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## U.S. Department of State

### Venezuela Country Report on Human Rights Practices for 1998

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#### VENEZUELA

Venezuela is a republic with an active multiparty democratic system, a bicameral congress, and a popularly elected president. Former president Rafael Caldera was elected in 1994 with the support of a coalition of small and medium-sized parties. The Congress comprised 20 political parties, although two traditional parties dominated it until November. In December Hugo Chavez Frias, the leader of an attempted coup in 1992, was elected President with 57 percent of the vote after campaigning on a promise of radical reform, including constitutional change. Chavez's election was the result of deep popular dissatisfaction with the traditional parties and frustration with the country's continued economic crisis. As a result of the November regional elections, the traditional Democratic Action (AD) Party remained the largest party in the National Congress, but Chavez's Fifth Republic Movement (MVR) Party became the second largest. These elections were held successfully under the 1997 Election Law, which provided for increased electoral transparency through automation of the electoral process and the inclusion of citizens to monitor the voting process at the election tables. The judiciary is legally independent, but judges are subject to influence.

The security apparatus comprises civilian and military elements, both accountable to elected authorities. The Justice Ministry controls the Judicial Technical Police (PTJ), which conducts most criminal investigations. The Interior Ministry controls the State Security Police (DISIP), which is primarily responsible for protecting public officials and investigating cases of subversion and arms trafficking. The General Directorate for Military Intelligence, under the Defense Ministry, is responsible for collecting intelligence related to national security and sovereignty. The national guard, an active branch of the military, has arrest powers and is largely responsible for guarding the exterior of prisons and key

government installations, maintaining public order, monitoring frontiers, conducting counterdrug operations, and providing law enforcement in remote areas. It also supplies the top leadership for the Metropolitan Police, the main civilian police force in and around Caracas, and for various state and municipal police forces. Both police and military personnel were responsible for human rights abuses.

Venezuela has abundant natural resources and its per capita gross domestic product (GDP) is \$3,838. However, income is unevenly distributed and 70 percent of the population live at or below the poverty line. Oil accounted for 28 percent of GDP, 61 percent of government revenues, and 77 percent of the country's exports in 1997. The decline in world oil prices led the Government to make successive budget cuts. Public sector iron, steel, aluminum, and petrochemical products constitute one-third of the country's non-oil exports. The Government's third attempt to privatize the aluminum industry failed in September when the only prequalified bidder withdrew.

The Government's human rights record continued to be poor in certain areas and includes extrajudicial killings of criminal suspects by the police and military, torture and abuse of detainees, failure to punish police and security officers guilty of abuse, arbitrary arrests and excessively lengthy detentions, illegal searches, and corruption and severe inefficiency in the judicial and law enforcement systems. Overcrowding and violence in the prisons were so severe as to constitute inhuman and degrading treatment. The Government maintained some restrictions on freedom of movement. Constitutional provisions for citizens' rights apply nationally, except in some border areas where guerrilla activity, drug trafficking, and kidnaping were a continuing problem. In these areas, suspension of freedom from arbitrary arrest and detention and search without warrant, as well as freedom to travel, have remained in effect since June 1994. Violence against women, abuse of children, discrimination against the disabled, and inadequate protection of the rights of indigenous people continue to be problems. Vigilante justice is also a problem.

The Government made limited progress in addressing these problems since the formulation of a national human rights agenda at a July 1997 high-level symposium held with nongovernmental organizations (NGO's). The newly created National Police Committee monitors police conduct and receives complaints of misconduct. The new human rights office in the Defense Ministry trains personnel in basic human rights norms. In December 1997, Congress enacted the Organic Criminal Procedures Code (COPP), which provides for open public trials with oral proceedings and jury participation. On March 25, three provisions of the COPP entered into force: Elimination of the secret stage of the trial, establishment of the right to plead guilty, and the ability to make reparation agreements. These three elements were designed to reduce the judicial backlog before the rest of the COPP reforms go into effect, scheduled for July 1999. In August Congress passed legislation that outlaws domestic violence.

## **RESPECT FOR HUMAN RIGHTS**

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

#### **a. Political and Other Extrajudicial Killing**

There were no reports of targeted political killings, but extrajudicial killings, primarily of criminal suspects, by the security forces continued. The Venezuelan Program of Action and Education in Human Rights (PROVEA), a highly respected nongovernmental human rights organization, documented 104 extrajudicial killings from October 1997 through September 1998, a decline from the 151 cases documented between October 1996 and September 1997 of killings. These involved summary executions of criminal suspects, indiscriminate or excessive use of force, and death resulting from mistreatment while in custody. According to PROVEA, the state police forces were responsible for 36

of the killings; the metropolitan police of the Federal District, 12; the PTJ, 12; the national guard, 12; the municipal police forces, 19; the armed forces, 8; and the DISIP, 5.

