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## U.S. Department of State

### Venezuela Country Report on Human Rights Practices for 1997

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#### VENEZUELA

Venezuela is a republic with an active multiparty democratic system, a bicameral congress, and a popularly elected president. Over three decades of two-party dominance ended in 1994 when former president Rafael Caldera was sworn in as President with the support of a coalition of small and medium sized parties. The Congress comprises seven major political groupings. In July 1995, the Government reinstated most of the constitutional protections for citizens' rights that it had suspended in June 1994 to combat subversion and to address the country's financial crisis. In some border areas where guerrilla activity, drug trafficking, and kidnaping were a continuing problem, suspension of freedom from arbitrary arrest and detention and search without warrant, as well as freedom to travel, remained in effect. 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 (DIM), under the Defense Ministry, is responsible for collecting intelligence related to national security and sovereignty. The National Guard, a branch of the military, has arrest powers and is largely responsible for guarding the exterior of prisons and key government installations, maintaining order during times of civil unrest, monitoring frontiers, 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, but a large proportion of its people are poor. Oil accounted for 28 percent of gross domestic product (GDP), 61 percent of government revenues, and 77 percent of the country's exports in 1997. Per capita GDP of \$3,500 is unevenly distributed. The public sector dominates the economy, employing one out of six workers. Public sector iron, steel, aluminum, and petrochemical products constitute one third of the country's non-oil exports. The Government privatized telecommunications and most of the steel sector, reprivatized most of the financial sector, and opened the oil industry to foreign joint ventures. The Government plans to privatize the aluminum industry and other smaller public sector enterprises in 1998.

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. 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 a problem.

In an effort to address these problems and formulate a national human rights agenda, the Government held a high-level symposium with nongovernmental organizations (NGO's) in July. In addition, the Government announced the creation of a National Police Committee and a human rights office in the Defense Ministry to ensure better compliance with human rights norms. In October the Supreme Court ruled that the Vagrancy Act, which permitted up to 5 years' detention without trial of persons deemed a danger to society, was unconstitutional. In December Congress approved a new Code of Criminal Procedure that provides for open public trials with oral proceedings and jury participation.

## **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 151 extrajudicial killings from October 1996 through September 1997. The killings 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 were responsible for 69 of the killings; the Metropolitan Police of the Federal District, 18; the PTJ, 17; the National Guard, 17; the Municipal Police, 15; the armed forces, 6; the DISIP, 4; and other branches of the security apparatus or a combination of branches, 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 are often biased in favor of members of the armed forces accused of abuse. A special 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.

Hundreds of prison inmates died as a result of riots, fires, and other harsh conditions in prison facilities (see Section 1.c.).

In January members of the Metropolitan Police arrested and handcuffed two young men in Guatire, Miranda state, in front of several witnesses. After the men were led away, the witnesses heard gunshots and later found one of the men, Freddy Rafael Toro Ramirez, dead from bullet wounds. The case was still under investigation at year's end.

There were no new developments in the June 1996 robbery and shooting in a Caracas bakery in which a policewoman and a suspect were killed. Members of the Metropolitan Police captured uninjured two other suspects, whom they handcuffed and took away. A few hours later the police delivered the bodies of the two suspects to the morgue, dead from bullet wounds. The authorities charged seven policemen with killing the suspects, but a judge later released them on the grounds that the case as filed was technically deficient.

In December 1996, a Sucre Municipal Police officer was released from jail after charges against him for shooting U.S. citizen Barton Wilder were reduced from intentional to negligent homicide. The officer, off duty and drunk, had fired into a group of roller-bladers, killing Wilder and injuring another person. Four members of the PTJ have been imprisoned for the 1995 execution-style killing of 21-year-old Hector Rojas, but they have not been tried.

In August a judge confirmed the charges of intentional homicide against two National Guard members and one prison guard for starting a fire that killed 25 inmates at La Planta prison in October 1996. However, he dropped charges against the officer in command, National Guard Captain Osmer Martinez, because of insufficient proof that Martinez had authorized use of the tear gas that caused the fire.

There were no prosecutions or new information surrounding 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 February-March 1989. There has been only one prosecution: A police officer was found guilty in 1991 of killing 18-year-old Eleazar Ramon Mavares, 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 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 year's end, the Government had partially complied; it had investigated and made a payment, but it had not punished any of those responsible. The Committee of Family Members of Victims of the Unrest (COFAVIC) referred 44 cases surrounding the 1989 killings to the IACHR, asserting that the Government had not ensured justice.

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 but by year's end had not finished paying the award. 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 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 significant problem. The victims are almost always known criminals who prey on residents of poor neighborhoods. Between October 1996 and September 1997, PROVEA recorded 12 lynchings and 22 attempted lynchings. In addition, vigilante groups known as "brigadas" are increasing 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. All had reportedly been detained by security force members 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 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. There were also cases of torture of political activists accused of subversion.

