly lending the OAS’s legitimacy to a flawed process.

The Office of the U.N. High Commissioner for Human Rights is active in Colombia, with a presence in Bogotá, Medellín, and Cali. Nonetheless, its relations with the government are difficult due to Colombia’s repeated failure to implement the office’s human rights recommendations.

## Cuba

The Cuban government systematically denies its citizens basic rights to free expression, association, assembly, movement, and a fair trial. A one-party state, Cuba restricts nearly all avenues of political dissent. Tactics for enforcing political conformity include police warnings, surveillance, short term-detentions, house arrests, travel restrictions, criminal prosecutions, and politically-motivated dismissals from employment.

In April 2003, authorities sentenced seventy-five dissidents to prison terms ranging from six to twenty-eight years, and all but thirteen—released in 2004 for humanitarian reasons—remain incarcerated at this writing. Raul Rivero, a poet and journalist, and Marta Beatriz Roque, a prominent independent economist—and the only woman sent to prison during the crackdown—were among the thirteen who were released.

### ***Legal and Institutional Failings***

Cuba's legal and institutional structures are at the root of rights violations. The rights to freedom of expression, association, assembly, movement, and the press are strictly limited under Cuban law. By criminalizing enemy propaganda, the spreading of "unauthorized news," and insult to patriotic symbols, the government curbs freedom of speech under the guise of protecting state security. The government also imprisons or orders the surveillance of individuals who have committed no illegal act, relying upon laws penalizing "dangerousness" (*estado peligroso*) and allowing for "official warning" (*advertencia oficial*).

The government-controlled courts undermine the right to fair trial by restricting the right to a defense, and frequently fail to observe the few due process rights available to defendants under domestic law.

### ***Trials and Releases of Political Dissidents***

The first major political trial since the 2003 crackdown was held in April 2004 in the central Cuban city of Ciego de Ávila. The trial involved ten defendants, among them Juan Carlos González Leiva, a blind lawyer who is the president of the Cuban Foundation for Human Rights (Fundación Cubana de Derechos Humanos). González Leiva was sentenced to four years of house arrest on charges of disrespect for authority, public disorder, disobedience, and resisting arrest. Several other defendants, including Virgilio Mantilla Arango, received prison sentences of up to seven years. The prosecution was based on a political protest that they held at a provincial hospital in March 2002.

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In September 2004, Rene Montes de Oca Martija, the leader of Cuba's Pro Human Rights Party (Partido Pro Derechos Humanos de Cuba), was sentenced to eight months in prison for the crime of "contempt of authority."

Thirteen incarcerated dissidents were granted provisional release in 2004, ostensibly for humanitarian reasons. In addition to Raul Rivero, fifty-nine, and Marta Beatriz Roque, fifty-nine, they included librarian Roberto de Miranda, sixty-two, who suffered from serious health problems in prison, and independent journalist Manuel Vasquez Portal, fifty-two.

### ***Prison Conditions***

Prisoners are generally kept in abusive conditions, often in overcrowded cells. Prisoners typically lose weight during incarceration, and some receive inadequate medical care. Some also endure physical and sexual abuse, typically by other inmates with the acquiescence of guards. In October 2004, human rights advocate Luis Enrique Ferrer Garcia was reportedly stripped and beaten by police and prison officials in the Youth Prison of Santa Clara. The following month, dissident Juan Carlos Herrera Acosta was reportedly beaten to unconsciousness by prisoners who called him "traitor, worm, coward." Other incarcerated dissidents report receiving death threats and being subjected to other forms of harassment.

Political prisoners who denounce poor conditions of imprisonment or who otherwise fail to observe prison rules are frequently punished by long periods in punitive isolation cells, restrictions on visits, or denial of medical treatment. Dissident Oscar Elias Biscet was frequently punished in this fashion. These abusive conditions are particularly hard on older dissidents, some of whom are in their sixties and in poor health.

### ***Death Penalty***

Under Cuban law the death penalty is possible for a broad range of crimes. Because Cuba does not release information regarding its use of the penalty, it is difficult to ascertain the frequency with which it is employed. As far as is known, however, there have been no executions since April 2003.

### ***Human Rights Defenders***

Human rights monitoring is not recognized as a legitimate activity, but rather is stigmatized as a betrayal of Cuban sovereignty. No local human rights groups enjoy legal status. Instead, human rights defenders face systematic harassment, with the government placing heavy burdens on their ability to monitor human rights conditions. Nor are international human rights groups such as Human Rights Watch allowed to send fact-finding missions to Cuba. And Cuba remains one of the few countries in the world, and the only one in the Western Hemisphere, to deny the International Committee of the Red Cross access to its prisons.

### ***Labor Rights***

The government recognizes only one labor union, the Worker's Central of Cuba (Central de

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Trabajadores de Cuba, CTC). Independent labor unions are denied formal status and their members are harassed. Workers employed in businesses backed by foreign investment remain under tight government control. Under restrictive labor laws, the authorities have a prominent role in the selection, payment, and dismissal of workers, effectively denying workers the right to bargain directly with employers over benefits, promotions, and wages.