The perpetrators of extrajudicial killings act with near impunity, as the Government rarely prosecutes such cases. The police often fail to investigate crimes allegedly committed by their colleagues and characterize incidents of extrajudicial killings as "confrontations," even though eyewitness testimony and evidence strongly indicate otherwise. In addition, the civilian judicial system remains highly inefficient and sometimes corrupt, and military courts often are biased in favor of members of the armed forces accused of abuse. A pretrial summary phase called "nudo hecho," which is used in cases involving public officials and is conducted in secret, often shields members of the security forces from prosecution, since cases can languish in that phase for several years. In the small number of prosecutions in which the courts convict perpetrators of extrajudicial killings and other abuses, the sentences issued are frequently light or the convictions are overturned on appeal. Unlike common criminals, members of the security forces charged with or convicted of crimes rarely spend much time in prison.

Security forces committed a number of killings in prisons, and 460 prison inmates died as a result of riots, fires, and other harsh conditions in prison facilities (see Section 1.c.).

In January the Metropolitan Police detained Harold Michael Zambrano Gonzalez and Arturo Jose Hernandez Ramirez without explanation. Later they both appeared at a hospital with gunshot wounds, from which both died. The police claimed that the two men belonged to a criminal gang that had attacked them. Family members and witnesses denied that version.

In May Carlos Alberto Colmenares Garcia, Richard David Palacios Garcia, and Avelino Rafael Vega died after the Sucre municipal police opened fire on their car. The police claim that the three men had weapons in their possession and had tried to flee when the police tried to pull them over. Witnesses said that the three men had pulled their car over and had not even left the car before the police opened fire. Two of the men died from wounds suffered during this confrontation. Witnesses claim that the third, Palacios, only had suffered injuries to his arms. However, the police delivered him to the hospital, dead, with gunshot wounds on his arms and chest. The PTJ was still investigating the incident at year's end.

In January 1997, members of the metropolitan police arrested and led away two young men in Guatire, Miranda state. Witnesses heard gunshots and later found one of the men, Freddy Rafael Toro Ramirez, dead from bullet wounds. The case was still being investigated at year's end.

In August a court sentenced the two off-duty policemen charged with the 1996 shooting death of Barton Wilder to 15 years each for intentional murder in the first degree. One of the officers, who was drunk, had fired into a group of roller-bladers, killing Wilder and injuring another person. The two policemen appealed the sentence.

The four PTJ members imprisoned for the 1995 execution-style killing of 21-year-old Hector Rojas still had not been tried at year's end.

There were no prosecutions or new information surrounding the 1996 death of 25 inmates from a fire started by prison guards at La Planta prison, the 1994 discovery of a common grave in the Sierra de Perija region of Zulia state, the 1992 killing of at least 63 prisoners at Catia prison, or the 1992 killing of reporters Maria Veronica Tessari and Virgilio Fernandez by members of the security forces.

Minimal progress was made towards resolving some 300 alleged extrajudicial killings by security forces during and after the civil unrest of early 1989. There has been only one prosecution: a police officer was

found guilty in 1991 of killing 18-year-old Eleazar Ramon Mavares, who was shot by security force members some 20 times at close range. The courts released the officer from prison 1 year later. In negotiations held with the Inter-American Commission on Human Rights (IACHR) in 1995, the Government agreed to initiate a new investigation of the Mavares case, punish those responsible, and provide indemnities to the victim's family, later determined to be \$30,000 (15 million bolivars). The IACHR gave Venezuela until April 1997 to comply with the agreement, and in October 1997 it again called on the Government to investigate this case, provide compensation to the victim's family, and bring to justice those responsible for the death. By the end of 1998, the Government had complied partially; it had investigated and made a payment, but it had not punished any of those responsible. In 1995 the Committee of Family Members of Victims of the Unrest referred 45 cases surrounding the 1989 killings to the IACHR, asserting that the Government had not ensured justice. In December the IACHR notified the Government that it would issue an opinion on the cases early in 1999.

In September 1996, the Inter-American Court of Human Rights awarded \$722,332 in damages to two survivors and the families of 14 fishermen killed in 1988 by military and police officers near the border town of El Amparo, Apure state. The Government began to make payments in September 1997 but had not finished paying the award by the end of 1998. The military originally claimed that the deaths were the result of military action taken against Colombian guerrillas, but the Government later acknowledged culpability and agreed to pay indemnities to the survivors and the victims' families. In August 1994, a military tribunal had overturned the conviction of 16 defendants in the case despite strong evidence that they had participated in a planned ambush.

Mob lynching of supposed criminals is a problem. The victims are almost always known criminals who prey on residents of poor neighborhoods. Between October 1997 and September 1998, PROVEA recorded 2 lynchings and 24 attempted lynchings. In addition, vigilante groups known as "brigadas" continued to increase their activity in various parts of the country such as Lara state.

#### b. Disappearance

There were no reliable reports of persons who disappeared after being detained by the police or the armed forces.