PROVEA documented 45 cases of torture from October 1996 through September 1997. A large number of cases were never reported because the victims feared retribution. According to PROVEA, the DISIP was responsible for 18 of the reported torture incidents; the PTJ, 8; the armed forces, 6; the State Police, 4; the Metropolitan Police, 3; the National Guard, 3; the DIM, 2; and the municipal police, 1. 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. The police shot their weapons wildly, 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, the incident was being investigated by a criminal court. The chief of the Baruta Municipal Police also ordered an internal investigation and promised to punish any officers guilty of brutality.

In January two members of the Metropolitan Police in the Federal District allegedly demanded \$10 (5,000 bolivars) from Sergio Bolivar when he entered a bar. When Bolivar refused to pay, they hit him in the forehead and right cheek with a gun and arrested him for possession of drugs. Bolivar was detained for 17 days.

In the Colombian border area where 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. For example, in January at Fort Yaruro, Apure state, brothers Leonardo and Luis Pena Rosales were allegedly tortured by electric current applied between the toes and near suffocation with a plastic bag.

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.

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 August, the 32 prison facilities administered by the Ministry of Justice held 25,658 inmates, of whom the courts had sentenced only 8,187.

The prisons contain more than 10,000 prisoners in excess of capacity. In letters written to the Justice Minister in December, 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. Guns, knives, and illegal drugs are easily smuggled into most prisons, and violence among prisoners is very common.

In August a battle between rival inmate gangs in El Dorado prison in Bolivar state left 29 inmates dead and 13 injured. The gangs, one from Bolivar state and one from Zulia state, were competing for control of the 381-inmate prison, which had only 14 guards and no telephone service. Following this incident, the Justice Minister said that "the jails were in the hands of the inmates." In September searches of eight prison facilities in the central region of the country yielded 3 tons of weapons. In October the former director of Sabaneta prison in Maracaibo was arrested for demanding a monthly kickback from a prison food supplier.

In November a fire caused by an electrical short circuit in Sabaneta prison resulted in the death of 16 inmates and injuries to 32 more. In October and November, prison riots resulted in multiple deaths and many injuries in Tocarón prison in Aragua state, Los Llanos prison in Portuguesa state, and Tocuyito prison in Carabobo state. In November during one of many riots at La Planta prison in Caracas, a grenade blast seriously injured 11 inmates.

PROVEA documented 283 deaths from violence in the prisons from October 1996 through September 1997. The majority of deaths were perpetrated by other prisoners, but 59 inmates were killed by the authorities--1 by a prison guard under the Ministry of Justice, and the other 58 by the National Guard. The Minister of Justice told the press on December 15 that about 250 prisoners had been killed in prison violence during the year. According to the annual report of a congressional committee, there were 266 deaths and 1,001 serious injuries from prison violence during the year. Hundreds more died as a consequence of poor sanitary conditions, poor diet, and inadequate medical care.

In January the Government transferred all inmates out of Caracas' notorious Catia prison and demolished the facility. While two prisons had been expanded in December 1996, none of the three new prisons under construction in the states of Bolivar, Lara, and Merida were completed by year's end. They are expected to provide space for 5,730 prisoners when opened in 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.

Following the August kidnaping by Colombian guerrillas of navy Lieutenant Carlos Bastardo in Puerto Chorosquero, the armed forces detained 227 persons, including some minors, for questioning. According to the Paez municipality's Committee for the Defense of Human Rights, they held many detainees incommunicado for several days.

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 11,452 persons detained in sweeps from October 1996 through September 1997. 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 are often forced to forgo their judicial hearings.

In November the DISIP arbitrarily detained eight Cuban exiles at gunpoint and expelled them from Margarita Island, prior to the arrival of Cuban President Fidel Castro to attend an Ibero-American summit meeting. Information Minister Fernando Egana later described this "brutal" raid as a "mistake." The police on Margarita Island also detained and harassed two other anti-Castro activists (also see Sections 2.a. and 2.b.).

On October 14, the Supreme Court ruled the 1939 Vagrancy Law unconstitutional. The law had permitted the detention for up to 5 years, without warrant, trial, or judicial appeal, of people deemed by

the police to be a danger to society even though there was no evidence that they committed a crime. This law was used chiefly against people with previous criminal records who were detained during police sweeps, but also against others, including squatters on public and private land.

Human rights groups welcomed the Court's decision. NGO's asserted that the law was often used subjectively by the security forces and state authorities to settle personal scores, and that it was also used to target specific groups, including the poor, prostitutes, and homosexuals. When the Court's ruling took effect in November upon formal publication, over 500 prisoners were released throughout the country.