### ***Key International Actors***

In mid-April 2004, the U.N. Commission on Human Rights voted twenty-two-to-twenty-one to adopt a resolution deploring the “actions which occurred last year in Cuba in respect to sentencing of political dissidents and journalists,” a reference to the heavy sentences meted out to dissidents in April 2003. A number of Latin American countries voted in favor of the resolution.

The U.N. Educational, Scientific and Cultural Organization (UNESCO) awarded independent journalist Raul Rivero its annual press freedom award in May. Rivero, sentenced to a twenty-year term of imprisonment during the 2003 crackdown, was honored for his “brave and longstanding commitment to independent reporting, the hallmark of professional journalism.”

The European Union continues to maintain its common position on Cuba, making improvement in economic and trade relations contingent on Cuba’s progress on human rights. In October 2004, however, Spain’s new ambassador to Cuba criticized E.U. policy toward the island and said that his government would work to thaw relations. A few days later, three European politicians—two Dutchmen and a Spaniard—who visited Cuba to meet with dissidents were arrested at Havana Airport, detained briefly, and expelled from the country.

The U.S. economic embargo on Cuba, in effect for more than four decades, continues to impose indiscriminate hardship on the Cuban people and to block Americans from traveling to the island. In early May 2004, President Bush announced new measures to tighten the embargo. The measures included stricter limits on cash remittances and on visits to family members. In October, for the thirteenth straight year, the U.N. General Assembly voted by an overwhelmingly margin to urge the U.S. to end the embargo.

## Guatemala

Eighteen years after the return of civilian rule and eight years after the signing of peace accords, Guatemala has made little progress toward securing the protection of human rights and the rule of law, essential features of a functioning democracy. Ongoing acts of political violence and intimidation threaten to reverse the little progress that has been made in recent years. With the United Nations concluding its ten-year verification mission at the end of 2004, efforts to establish new forms of international collaboration on human rights issues face strong opposition from powerful sectors within the country, as well as legal hurdles created by the Constitutional Court's highly restrictive interpretation of the Guatemalan constitution.

### *Impunity*

Guatemala is still suffering the effects of an internal armed conflict that was, in many respects, the region's most brutal. A U.N.-sponsored truth commission estimated that as many as 200,000 people were killed during the thirty-six-year war that ended in 1996. Government forces were responsible for the vast majority of the killings.

Guatemalans seeking accountability for these abuses face daunting obstacles. One is the weakness of a justice system that relies on prosecutors and investigators who receive grossly inadequate training and resources. The courts routinely fail to resolve judicial appeals and motions in an expeditious manner, allowing defense attorneys to engage in dilatory legal maneuvering. The army and other state institutions fail to cooperate fully with investigations into abuses committed by current or former members. The police do not provide adequate protection to judges, prosecutors, and witnesses involved in politically sensitive cases.

Of the 626 massacres documented by the truth commission, only one case has been successfully prosecuted in the Guatemalan courts. In 2004, a lieutenant and thirteen soldiers were found guilty of the 1995 Xamán massacre in which eleven civilians were murdered; they were sentenced to 40 years in prison each. By contrast, the prosecution of former military officers allegedly responsible for the 1982 Dos Erres massacre, in which 162 people died, has been held up for years by dilatory motions by the defense.

The few other convictions obtained in human rights cases have come at considerable cost. In the case of Myrna Mack, an anthropologist who was assassinated in 1990, it took over a decade to obtain the conviction of an army colonel, Valencia Osorio, for his role in orchestrating the killing. During that time, a police investigator who gathered incriminating evidence was murdered, and two other investigators—

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as well as three witnesses—received threats and fled the country. The conviction was subsequently overturned by an appeals court in 2003, only to be reinstated by the Supreme Court in 2004. However, Osorio was able to escape police custody and has not served his sentence.

### ***Clandestine Groups***

Over the past three years, there have been an alarming number of attacks and threats against Guatemalans seeking justice for past abuses. The targets have included human rights organizations, justice officials, forensic experts, plaintiffs, and witnesses involved in human rights cases. They have also included journalists, labor activists, and others who have denounced abuses of authority.

There is a widespread consensus among local and international observers that the people responsible for these acts of intimidation are affiliated with private, secretive, illegally armed networks or organizations, commonly referred to in Guatemala as “clandestine groups.” These groups appear to have links to both state agents and organized crime—which give them access to considerable political and economic resources. The Guatemalan justice system, which is ill-prepared to contain common crime, has so far proven no match for this powerful and dangerous threat to the rule of law.

### ***Excessive Use of Force***

While political violence is no longer carried out as a matter of state policy, members of the national police still sometimes employ excessive force against suspected criminals and others. These cases usually entail the abuse of authority by poorly trained police officers.