There were no developments in connection with the 1995 disappearances of Julio Rafael Tovar, Fidel Ernesto Croes Aleman, Luis Martin Sanchez Vargas, Juan Daniel Monsalve, or Jose Ramos; or the 1994 disappearances of Elsidia Ines Alvarez, Benjamin Vasquez, and Fidel A. Sanabria. Members of the security forces reportedly had detained each of them prior to their disappearances.

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

The law prohibits torture, but credible human rights groups report that the security forces continue to torture and abuse detainees physically. This abuse most commonly comprises beatings during arrest or interrogation, but there have been incidents when the security forces used near suffocation and other forms of torture that leave no telltale signs. Most victims come from the poorest and least influential parts of society.

PROVEA documented 21 cases of torture from October 1997 through September 1998. A large number of cases were never reported because the victims feared retribution. According to PROVEA, the DISIP was responsible for 4 of the reported torture incidents; the PTJ, 4; the armed forces, 5; the state police forces, 5; and the national guard, 3. Some of these cases were in border areas where constitutional protections were suspended.

Torture, like extrajudicial killings, continues because the Government does not ensure the independent investigation of complaints needed to bring those responsible to justice. In addition to lack of vigor by the judiciary, the fact that the Institute of Forensic Medicine is part of the PTJ also contributes to a climate of impunity, since its doctors are unlikely to be impartial in their examinations of cases that involve torture by members of the PTJ. Very few instances of torture have resulted in convictions.

Some 50 Baruta municipal police officers, in search of the killer of a colleague, attacked residents of the poor working class Caracas suburb of Petare in the predawn hours of December 25, 1997. The police fired shots, broke into homes, and beat, shot at, and threatened with death residents in their path. The operation resulted in 43 persons injured, 8 of whom had gunshot wounds. At year's end, a criminal court was still investigating the incident. The chief of the Baruta municipal police also ordered an internal investigation and promised to punish any officers guilty of brutality. However, the victims declared that responsibility for the incident had not been determined nor had any compensation been made.

In August national guardsmen used tear gas and plastic bullets to disperse a group of Pemon Indians, who were blocking access to a construction site (see Section 5).

In the Colombian border area where some constitutional protections have been suspended, the national guard and army act with near impunity. The Support Network for Justice and Peace has documented many human rights abuses in this region by amassing detailed witness testimony. There has been no resolution of the border-area cases from 1995, in which members of the military, in separate incidents in reaction to guerrilla attacks, tortured 23 rural workers near Cararabo and 19 peasant farmers in La Victoria, both in Apure state.

Throughout the summer, a rash of small pipe bombs, one of which contained political pamphlets, were set off in several government buildings, including the Ministry of Justice. No one was hurt in any of the incidents, no one ever claimed responsibility, and no responsibility was ever assigned.

Prison conditions continued to be extremely harsh due to underfunding, poorly trained and corrupt prison staff and national guard members, and overcrowding so severe as to constitute inhuman and degrading treatment. As of July, the 32 prison facilities administered by the Ministry of Justice held 24,929 inmates, of whom the courts had sentenced only 8,468.

In July the Ministry of Justice reported that the prison system was 54 percent above its planned capacity. Some prisons held three to five times the number of prisoners for which they were designed. For example, Sabaneta prison in Maracaibo was designed for 800 prisoners but holds 2,574, and La Planta prison in Caracas was designed for 400 but holds 1,584. The Justice Ministry claims that since July overcrowding declined due to the release of prisoners who have benefited from the three provisions of the COPP that entered into force on March 25 and the expansion of the prison system. In January the authorities opened a prison in Merida that has a capacity of 839; in August they reexpanded the capacity of El Dorado prison in Bolivar from 200 to 1,796; and in December, a prison in Lara opened with a capacity of 877. However, 3 months after the reopening of El Dorado prison, considered a major step in addressing the problem of overcrowded and violent prisons, conditions in the prison deteriorated significantly and on December 8, prisoners started a major riot which resulted in 10 deaths and 83 injuries. Overall, violence in the prisons increased compared with 1997.

In letters written to the Justice Minister in December 1997, the Prosecutor General called attention to excessive use of force by prison guards, inadequate medical care for prisoners, and failure to meet the nutritional needs of inmates with the food provided by prison kitchens. Inmates often have to pay guards as well as each other to obtain necessities such as space in a cell, a bed, and food. Because of its low

quality and insufficient quantity, only about 30 percent of inmates consume prison food. Most prisoners get their food from their families, from paying prison guards, or from bartering with other prisoners. The Justice Ministry is experimenting with the possibility of privatizing prison food services. Guns, knives, and illegal drugs are easily smuggled into most prisons, and violence among prisoners is very common.

PROVEA documented 460 deaths from violence in the prisons from October 1997 through September 1998. Other prisoners perpetrated the majority of killings, but eight inmates were killed by the authorities: two by prison guards under the Ministry of Justice, two by prison directors, and four by the national guard. Hundreds more died as a consequence of poor sanitary conditions, poor diet, and inadequate medical care. In Tocuyito, the largest and most violent prison, there were 70 deaths from violence in the period between October 1997 and September 1998. Although the Government repeatedly acknowledged the poor state of the prisons and stated its intention to improve the situation, funding for prisons remained extremely low, preventing significant improvement in most penitentiaries.