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.

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 is 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 4-1/2 years are the norm.

On December 10, Congress passed a new Code of Criminal Procedure that will introduce for the first time open, public trials with oral proceedings and participation by juries. The new adversarial system of justice, which eliminates a secret stage in the trial known as "secreto sumarial," is expected to give practical effect to the presumption of innocence. The code is to take full effect in July 1999.

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

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. Military courts, however, are significantly different from civilian courts in that by law the President must review every case after the initial investigation stage and decide if that case will 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.

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 1997. 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; however, there were a few instances of reprisal. The DISIP searched the office of newspaper columnist Alfredo Pena, and the DIM allegedly harassed television reporter Jose Domingo Blanco. In August the military detained two newspaper reporters covering the Bastardo kidnaping (see Section 1.d.) and allegedly confiscated their work.

In November DISIP agents confiscated the informational material prepared by eight detained Cuban exiles who planned to distribute it at the Ibero-American summit conference. The material was not returned. Interior Minister Jose Guillermo Andueza later promised that they would be allowed to express their views, and they held a press conference without government interference.

The charge of criminal defamation was sometimes used against the media to limit coverage of sensitive issues. In June after serving 5 months of a 1-year sentence for criminal defamation, William Ojeda, the author of the book "How much does a judge cost?" (Cuanto vale un juez?), a compilation of accusations of judicial corruption, was freed by a presidential pardon. In July a criminal judge issued a restraining order against the newspaper *Reporte Diario de la Economia* to stop the publication of any information concerning the bank Banesco and its president. The order was in reaction to a defamation case brought by the bank president against the newspaper, but preceded any hearing on the merits. In July 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, because a PTJ official had accused them of criminal defamation. Pont was not detained, but Arcangel spent 6 days in prison and was released only on condition that he not comment on the case. Neither had been tried by year's end.

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, are generally held unimpeded. The Government requires permits for public marches but does not deny them for political reasons.

As in earlier years, some demonstrations turned violent and were quelled by security forces. In February about 70 hooded youths threw rocks at police after the Federal District governor turned down a request by striking university professors to march from the campus of the Central University of Venezuela to the Education Ministry. The police responded with birdshot, water cannons, and tear gas. The police responded in a similar fashion during an authorized march through downtown Caracas later in the month when some demonstrators veered off the approved route, approached the Capitol, and confronted police. According to PROVEA, 58 people were injured during demonstrations and 151 detained from October 1996 through September 1997.

On November 3, armed DISIP agents detained eight Cuban exiles who had planned a peaceful protest against Cuban President Fidel Castro at the Ibero-American summit conference on Margarita Island. The authorities expelled the eight persons from the island and confiscated their written material. President Caldera and other government officials apologized for the actions of the security forces. Interior Minister Andueza promised that they would be allowed to express their views, and four members of the group returned to the island. The police also detained and harassed two members of another anti-Castro group on Margarita Island.

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 generally respect this right in practice.

In September the Government denied legal status to the Unification Church of Venezuela because it had sponsored the travel to Venezuela of more than 100 young Japanese women who entered the country without proper visas.

#### 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. The Government, however, can suspend the freedom to travel, as it did from June 1994 to July 1995. The Government also restricts foreign travel for persons being investigated for criminal activities.

Venezuela traditionally has been a haven for refugees, exiles, and displaced persons from many European, Caribbean, and Latin American countries. The Government cooperates with the office of the United Nations High Commissioner for Refugees and other humanitarian organizations in assisting refugees. The Government provides first asylum and provided it to approximately 20 persons in 1997.

There were no reports of 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. An antiquated and inefficient system for counting votes, however, gives rise to numerous and, in some cases, credible allegations that the political parties that dominate electoral councils commit fraud.

In December Congress passed a new election law that contains 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. Most legislators from all levels of government will continue 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, will continue 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. Women hold 13 seats as Deputies in the 209-member lower house of Congress, 4 seats in the 52-person Senate, and 2 of 27 ministerial positions.

Indigenous people traditionally have not been fully integrated into the political system due to their limited knowledge of politics, low voter turnout, geographic isolation, and lesser 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 undermine the country's image.

Amazonas state deputies and political party leaders criticized the human rights office of the Apostolic Vicariate of Puerto Ayacucho, which defends the rights of the indigenous communities, for waging a successful court challenge to the state political boundary law. Vandals damaged Vicariate property in what the office believes was an intimidation campaign by anti-indigenous elements in the state. When a lawyer in the Vicariate's office asked the state police commandant to investigate an alleged extrajudicial killing, the local prosecutor filed a criminal charge of "usurpation of functions" against the office and the lawyer. In June, more than 6 months after the filing, the Superior Court of Puerto Ayacucho dismissed the usurpation case.