In August 2004, for instance, national police used excessive force against workers who had occupied Nueva Linda, a private plantation on the Pacific coast, according to the National Human Rights Ombudsman. After the workers resisted police efforts to evict them from the property, a gun battle erupted, killing eleven people, including four police. Journalists who witnessed the confrontation reported that the police carried out several extrajudicial executions. They also reported being threatened and beaten by police.

### ***Workplace Discrimination***

Women and girls working in Guatemala's two female-dominated industries—the export-processing (maquiladora) and live-in domestic worker sectors—face widespread sex discrimination at the hands of private employers and the government. Domestic workers are denied key labor rights protections, including minimum wage guarantees and an eight-hour workday, and have only limited rights to paid national holidays. Younger women and girls, in particular, sometimes face sexual harassment and violence in the homes where they work.

Women and girls working in the maquiladora sector, though formally protected under the law, encounter persistent sex discrimination in employment based on their reproductive status, with little hope for government remedy. Guatemalan maquiladoras, many of which are suppliers for well-known South

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Korean and U.S.-based corporations, discriminate against women workers in a number of ways—including requiring women to undergo pregnancy tests as a condition of employment; denying, limiting, or conditioning maternity benefits to pregnant women; denying reproductive health care to pregnant workers; and, to a lesser extent, firing pregnant women.

### ***Key International Actors***

The United Nations Verification Mission in Guatemala (MINUGUA) was scheduled to close its operations at the end of 2004. In preparation for that date, MINUGUA sought to strengthen the capacity of key state institutions to promote the goals of the 1996 peace accords and train young Guatemalan professionals as verifiers and promoters of the accords. The Office of the United Nations High Commissioner for Human Rights reached an agreement with Guatemala to establish an in-country office that would provide observation and technical assistance following MINUGUA's departure. However, the agreement, which still had not been ratified by the Guatemalan Congress at this writing, has faced significant opposition from some legislators.

The United Nations has also entered into an agreement with Guatemala to establish a special commission to investigate and promote the prosecution of the “clandestine groups.” The Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (CICIACS) grew out of a proposal developed by the Guatemalan government and local human rights groups, in consultation with members of the international community. Both the U.S. and European diplomatic corps have supported the creation of the CICIACS and expressed their intention to help finance its operations. The agreement has not been ratified by the Guatemalan Congress, however, and its prospects for ratification have been greatly diminished by a finding of the Constitutional Court that several of its articles were unconstitutional. The government has said it would propose modifications to the initiative that would make it consistent with the court's restrictive interpretation of the constitution.

The Inter-American human rights system has provided an important venue for human rights advocates seeking to press the state to accept responsibility for abuses. In 2004, Guatemala accepted state responsibility for several cases brought before the Inter-American Court of Human Rights, including the 1990 murder of anthropologist Myrna Mack and the 1982 Plan de Sánchez massacre.

## Haiti

The bicentennial of Haiti's independence, 2004 was a year of turmoil, lawlessness, and humanitarian disaster. The interim government, which took power in March, has been unable to impose its authority over large swathes of the country or uphold the rule of law. With only a small, demoralized, and poorly-trained police force, the government has had to rely on the U.N.-mandated multinational force to maintain security, but that force's numbers are insufficient for restoring public order and stability.

In responding to mounting violence, the Haitian police are responsible for frequent illegal arrests and, in some instances, extrajudicial executions. The justice system is in disarray, with even the most serious crimes going unpunished. Prison conditions remain deplorable.

Haiti also suffered humanitarian tragedy in 2004, further impoverishing and destabilizing the country. Tropical Storm Jeanne slammed through Haiti in September, killing at least two thousand people, flooding certain areas, and adding to the country's litany of troubles. Armed gangs, taking advantage of the lack of security, stole humanitarian assistance meant for victims of the storm. Aid groups threatened to suspend operations if their safety could not be protected.

### ***Violence, Lawlessness, and Instability***

In February 2004, rebel forces captured large sections of the country and pushed President Jean-Bertrand Aristide from office. The rebels, who began by taking over police stations in the northern city of Gonaives, included a solid core of former officers and soldiers from the country's disbanded army, as well as former paramilitaries responsible for innumerable atrocities during Haiti's 1991-1994 military government. Among their leaders was Louis Jodel Chamblain, one of the founders of the Revolutionary Front for Haitian Advancement and Progress (Front révolutionnaire pour l'avancement et le progrès haïtien, FRAPH), who had been sentenced in absentia to life in prison for the September 1993 murder of activist Antoine Izmary, as well as for involvement in the 1994 Raboteau massacre.

The scene of the greatest violence was Saint Marc, a town an hour south of Gonaives. During much of February, the town was terrorized by a violent pro-government death squad known as Bale Wouze, or Clean Sweep. Family members of the dead gave Human Rights Watch a list of twenty-four people who were killed in the violence, including Kenol St. Gilles, who was burned alive by Bale Wouze members on February 11.