There were no prosecutions of public officials for the corruption and neglect that contributed to the January 1994 riot at Sabaneta prison, in which inmates killed 105 fellow prisoners and wounded scores of others.

The Government permits prison visits by human rights monitors.

#### d. Arbitrary Arrest, Detention, or Exile

In 1995 the Government reinstated the constitutionally protected freedom from arbitrary arrest and detention in all but 16 municipalities along the Colombian border where guerrilla activity, drug trafficking, kidnaping, and extortion were a continuing problem. However, the security forces arbitrarily arrested and detained citizens throughout the country.

Outside the military theaters of operation, especially during anticrime sweeps in impoverished sections of major cities, there continued to be arbitrary detentions by the Metropolitan Police, the DISIP, the national guard, and the PTJ. The authorities detained persons during the sweeps for up to 2 days while they checked criminal records; most were released without charges. PROVEA documented 12,308 persons detained in sweeps from October 1997 through September 1998. The DISIP also occasionally detained political radicals who had committed no crimes.

The law provides for the right to judicial determination of the legality of detention; however, the police may hold persons without an arrest warrant for up to 8 days, and the courts may hold them for up to an additional 8 days in court custody. In many cases, the police abused detainees physically and psychologically during the initial 8-day period and illegally held them incommunicado. During the second 8-day period a judge may, on the basis of the police investigation, order either the formal arrest or the release of the suspect. Arbitrary arrests are common, and the authorities sometimes exceed the time limits for holding suspects. Prison officials often illegally demand payment from prisoners for transportation to judicial proceedings at which formal charges are made. Those who are unable to pay often are forced to forgo their judicial hearings.

Forced exile is illegal and is not practiced.

#### e. Denial of Fair Public Trial

The civilian judiciary is legally independent, but judges are subject to influence from a number of sources.

The judicial sector consists of the Supreme Court, which is the court of final appeal; the Prosecutor General, who provides opinions to the courts on prosecution of criminal cases and acts as public ombudsman to bring public employee misconduct or violations of the constitutional rights of prisoners or accused persons to the attention of the proper authorities; the Ministry of Justice, which manages the national police force and prisons and files complaints in criminal courts; and the Judicial Council, which oversees the lower courts as well as the selection and training of judges. The lower court system includes district and municipal courts as well as trial and appeal courts that deal with civil and criminal matters.

When the COPP goes into effect, if members of the security forces (with the exception of the military) are prosecuted, they would stand trial under the new open public trial system. Members of the military would be tried under the military court system, which also has adopted most of the reforms in the COPP.

Military courts can try civilians in cases of armed subversion and whenever armed forces members are involved. Military courts are subject to a requirement for a speedy trial and a statute of limitations similar to that of civilian courts. Persons convicted by a military court have the same right of appeal to the Supreme Court as do those convicted by the civilian system. However, military courts are significantly different from civilian courts in that by law the President must review every case after the initial secret investigation stage and decide if that case is to go to trial. In addition, the Supreme Court selects military judges from a list of candidates provided by the Minister of Defense, a process that links the careers of military judges to the high command. The tendency of military judges to be responsive to the views of their military leaders, to maintain procedural secrecy, and to act slowly in high-profile cases in which the military is implicated make impartial or timely trials for defendants unlikely. As a result, military offenders evade punishment for extrajudicial killings and other human rights abuses.

The law provides for the right to a fair trial and considers the accused innocent until proven guilty in a court. However, the presumption of innocence has been ineffective in the justice system, which is overburdened and inefficient, suffers from widespread corruption, and lacks public credibility. Judges are underpaid, poorly disciplined, and susceptible to political influence. The judicial process is paper intensive, requiring the costly and time-consuming production of voluminous reports at every stage by judges, attorneys, and witnesses. Case backlogs and lengthy pretrial detention averaging 4 years are the norm.

In December 1997, Congress passed the new Organic Criminal Procedures Code (COPP) that is to introduce for the first time open, public trials with oral proceedings and participation by juries. The new adversarial system of justice is expected to give practical effect to the presumption of innocence. Three sections of the COPP went into effect on March 25: Elimination of the "secreto sumarial" or secret stage of the trial, establishment of the right to plead guilty, and the ability to make reparation agreements. These sections were designed to clear out the overwhelming backlog of cases before the code goes into full effect in July 1999.

The law provides for public defenders for those unable to afford an attorney, but there are not enough to handle the caseload. The Judicial Council reported that there are 159 public defense attorneys for the entire country.

There were no reports of political prisoners.