In July 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 the Minister of Defense created a human rights office to promote respect for human rights in the armed forces.

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

The law prohibits discrimination based on ethnic origin, sex, or disability. The Government, however, does not adequately safeguard the rights of indigenous people, protect women against societal and domestic violence, and 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 will not be punished if, before sentencing, he marries the victim. Few police officers are trained to deal responsibly with rape victims. A total of 7,561 sexual assaults, including rape, were reported to the authorities in 1996. Women's organizations, however, 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. According to local monitors, the police are generally unwilling to intervene to prevent domestic violence, and the courts rarely prosecute those accused of such abuse. In addition, poor women are generally unaware of legal remedies and have little access to them.

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 have gradually surmounted many of the barriers to their full participation in political and economic life. Nonetheless, women are still 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 and 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 are often 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. The recommendations of these groups, however, have not been widely implemented by the police and other concerned governmental agencies.

## Children

The Government scaled back its expenditure on education, health, and social services. While the law provides for universal free education, primary and secondary education is chronically underfunded. Basic education fell from 20 percent of the Ministry of Education budget in 1989 to 7.5 percent in 1994. Fully a third of the budget during that period was dedicated to post-secondary education. In addition, a large number of children are not eligible to receive government assistance, including public education, because their birth is not properly documented.

According to a study by two reputable NGO's, one in four children is malnourished. The incidence of

diarrhea-related and respiratory illnesses, caused in part by poor sanitation and chronic malnutrition, has increased slightly over the last decade. Such preventable diseases 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 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 sleep on bare concrete floors.

Amnesty International reported 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 with 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. Public facilities for such children, however, 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 live 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 comprising 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 and water pollution. Few indigenous people hold title to their land.

In May the President issued a decree permitting expansion of legal mining activities in the 3.6 million hectare Imataca Forest Reserve, located in an area plagued by illegal mining and land invasion. Environmental and indigenous organizations filed suit challenging the decree in the Supreme Court on the grounds 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. Supporters of the decree contend that regulated mining would provide significant export and tax revenue while reducing the environmental damage and abuse of indigenous residents caused by illegal mining. In November 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.

In July a judge in Puerto Ayacucho ruled that some 80 to 200 nonindigenous families farming in an area traditionally inhabited by the Piaroa and Guajibo indigenous groups in Amazonas state must cease all agricultural activity pending an environmental impact assessment. According to human rights activists, many farmers did not comply with the order.

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. The last major operation to dislodge illegal miners was conducted in August and September 1996; about 80 miners were arrested, but several hundred more were believed to be still operating.

## **Section 6 Worker Rights**

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

Both the Constitution and labor law recognize and encourage the right of unions to organize. The comprehensive 1990 Labor Code extends to all private sector and public sector employees (except members of the armed forces) the right to form and join unions of their choosing. 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), and three small ones, as well as a number of independent unions, operate freely. About 25 percent of the national labor force is unionized. The CTV's top leadership includes members of several political parties. The majority are affiliated with the country's largest party, Democratic Action (AD). The CTV and the AD exercise reciprocal influence on 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 1997 most strikes occurred among government employees such as university professors, teachers, judicial workers, telephone workers, and physicians in public hospitals and clinics, who began their month-long strike in December 1996. In addition, there was a nationwide work stoppage by both public and private sector workers on August 6 to protest a gasoline price increase and delays in expected private sector salary increases.

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 freely practiced. 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 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." However, there were credible reports of prison labor being administratively imposed on persons detained under the Vagrancy Law. 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. 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.).

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 working in the informal sector was not 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 said they were not in school. The actual figure is probably much higher considering that those who said they attended school also reported that they worked on average 7-1/2 hours a day 4 to 7 days a week.

The Labor Code allows children between the ages of 12 and 14 years 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 years 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 years may work only during the hours between 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.

#### e. Acceptable Conditions of Work

The monthly minimum wage was \$149 (74,640 bolivars) in the private sector for urban workers and \$136 (67,940 bolivars) for rural workers effective in May. 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 \$192 (95,938 bolivars). The law excludes only domestic workers and concierges from coverage under the minimum wage decrees. Under the Labor Code, the rates are set by administrative decree, which Congress may either suspend or ratify but may not change. The Ministry of Labor enforces minimum wage rates effectively in the formal sector of the economy but generally does not enforce them in the informal sector.

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 to 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 of from one-quarter to twice the minimum monthly salary for first infractions. In practice, however, unsafe job sites are seldom closed down by Ministry of Labor inspectors. Under the law, workers can remove themselves from dangerous workplace situations without jeopardy to continued employment.

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