Haiti's violence and instability did not end with the establishment of an interim government in March 2004. Despite the arrival of international military forces mandated to reestablish a stable and secure

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environment, much of the country remains under the control of irregular armed groups. The Haitian National Police—a demoralized and discredited force by the end of the Aristide presidency—is small, poorly trained, and under-resourced. Its personnel are outnumbered and outgunned by former soldiers, criminal gangs, and other irregular armed groups. Although a few weak attempts at disarmament have been made, the country remains awash with illegal weapons.

Former soldiers wanting back pay and the reinstatement of the army occasionally threaten to rise up against the government to enforce their demands. They have taken over police stations, former barracks, and other buildings in several cities and towns, painting the buildings yellow, the army's traditional color. They frequently have manned checkpoints, patrolled streets—sometimes in state vehicles—and taken over other government functions.

Armed gangs, some of which claim affiliation with the political party of former President Aristide, were responsible for a wave of escalating violence beginning in September 2004. Nearly two hundred people were killed in the months of September and October. On September 30, three police officers were reportedly shot to death in Port-au-Prince, with two of them later found decapitated.

### ***Police Abuses***

In responding to the wave of violence in September and October 2004, police arrested and detained people illegally, often carrying out arrests without warrants and failing to bring detainees before a judge within the forty-eight hour period mandated under Haitian law. Detainees included Yvon Fulle, the president of the Haitian Senate, and two other politicians associated with the Aristide government, who were arrested on October 2 at Radio Caraïbes in Port-au-Prince. Indeed, hundreds of Aristide supporters were reportedly arrested on suspicion of involvement in violence. Whether the police have evidence to justify some of the arrests—like that of Father Gerard Jean-Juste, picked up on October 13 at his parish in Port-au-Prince—is far from clear.

Beatings and extrajudicial executions by police have also been reported. In November 2004, the National Coalition for Haitian Rights (NCHR), a nongovernmental human rights group, called for the establishment of an independent commission to investigate police responsibility for the October 26 killing of seven to thirteen youths in Fort National, a poor area of Port-au-Prince. According to reports received by NCHR, the youths were tortured by a “commando unit” of masked police officers before they were killed.

### ***Justice***

The justice system was essentially destroyed in February 2004, with court buildings in several cities and towns looted, burned, or both, and valuable court documents lost. The country's prisons and jails were entirely emptied.

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The new government has promised to rebuild the justice system and put an end to the impunity for which Haiti is notorious. Yet progress has been slow. Although the government arrested a number of people implicated in the February killings in Saint Marc, it has made few advances in prosecuting the case. And in August 2004, in a critical setback for justice, a jury acquitted former paramilitary leader Louis Jodel-Chamblain and ex-military police Capt. Jackson Joanis of the 1993 murder of Antoine Izmary. The trials were a hastily-conducted sham.

Prison and jail conditions are dire. Many detention facilities are still not in functioning condition; those that do hold prisoners are generally dirty and crowded, and often lack sanitary facilities.

### ***Election Conditions***

Interim Prime Minister Gerard Latortue has promised to hold elections in 2005. Yet unless the government and U.N. forces succeed in stabilizing the country, it is doubtful that Haiti will have the security conditions necessary for free and fair elections. In October 2004, further complicating progress toward elections, the chairwoman of the provisional electoral council resigned after a dispute with the council's treasurer over the alleged misappropriation of funds.

### ***Human Rights Defenders***

Human rights defenders, working in a dangerous, highly-politicized environment, face threats and intimidation. Anonymous death threats were reported by Renan Hedouville, the head of the Lawyers Committee for the Respect of Individual Liberties (Comite des Avocats pour le Respect des Libertes Individuelles (CARLI)), and Mario Joseph, a lawyer with the International Lawyers Office (Bureau des Avocats Internationaux (BAI)).

### ***Key International Actors***

Multinational troops arrived in Haiti just after President Aristide departed. In April 2004, the U.N. Security Council approved just over 8,300 peacekeeping troops for Haiti: 6,700 military personnel and 1,622 civilian police. The troop deployment in Haiti is headed by Brazil, which is seeking a permanent seat on the U.N. Security Council. Unfortunately, as of mid-October, the U.N. Stabilization Mission in Haiti (MINUSTAH) had far fewer personnel than allotted: a mere three thousand military troops and 650 civilian police. Besides Brazil, the countries sending troops included Argentina, Chile, Nepal, Peru, Sri Lanka, and Uruguay.

Despite Haiti's dire human rights and humanitarian conditions, the United States continues to deny Haitians on U.S. territory temporary protection from deportation back to Haiti. It also intercepts Haitians who flee their country and repatriates them immediately. In late February 2004, in a clear violation of international refugee protections, the U.S. Coast Guard dropped off hundreds of asylum seekers in the main port in Port-au-Prince, the site of violence and widespread looting.