#### f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

Constitutional provisions prohibit arbitrary interference with privacy, family, home, and

correspondence. However, from June 1994 to July 1995, the Government suspended the constitutional protection of freedom from search without a warrant, along with other freedoms. This suspension remained in effect in some border areas throughout 1998. Even after reinstatement of the provision in urban areas, security forces often conducted searches of homes without warrants, especially during anticrime sweeps in impoverished neighborhoods. In recent years, there have been some complaints, especially by human rights monitors, of illegal wiretapping by the security forces.

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

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

The Constitution provides for freedom of speech and of the press, and the Government generally respects these rights in practice. Individuals criticize the Government publicly.

The charge of criminal defamation sometimes was used against the media to limit coverage of sensitive issues. In July 1997, a judge in Guarenas, Miranda state, ordered the arrest of the publisher of the Caracas newspaper El Mundo, Luis Oscar Pont, and of one of its editors, Miguel Arcangel Calderon, because a PTJ official had accused them of criminal defamation. This case was closed at the end of 1997. Pont was not detained and the Supreme Court and the Third Superior Judge of Miranda later ruled in favor of Pont. However, Calderon spent 6 days in prison and was released only on condition that he not comment on the case.

The print and electronic media are independent. However, a 1994 law forbids persons without journalism degrees to practice the profession and requires journalists to be members of the National College of Journalists. Media owners, acting as the Venezuelan Press Bloc, brought a case to the Supreme Court in November 1995 challenging the law as a violation of the freedom of expression provided for in the Constitution and international agreements on human rights that have the force of law. The Court had not ruled by year's end.

The Government respects academic freedom.

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

The Government generally respects the constitutional provision for freedom of peaceful assembly. Public meetings, including those of all political parties, generally are held unimpeded. The Government requires permits for public marches but does not deny them for political reasons.

However, as in earlier years, some demonstrations turned violent and were quelled by security forces. According to PROVEA, 6 persons were injured during demonstrations and 118 detained from October 1997 through September 1998. The student and teaching sectors carry out the largest number of protests and the largest number of their demonstrations end up being quelled by security forces. In May the police dissolved a teachers' march in Barquisimeto on the grounds that it was not authorized, even though the teachers had submitted a request within the requisite 48 hours and had not received a reply. The police used dogs and, as a result, five marchers suffered bites.

The Government respects the constitutional provision for freedom of association. Professional and academic associations operate without interference.

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

The Constitution provides for freedom of religion, provided that a faith does not threaten public order or violate good custom. The authorities respect this right in practice.

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

The Constitution provides for the right of citizens and legal residents to travel within the country and to go abroad and return. However, the Government can suspend the freedom to travel, as it did from June 1994 to July 1995. Although the Government generally respects these rights, freedom to travel remains suspended in some border areas and is restricted through the use of curfews. The Government also restricts foreign travel for persons being investigated for criminal activities.

The law includes provisions for granting refugee and asylee status in accordance with the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol. However, there are no legal provisions for the determination of refugee status. Instead, the Government allows the Venezuelan Bishops' Conference to coordinate with the United Nations High Commissioner for Refugees (UNHCR) in assisting refugees. Since 1990, the UNHCR registered 2,032 asylum-seekers, and of these, 1,630 persons were granted refugee status by the UNHCR. In 1998 there were a total of 158 persons still in the country who had been granted refugee status. The Government provides first asylum and granted it to three persons in 1998.

There were no reports of the forced return of persons to a country where they feared persecution.

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

The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right through periodic, free, and fair elections held on the basis of universal suffrage.

In December 1997, Congress passed a new election law to replace the previous antiquated and inefficient system for counting votes, which had led to numerous and—in some cases—credible allegations that the political parties that dominated electoral councils committed fraud. The law contained three major reforms: Removal of political party representatives from all electoral organs, mechanization of the voting process, and prohibition of campaign financing by anonymous sources. Although the newly established National Electoral Council was the subject of controversy concerning its ability to implement the new law effectively, the smoothness of the electoral process during the December 6 presidential election and the rapid reporting of the results were evidence of the electoral reform. Most legislators from all levels of government continued to be elected from party lists (which, under the new law, are supposed to have at least 30 percent women). The top election officials, although not party members, continued to be selected by negotiation among the political parties in Congress.

Women and nonwhites participate fully in government and politics but remain underrepresented in senior leadership positions. A bicameral Congressional Committee for Women's Rights focused on promoting political office-holding opportunities for women. In the November 8 regional elections, women won 26 seats as deputies in the 207-member lower house of Congress (whose president is a woman), and 5 seats in the 53-member Senate. They held 3 of 27 ministerial positions in Caldera's Cabinet.

Indigenous people traditionally have not been integrated fully into the political system due to their limited knowledge of politics, low voter turnout, geographic isolation, and fewer economic and educational opportunities. Few indigenous people are in the Government, and only one is in Congress as an alternate deputy.

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

A wide variety of human rights groups generally operate without government restriction, investigating and publishing their findings on human rights cases. Both international and local human rights organizations were provided ready access to the prison system. However, government officials were critical of some human rights groups, accusing them of seeking to discredit the State and undermining the country's image. One human rights group reported receiving death threats while investigating human rights abuses committed by the police.