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The Caribbean Community and Common Market (CARICOM), a fifteen-member group of Caribbean countries, suspended ties with Haiti after President Aristide went into exile. In November CARICOM leaders decided to maintain the suspension, stating that it was based on “fundamental principles of respect for human rights, due process and good governance.”

In October, the Inter-American Commission on Human Rights (IACHR) expressed grave concern over human rights conditions in Haiti.

## Mexico

Several of Mexico's most pressing human rights problems stem from shortcomings in its criminal justice system. They include torture and other ill-treatment by law enforcement officials, and a failure to investigate and prosecute those responsible for human rights violations.

President Vicente Fox has repeatedly promised to address these problems and has taken important steps toward doing so—establishing a special prosecutor's office to investigate past abuses and proposing justice reforms designed to prevent future ones. Neither initiative has received adequate government support, however, and it is unclear whether President Fox will be able to advance these programs in the two years that remain in his presidency.

### ***Torture, Ill-treatment, and Police Brutality***

Torture is a persistent problem within the Mexican criminal justice system. A factor perpetuating the practice is that some judges accept the use of evidence obtained through violations of detainees' human rights. Prison inmates are subject to abuses, including extortion by guards and the imposition of solitary confinement for indefinite periods of time. Children in some juvenile detention facilities are forced to live in squalid conditions and are reportedly subject to beatings and sexual abuse. Foreign migrants are especially vulnerable to abusive practices by government agents.

Abusive police practices were evident in several high profile cases in 2004. In May, police in Guadalajara, Jalisco, clashed with protesters during the final day of the EU-Latin America summit and, several hours later, swept through the area around the protest, rounding up people as they sat in public parks, rode buses, walked down the street, and as they were being treated in the Red Cross clinic. Police beat some of the detainees during and after their arrests, and held over fifty people incommunicado for two days. During this time, detainees were denied access to legal counsel and subjected to physical mistreatment and abuse. Several former detainees reported being coerced into signing false confessions as a result of torture and other abuses.

In March 2004, President Fox proposed reforms designed to fix features of Mexican criminal procedure that perpetuate and even encourage the use of torture by law enforcement officials. The new legislation would disqualify all evidence obtained illegally and allow confessions to be entered as evidence at trial only when they were made in the presence of a judge and defense counsel. The impact of these provisions was undercut, however, by language that could exempt suspects in organized crime cases from these and other due process guarantees. At this writing, the Mexican Congress had yet to vote on the bill.

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## ***Impunity***

The criminal justice system routinely fails to provide justice to victims of violent crime and human rights abuses. The causes of this failure are varied and include corruption, inadequate training and resources, and a lack of political will. One prominent example is the unsolved murders of hundreds of young women and girls over the last decade in Ciudad Juárez, a city on the U.S. border in Chihuahua state.

The state's efforts to prosecute those responsible for the killings have been fraught with problems. In October 2004, a Chihuahua judge sentenced bus driver Victor Garcia Uribe to successive fifty-year prison terms for the murders of eight young women. Garcia was convicted on the basis of a confession that he said he made under torture and that he later recanted. There was no physical evidence linking García to any of the murders. In 2002, police gunned down García's lawyer, Mario Escobedo Salazar, under highly suspicious circumstances. Escobedo and another lawyer had reported receiving telephone threats for three months from unidentified male callers who warned them that they would be killed if they continued representing García and another suspect. That other suspect died while in police custody. Three other individuals facing charges for some of the Juárez killings have also recanted confessions that they claim were coerced through torture.

A major shortcoming of the Mexican justice system is that it leaves the task of investigating and prosecuting army abuses to military authorities. The military justice system is ill-equipped for such tasks. It lacks the independence necessary to carry out reliable investigations and its operations suffer from a general absence of transparency. The ability of military prosecutors to investigate army abuses is further undermined by fear of the army, which is widespread in many rural communities and which inhibits civilian victims and witnesses from providing information to military authorities.

## ***The Special Prosecutor's Office***

In 2001, President Fox established a special prosecutor's office to investigate and prosecute past acts of political violence, including massacres of student protesters in 1968 and 1971, and the forced disappearance of hundreds of government opponents during the country's "dirty war" in the 1970s. For two years the office's progress was limited by insufficient cooperation from the military and inadequate access to government documents. But in November 2003, the special prosecutor won a landmark decision from the Mexican Supreme Court holding that statutes of limitations do not apply to old "disappearance" cases as long as the victims' bodies have not been found. He then obtained arrest warrants for several high level officials, and secured the arrests of Miguel Nazar Haro in February 2004 and Juventino Romero Cisneros in October 2004. Both are accused of participating in the forced disappearance of Jesús Piedra Ibarra in the 1970s.

But these advances have been counterbalanced by significant failures. All the other suspects have managed to escape arrest. There have been no exhumations, nor any indication that the special prosecutor has made progress uncovering the fate of hundreds of "disappeared" people or in providing

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Mexico with a comprehensive account of the crimes that took place. The special prosecutor's most ambitious move—the indictment of former president Luis Echeverría—was thrown out by a trial judge. The case is now before the Supreme Court.

### ***Labor Rights***

Legitimate labor-organizing activity is obstructed by collective bargaining agreements negotiated between management and pro-management unions. These agreements often fail to provide worker benefits beyond the minimums mandated by Mexican legislation, and workers sometimes only learn of the agreements when they grow discontented and attempt to organize independent unions. Workers who seek to form independent unions risk losing their jobs and are generally left unprotected by the government from retaliatory dismissals.

### ***Freedom of Expression***

Mexican laws on defamation are excessively restrictive and tend to undermine freedom of expression. Besides monetary penalties, journalists face criminal prosecution for alleged defamation of public officials. Journalists have occasionally faced violence at the hands of government agents.

### ***Right to Education***

Mexico has failed to ensure that tens of thousands of rural children receive primary education during the months that their families migrate across state lines to work in agricultural camps. While there is a federal program to provide primary schooling in the agricultural camps, a large number of parents choose to have their children work in the fields rather than attend school. The failure to enforce child labor laws facilitates this choice.

### ***Key International Actors***

As part of a Technical Cooperation Agreement signed by President Fox, the U.N. High Commissioner for Human Rights maintains an in-country office that, in December 2003, produced a comprehensive report documenting ongoing human rights problems and providing detailed recommendations for addressing them. The Fox administration has committed itself to developing a national human rights program based on the report's recommendations, but at this writing had yet to do so. The administration's justice reform proposal incorporates some elements of those recommendations while ignoring others, such as the recommendation to end military jurisdiction over cases involving human rights violations.

The United States and Canada are, along with Mexico, signatories to the North American Free Trade Agreement and its labor side accord, which commits them to enforce their laws protecting workers' rights and grants them authority to hold one other accountable for failing to meet these obligations. Under the accord, when a government of one country receives a complaint of violations committed in one of the other two, it can investigate the charges. However, because the complaint process is

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convoluted and enforcement mechanisms are weak, the accord has had little impact on labor rights violations in Mexico.

Mexico has played a leading role at the international level in pressing for human rights promotion to be considered an integral part of counter-terror efforts. It sponsored resolutions to that end at both the U.N. General Assembly and Commission on Human Rights and successfully pressed the Commission to name an independent expert on the protection of human rights and fundamental freedoms while countering terrorism.

## Peru

Peru's progress in carrying out the recommendations of its truth commission, which reported in August 2003 on human rights violations committed during the country's twenty-year internal conflict (1980-2000), has been disappointingly slow. Movement toward prosecuting state officials responsible for the worst human rights violations has been obstructed by military courts. Civilian prosecutors have advanced significantly in only a small number of cases.

The inefficiency and inaccessibility of Peru's justice system, coupled with local government corruption and lack of transparency, have contributed to outbreaks of violence in rural areas, such as the lynching of a controversial mayor. Police use lethal force unjustifiably in dealing with public protests, sometimes with fatal consequences. Longstanding problems like torture and inhumane prison conditions continue to give cause for concern. Journalists in provincial towns and cities are vulnerable to physical attack and intimidation for criticizing local authorities.

### *Confronting the Past*

Military courts insist on retaining jurisdiction over cases in which military personnel are implicated, a major obstacle to justice. In June 2004, the prosecutor investigating the "disappearance" and extrajudicial execution in 1992 of nine students and a teacher from the University of La Cantuta stated that military courts should have jurisdiction in the trial of Gen. (Rtd.) Nicolás Hermoza Ríos, who was army commander at the time of the crime. In August 2004 the Supreme Council of Military Justice, Peru's highest military tribunal, affirmed its prior ruling in August 1994, acquitting Hermoza, another military official, and former intelligence chief Vladimiro Montesinos of the crime. The following day, the Constitutional Court ruled that Peru's Constitution did not permit violations of human rights committed by military personnel to be judged in military courts. Human rights lawyers are now pressing for the Cantuta case to be reopened in the ordinary courts.

In other cases, bureaucratic inefficiency, insufficient resources, and a lack of skilled investigators have contributed to delays. For example, a protracted investigation into circumstances of the 1986 prison massacre of El Frontón, which began in October 2002, continues to face serious difficulties two years later. Human rights lawyers representing relatives of the 122 prisoners who died in the massacre have questioned the identification of twenty-six bodies carried out by the Medical Legal Service (SML). Due to these delays, as of November 1, 2004, the prosecutor had yet to open a criminal investigation.

The special prosecutor's office mandated to investigate 159 cases of "disappearance" under a friendly settlement with the Inter-American Commission on Human Rights, as well as forty-three cases referred

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to it by Peru's truth commission, has filed charges in only five cases. None of the defendants is currently in detention. A local prosecutor in Junín charged General Pérez Documet, then military chief of Junín province, with the abduction and torture in 1991 in Huancayo of Luis Alberto Ramírez Hinostroza. Ramírez subsequently received repeated death threats and, in August 2004, was shot and wounded by unidentified assailants close to his home.