In July 1997, the Government held its first formal meeting with NGO's to begin to formulate a national human rights agenda. The Interior, Justice, and Family Ministers took an active part in the discussion of some 40 proposals dealing with preventive detention, prison conditions, and other human rights problems. The Interior Minister announced the creation of a National Police Committee to monitor police conduct, receive complaints, and ensure implementation of disciplinary measures. In September 1997, the Minister of Defense created a human rights office to promote respect for human rights in the armed forces. During the year, NGO's complained that the Government had done little to advance any of the proposals discussed at the meeting.

In July presidential candidates met with human rights NGO's to answer questions about their platforms.

#### **Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status**

The law prohibits discrimination based on ethnic origin, sex, or disability. However, the Government does not safeguard adequately the rights of indigenous people, protect women against societal and domestic violence, or ensure disabled people access to jobs and public services. Very few resources are devoted to children's welfare; young delinquents are locked in institutions that are unsafe.

##### **Women**

Women face substantial institutional and societal prejudice with respect to rape and domestic violence. The law makes rape extremely difficult to prove, requiring at a minimum medical examination within 48 hours of the violation. A provision in the Penal Code provides that anyone guilty of rape can avoid punishment if, before sentencing, he marries the victim. Few police officers are trained to deal responsibly with rape victims. However, women's organizations assert that such figures are very low and do not accurately portray the problem of rape and sexual assault. They claim that many victims do not report the incident or press charges due to societal pressure and their own feelings of guilt.

Domestic violence against women is very common and has been aggravated by the country's economic difficulties. Over 14,000 cases of domestic violence were reported to the authorities in 1997. According to local monitors, the police generally are unwilling to intervene to prevent domestic violence, and the courts rarely prosecute those accused of such abuse. In addition, poor women generally are unaware of legal remedies and have little access to them. In August Congress passed the Law Against Violence toward Women and Children. It requires the police to receive reports of domestic violence and obligates hospital personnel to advise authorities of abuse.

Women and men are legally equal in marriage. Women account for roughly half the student body of most universities, have advanced in many professions, including medicine and law, and gradually have surmounted many of the barriers to their full participation in political and economic life. Nonetheless, women still are underrepresented in the higher ranks of labor unions and private industry.

The Labor Code specifies that employers must not discriminate against women with regard to pay or working conditions, must not fire them during pregnancy or for a year after giving birth, must grant them unpaid leave and benefits for 6 weeks before the birth of a child and 12 weeks after, and must provide them with 10 weeks of unpaid leave if they legally adopt children under 3 years of age. According to the Ministry of Labor and the major labor federation, these regulations are enforced in the formal sector, although social security payments often are delayed.

The National Women's Council, an agency of the presidency with representation from the Ministries of Justice, Education, Family, Health, and Labor, in 1996 prepared a manual on violence against women and children, which includes information on where the victims might obtain assistance. There are a number of NGO's concerned with domestic violence, sex education, and economic discrimination. However, the recommendations of these groups have not been implemented widely by the police or other concerned governmental agencies.

## Children

The Government continued to scale back its expenditure on education, health, and social services. While the law provides for universal free education, about one-third of the Ministry of Education budget was dedicated to post-secondary education, leaving both primary and secondary education chronically underfunded. According to the United Nations Children's Fund, only 76.5 percent of eligible children enter the first grade. This means that over 750,000 children remain outside the educational system. In addition, the 1998 annual report of the Community Centers for Learning (CECODAP) stated that over 400,000 children are not eligible to receive government assistance, including public education, because their birth is not documented properly. The Government is attempting to remedy this problem with new regulations to standardize the registration of children's births.

According to CECODAP's study, 500,000 children, most under the age of 5, have an average of 2 episodes of gastroenteritis a year, a sickness that is the ninth leading cause of death in the country. A total of 40 percent of the population under the age of 17 suffer from malnutrition and 76 percent live in poverty. These conditions contribute to the increase in preventable diseases that are leading causes of infant mortality.

An increase in poverty has raised the level of stress within families and led to a rise in the number of abandoned children and to more child abuse. A survey by the National Institute for Minors in 1994 determined that 206,000 children were involved in illicit activities, principally begging but also petty theft, prostitution, and drug trafficking. Some 40,000 children were exploited sexually, according to a 1994 study. There were also reports of trafficking in children from other South American countries to work in Caracas as street vendors and housemaids.

The authorities in Caracas and several other jurisdictions tried to cope with the phenomenon of street children by imposing curfews for unsupervised minors. Children's rights advocates claim that curfews permit the police to act arbitrarily in detaining persons who have committed no crime. Because reform institutions are filled to capacity, hundreds of children accused of infractions are confined in jails where they are crowded into small, filthy cells, fed only once a day, and forced to sleep on bare concrete floors.

In October 1997, Amnesty International reported past incidents in which minors were subjects of extrajudicial killings and abuse, as well as deficiencies in law and practice with regard to the detention of children. In particular, the 1980 Minors' Protection Act requires them to be brought before a judge within 8 days of detention, but this may be extended to 3 months. In addition, security forces and law enforcement authorities often detain children together with adults.

Reports of child abuse are rare due to a fear of entanglement with the authorities and ingrained attitudes regarding family privacy. The overburdened judicial system, although very slow, generally ensures that in most situations children are removed from abusive households once a case has been reported. However, public facilities for such children are inadequate and have poorly trained staff.

### People With Disabilities

The physically disabled have minimal access to public transportation, and ramps are practically nonexistent, even in government buildings. According to local advocates, the disabled are discriminated against in many sectors, including education, health care, and employment.

In 1993 the Government passed the first comprehensive law to protect the rights of the disabled. That law requires that all newly constructed or renovated public parks and buildings provide access for the disabled. Among other important provisions, the law forbids discrimination in employment practices in the provision of public services. However, the Government did not make a significant effort to implement the new law, to inform the public of it, or to try to change societal prejudice against the disabled.

### Indigenous People

Although the law prohibits discrimination based on ethnic origin, members of the country's indigenous population frequently suffer from inattention to and violation of their human rights. Many indigenous people are isolated from modern civilization and lack access to basic health and educational facilities. High rates of cholera, hepatitis-B, malaria, and other diseases plague their communities. There are about 316,000 indigenous people in 28 ethnic groups, according to a special 1992 census.

The Constitution provides for special laws governing "the protection of indigenous communities and their progressive incorporation into the life of the nation." Nonetheless, local political authorities seldom take account of the interests of indigenous people when making decisions affecting their lands, cultures, traditions, and allocation of natural resources. As farmers and miners intrude on their habitat, indigenous communities are threatened by deforestation, water pollution, and the introduction of deadly diseases. Few indigenous people hold title to their land.

At year's end, the Supreme Court had not yet ruled on a lawsuit filed by environmental and indigenous organizations challenging a 1997 decree that permitted the expansion of legal mining activities in the Imataca Forest Reserve. The groups charged that only Congress can change the nature of the reserve, that there was an inadequate public review process prior to the change, and that expanded mining activities would adversely affect the health of the Warao, Arawako, Karina, Akawaio, and Pemon indigenous communities that inhabit the Imataca watershed area. In November 1997, the Supreme Court ordered the Government not to issue any new mining concessions in the Imataca reserve until the Court ruled on the constitutionality of the presidential decree.

The controversy over infrastructure development and the maintenance of traditional Indian lifestyles is most evident in Bolivar state, where the Pemon Indians protested the building of power lines in August. About 80 Pemons blocked access to a construction site, using bows and arrows against the national guard, and children as shields. The national guardsmen used tear gas and plastic bullets to disperse the Pemons. After capturing the leader, the national guard was able to negotiate a 48-hour truce.

The Yanomami, among the most isolated of the indigenous people, have been subject to persistent incursions into their territory by illegal gold miners. The miners have not only introduced new diseases

but social ills as well. In December 1996, a number of human rights organizations, acting on behalf of the Yanomami community of Haximu, petitioned the IACHR in connection with the 1993 massacre of 16 members of the community by Brazilian miners. The petition alleges that the Government failed in its obligation to protect the Yanomami and to seek appropriate punishment of the killers, who were released by the Brazilian authorities after 3 months' detention. In May the Government agreed to work with the NGO's under IACHR mediation to resolve the case. In September the army conducted an operation to dislodge illegal miners. At year's end, the matter remained unsettled.

## **Section 6 Worker Rights**

### **a. The Right of Association**

Both the Constitution and labor law recognize and encourage the right of workers to organize. The comprehensive 1990 Labor Code extends the right to form and join unions of their choosing to all private sector and public sector employees (except members of the armed forces). The Code mandates registration of unions with the Ministry of Labor, but it reduces the Ministry's discretion by specifying that registration may not be denied if the proper documents (a record of the founding meeting, the statutes, and the membership list) are submitted. Only a judge may dissolve a union, and then only for reasons listed in the law, such as the dissolution of a firm or by agreement of two-thirds of the membership.

One major union confederation, the Venezuelan Confederation of Workers (CTV), three small union confederations, and a number of independent unions operate freely. About 28 percent of the national labor force is unionized. The CTV's top leadership includes members of several political parties but the majority are affiliated with one of the traditional parties, Democratic Action. The CTV and the AD influence each other.

The law recognizes the right of public and private sector employees to strike. However, public servants may exercise it only if it does not cause "irremediable damage to the population or to institutions." The Labor Code allows the President to order public or private sector strikers back to work and to submit their dispute to arbitration if the strike "puts in immediate danger the lives or security of all or part of the population." During 1998 most strikes occurred among government employees such as university professors, teachers, judicial workers, telephone workers, and physicians in public hospitals and clinics. In the health sector, a series of strikes occurred beginning in May. In September doctors called a complete halt to medical attention, including emergencies, which lasted 17 days. The Government launched a media campaign against the doctors and announced punitive measures. The President eventually ordered them back to work and submitted the conflict to arbitration.