Another prosecutor charged with investigating human rights violations committed during the government of President Fujimori (1990-2000) has made greater progress. More than forty former agents of the Colina group, a death squad responsible for "disappearances" and extrajudicial executions in the early 1990s, are currently detained awaiting trial.

### ***Local Corruption and Access to Justice***

Although Peru is largely free of the political violence which wracked the country in the 1980s, there were serious outbreaks of violence in 2004 when irate townspeople vented their grievances against controversial local authorities, or when supporters of the authorities attacked critics. In a report published in September 2004, Peru's national human rights ombudsman named seventy-seven municipalities affected by conflicts between townspeople and local governments. In April 2004, a furious mob lynched Cirilo Robles, the mayor of Ilave, Puno, who was accused of corruption. Another government official was seriously injured. During the same month, men armed with planks, machetes, and other weapons attacked townspeople in Lagunas, on the Peruvian Amazon, injuring more than forty, some seriously. The townspeople had surrounded the town hall to prevent the mayor from evading an accounting audit. Local government corruption and the failure of the Peruvian justice system to investigate effectively allegations of corruption and abuse of power were contributory factors in such outbreaks of violence.

### ***Use of Excessive Force to Quell Demonstrations***

According to the nongovernmental National Human Rights Coordinating Group, eleven demonstrators have died as a result of excessive use of lethal force by the police and army since the government of President Toledo took office in 2000. In October 2004, members of the national police shot and killed two coca growers in San Gabán, Puno who were protesting the government's failure to pay coca producers for the cultivation of alternative crops. Eight others suffered gunshot wounds.

### ***Torture and Prison Conditions***

Criminal suspects held for interrogation in police stations are frequently tortured. Conditions in some prisons continue to be harsh. The Peruvian nongovernmental human rights group COMISEDH (Comisión de Derechos Humanos) documented thirty-three cases of torture between January and November 2004. Nine of the victims died.

Human rights groups have urged the government to close down the remote, high-altitude prisons of Challapalca, in Tacna, and Yanamayo, in Puno. After a visit to Challapalca prison in August 2002 the

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Inter-American Commission on Human Rights published a damning report stating that conditions there were inhumane, and that among other physical abuses new arrivals had been beaten and tortured with electric prods. So far, the Peruvian government has failed to implement the commission's long-standing recommendation that the prison be closed, although the number of prisoners held there has been reduced. About eighteen were still being held there as of November 2004.

### ***Attacks on Journalists***

Journalists and radio commentators in Peru's provinces are vulnerable to physical attack, intimidation, and harassment for criticizing local authorities. This pattern of abuse has been constant for many years and shows the precariousness of respect for press freedom in many Peruvian cities. In February 2004, Antonio De La Torre Echeandía, a journalist for Radio Orbita, was stabbed to death by two men who attacked him with knives while he was returning from a party in the town of Yungay. A few days earlier, De la Torre had broadcast accusations against local government officials. In March, the mayor, who was suspected of having ordered the assassination, was arrested and detained in the Huaraz prison. However, police delayed carrying out arrest warrants against two others implicated in the murder, including the mayor's daughter. In September, journalist César Castro Cano was stabbed and wounded in Cusco, where he had been investigating alleged mismanagement by a local government official.

## Venezuela

Venezuelan democracy passed an important test in August 2004 when it held, in a lawful and peaceful manner, a national referendum to determine whether President Hugo Chávez should remain in office. According to election authorities and international observers, a solid majority of Venezuelans voted in favor of the president's continued tenure. But President Chávez and his supporters in the National Assembly continue to take steps to undermine the independence of the country's judiciary and to threaten freedom of the press.

The country's political polarization has diverted attention from other pressing human rights issues, including a longstanding problem of police abuse. Extrajudicial executions of criminal suspects by both state and municipal police forces are common and all too often go unpunished. Cases of torture continue to be reported. Violence and anarchy prevail in many Venezuelan prisons. Refugees from neighboring Colombia, in areas close to the border, face legal insecurity, difficult living conditions, and sometimes threats to their lives.

### *Independence of the Judiciary*

In May 2004, President Chávez signed a court-packing law that expands the number of Supreme Court justices from twenty to thirty-two. Although the new justices had not been appointed at this writing, the new law allows the governing coalition to use its slim majority in the legislature to obtain an overwhelming majority of seats on the country's highest court. The law also gives the governing coalition the power to remove sitting justices by nullifying their appointments.

A political takeover of the Supreme Court would compound the damage already done to judicial independence by policies pursued by the Court itself. The Court, which has administrative control over the judiciary, has failed to grant 80 percent of the country's judges security of tenure, which is an essential ingredient of judicial independence. In March 2004, three judges were summarily fired after they ordered the release of people detained during anti-government protests.