There are no restrictions on affiliation with international labor organizations, and many union organizations are active internationally.

### **b. The Right to Organize and Bargain Collectively**

The Labor Code protects and encourages collective bargaining, which is practiced freely. According to the code, employers must negotiate a collective contract with the union that represents the majority of their workers. The code also contains a provision stating that wages may be raised by administrative decree, provided that the Congress approves the decree. The law prohibits employers from interfering with the formation of unions or with their activities and from stipulating as a condition of employment that new workers must abstain from union activity or must join a specified union.

Ministry of Labor inspectors hear complaints regarding violations of these regulations, and can impose a maximum fine of twice the minimum monthly wage for a first infraction. Under the code, union officials enjoy special protection from dismissal. If a judge determines that any worker was fired for union activity, the worker is entitled to back pay plus either reinstatement or payment of a substantial sum of money, which varies according to his years of seniority.

Labor law and practice is the same in the sole export processing zone, located in Punto Fijo, as in the rest of the country.

#### c. Prohibition of Forced or Compulsory Labor

The Labor Code states that no one may "obligate others to work against their will" and such practices are not known to occur. Apart from the general prohibition of compulsory labor, the law does not specifically prohibit forced and bonded labor by children, but such practices are not known to occur.

#### d. Status of Child Labor Practices and Minimum Age for Employment

The Labor Code and the Tutelary Law for Minors contain provisions to protect children from exploitation in the workplace. The Ministry of Labor and the National Institute for Minors enforce child labor policies effectively in the formal sector of the economy but much less so in the informal sector, which accounts for the vast majority of child laborers. A plan formulated by the National Institute for Minors in 1996 to reach and better protect children who work in the informal sector has not been implemented because of a lack of funding.

Primary school education is compulsory, free, and universal. However, 64 percent of children leave school before the ninth grade. In a 1996 survey of working children conducted by the National Institute for Minors, 45 percent of those polled stated that they were not in school. The actual figure is probably much higher considering that those who stated that they attended school also reported that they worked on average 7, hours a day 4 to 7 days a week.

The Labor Code allows children between the ages of 12 and 14 to work only if the National Institute for Minors or the Labor Ministry grants special permission. It states that children between the ages of 14 and 16 may not work without permission from their legal guardians. Minors may not work in mines or smelters, in occupations that risk life or health, that could damage intellectual or moral development, or in public spectacles.

Those under 16 years of age must by law work no more than 6 hours a day or 30 hours a week. Minors under the age of 18 may work only between the hours of 6 a.m. and 7 p.m. The estimated 1.2 million children who work in the informal sector, mostly as street vendors, generally work more hours than the total permitted under the law. In the National Institute for Minors 1996 survey of working children, half the children worked both morning and afternoon, and 64.5 percent worked 6 or 7 days a week. Apart from the general prohibition of compulsory labor, the law does not specifically prohibit forced and bonded labor by children, but such practices are not known to occur (see Section 6.c.).

#### e. Acceptable Conditions of Work

The monthly minimum wage was \$178 (100,000 bolivars) in the private sector for urban workers and \$160 (90,000 bolivars) for rural workers effective May 1. Total take-home pay in the public sector, the product of collective bargaining, was at least equal to that received by private sector minimum wage workers. Fringe benefits are added to these minimum figures; they vary with the workers' individual

circumstances, but in general increase wages by about one-third. However, even with these benefits, the minimum wage is not sufficient to provide a decent standard of living for a worker and family. Unions point out that a worker's income is often less than the cost of a family's basic food basket, estimated by the Government at year's end at \$218 (122,902 bolivars). Under the Labor Code, the minimum wage rates are set by administrative decree, which Congress may either suspend or ratify but may not change. The law excludes only domestic workers and concierges from coverage under the minimum wage decrees. The Ministry of Labor enforces minimum wage rates effectively in the formal sector of the economy, but about half of the population works in the informal sector, where labor laws and protections generally are not enforced. The 1990 Labor Code reduced the standard workweek to a maximum of 44 hours and requires 2 "complete days of rest each week." Some unions, such as the petroleum workers, have negotiated a 40-hour week. Overtime may not exceed 2 hours daily, 10 hours weekly, or 100 hours annually, and may not be paid at a rate less than time and a half. The Ministry of Labor effectively enforces these standards in the formal sector.

The authorities have yet to promulgate regulations to implement the 1986 Health and Safety Law, which is not enforced. The delay is due largely to concern that the law provides penal sanctions against management when violations of health and safety occur and that there is ambiguity in the law over what constitutes a violation. The Labor Code states that employers are obligated to pay specified amounts (up to a maximum of 25 times the minimum monthly salary) to workers for accidents or occupational illnesses, regardless of who is responsible for the injury.

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

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