### *Freedom of the Press*

Venezuela has a vigorous and uninhibited media. Indeed, as part of the often heated and acrimonious debate between supporters of the government and its opponents, members of the media have been able to express strong views without restriction. Private television companies have often adopted blatantly partisan positions, airing news and debate programs extremely hostile to the Chávez government. In response, many journalists working for media that support the opposition have been subject to

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aggression and intimidation by government supporters. To a lesser degree, journalists working for media sympathetic to the government have also faced intimidation.

While journalists have a professional responsibility to be objective in their reporting, it is not the job of government to police such professional standards. On the contrary, the government has an obligation, no matter how critical or partisan the reporting, to defend press freedom by vigorously prosecuting perpetrators of attacks and acts of intimidation. In the majority of cases, the Chávez government has not done so.

In October 2004, the National Assembly moved to pass a government bill on the “social responsibility” of radio and television stations that would impose excessive restrictions on the content of these media. The draft legislation would introduce an array of restrictions on broadcasting content that, if enforced rigorously, would infringe upon basic norms of free expression. Under the guise of protecting children from crude language, sexual situations, and violence, the proposed law would subject adults to restrictive and puritanical viewing standards. The proposed law also contains loosely-worded rules on incitement to violence and threats to public order that could penalize the stations’ legitimate expression of political views.

In addition, the draft law provides for a regime of drastic punishments for infractions the likely effect of which would be to encourage pervasive self-censorship. If found responsible for infractions, the stations could be fined, ordered to suspend transmissions, or even have their broadcasting licenses revoked.

### ***Police Killings, Torture, and Ill-treatment***

Police continue to carry out extrajudicial executions of criminal suspects. According to the respected nongovernmental human rights group PROVEA, 130 people, most of them young male criminal suspects, were victims of extrajudicial execution by national, state, and municipal police forces between October 2002 and September 2003. About one in ten of the victims were children under the age of eighteen. In many cases, the police covered up executions by asserting that the victims were killed in exchanges of gunfire, despite contrary testimony by witnesses. Generally, the police responsible for killings escaped justice.

In early February and late March 2004, National Guard and police officers beat and tortured people detained during and after protests in Caracas and other Venezuelan cities. After demonstrators clashed with National Guard units and Chávez supporters, leaving thirteen people dead and more than one hundred wounded, security forces detained more than three hundred civilians. Detainees reported being beaten during and after their arrests with nightsticks, with the flat side of sabers, and with helmets, gunstocks, and other articles. Some reported that their captors hurled tear gas bombs into the closed vehicles in which they were seated, causing extreme distress, near suffocation, and panic, while others described how the powder from tear gas canisters was sprinkled on their faces and eyes, causing burns and skin irritation. Detainees also reported being shocked with electric batons while in custody and

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defenseless. The alleged abuses appeared to enjoy official approval at some level of command in the forces responsible for them.

### ***Prison Conditions***

Conditions in Venezuelan prisons are cruel, inhuman, and degrading. Overcrowding is a chronic problem and prisons are virtually controlled by armed gangs. Prison riots and inmate violence claim hundreds of lives every year. In 2003 PROVEA estimated the prison murder rate to be forty times the national average.

### ***Border Security and the Right to Refugee Status***

Lawlessness prevails along parts of Venezuela's 1,300 mile border with Colombia. Colombian paramilitaries and guerrillas, as well as Venezuelan armed groups and criminal gangs, appear to be responsible for execution-style killings, but so far such groups have operated with near-complete impunity.

According to the United Nations High Commissioner for Refugees (UNHCR), 2,691 people had applied for refugee status in Venezuela by summer 2004. But UNHCR officials say that the real number of refugees is far higher since most try to blend undetected into the population. In February 2004, Venezuela began using a newly-established asylum application process and in June began providing identification documents to recognized refugees to enable them to exercise their rights, including to work, study, and obtain medical treatment.

The Venezuelan National Refugee Commission granted temporary protection status to 292 indigenous Wayúu who fled to Venezuela in May 2004 following armed violence in their community of Bahía Portete, in La Guajira, Colombia. It was the first time that the Venezuelan government has granted this status. The temporary protection is valid for ninety days and renewable according to the security and protection needs of the group. This status means they can remain in Venezuela and get government assistance through the National Civil Protection Office.

### ***Key International Actors***

The Organization of American States (OAS) played a key role in brokering the agreement between the government and the political opposition to find a peaceful and constitutional solution to the political crisis, helping set the stage for the August 2004 recall referendum. The U.S.-based Carter Center, along with the OAS, provided international observers to help ensure that the referendum took place without serious incident or disruption by partisans on either side. Both the Carter Center and the OAS validated the official results of the referendum, concluding that President Chávez had won a legitimate victory.

UNHCR organized a series of training workshops for the army units that patrol the border and provided officers with instruction on refugee rights, international refugee law, and the role of the military in

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refugee protection. UNHCR also provided the National Refugee Commission with continuing technical assistance, training, and expertise.