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2009 Human Rights Report: El Salvador

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Report on Human Rights Practices

March 11, 2010

El Salvador is a constitutional, multiparty democracy with a population of approximately 5.8 million. In March voters elected Carlos Mauricio Funes Cartagena of the Farabundo Marti National Liberation Front (FMLN) as president for a five-year term in generally free and fair elections. Funes was inaugurated on June 1. Civilian authorities generally maintained effective control over the security forces.

Although the government generally respected the rights of its citizens, protection of human rights was undermined by widespread violent crime, including the following: gang-related violence, high levels of impunity from prosecution, and judicial corruption. Other significant human rights problems included harsh, violent, and overcrowded prison conditions; lengthy pretrial detention; violence and discrimination against women; abuses against children, child labor, and forced child prostitution; trafficking in persons; violence and discrimination against sexual minorities; and inadequate enforcement of labor laws.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

There were no verified reports that the government or its agents committed politically motivated killings; however, there were reports that security forces were involved in unlawful killings. The Office of the Ombudsman for Human Rights (PDDH) stated that the National Civilian Police (PNC) was responsible for 545 cases of abuse of human integrity, which included unlawful killings, attempted unlawful killings, assaults, and other offenses causing bodily harm. By year's end the PDDH had received 10 complaints of alleged unlawful killings. The Office of the PNC Inspector General reported that during the year security forces killed 30 persons.

On September 29, unknown assailants disguised as road repair workers shot and killed Roque Feller Melgar, a former legislative deputy for the Christian Democratic Party and mayoral candidate for the National Republican Alliance (ARENA) party. At year's end authorities had not identified any suspects, and continued to investigate the case.

In June unknown actors strangled community activist Gustavo Marcelo Rivera near San Isidro, Cabanas. On July 7, the National Civilian Police (PNC) arrested seven purported gang members for the crime. At year's end authorities continued

to investigate the case.

On December 20, unknown assailants shot and killed environmental activist Ramiro Rivera (no relation to Marcelo) in Trinidad, Cabanas. On December 26, also in Trinidad, unknown assailants shot and killed Dora Santos Sorto Rodriguez, wife of environmental activist Santos Rodriguez. At year's end authorities were conducting an investigation of these cases.

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There was no further information regarding the July 2008 fatal shooting of Rafaela Hernandez Delgado while she was riding a public bus.

On December 18, an appellate court in San Miguel overturned the dismissal of charges against Shefick Cruz Vasquez and Edilberto Paiz Morales, who were accused in the August 2008 murder of Garcia Amaya. At year's end the PNC Office of the Inspector General reported that both defendants were in police custody awaiting trial.

There was no further information, and none was expected, regarding the case of PNC officer Luis Alfonso Rubi Canales, who was allegedly involved in the 2007 killing of Jose Napoleon Aviles.

At year's end there was no further information, and none was expected, regarding the pending case, and the whereabouts of, PNC officer Elmer Vladimir Lovato Ramos, implicated in the 2006 killing of Cesar Anaya Vanegas.

There was no information available regarding the attorney general's 2008 appeal of the Supreme Court's acquittal of Edwin Rene Sanchez Canjura for two counts of murder and 17 counts of attempted murder, in relation to the 2006 killings of two police officers.

At year's end a decision was pending following the December 2 trial court hearing of the case of Rosa Elba Zelaya de Ortiz for the 2004 murder of Teamster Union activist Gilberto Soto. Santos Sanchez, also charged with the murder of Soto, did not appear at the December hearing and remained at large with a warrant for his arrest.

The Human Rights Institute of the University of Central America reported that by year's end, the government had not taken concrete steps to observe the Inter-American Court of Human Rights' November 2007 ruling against the government for violations of judicial guarantees and rights in the 1994 killing of Mauricio Garcia Prieto.

b. Disappearance

There were no reports of politically motivated disappearances. Upon assuming office on June 1, President Funes terminated the Interinstitutional Committee for the Search for Missing Children Resulting from the Armed Conflict in El Salvador. In August the government announced the establishment of a national search commission to work with nongovernmental organizations (NGOs) to locate persons who were forcibly disappeared during the 1980-92 civil war. By year's end the new commission had not begun operation. The NGO Association for the Search for Missing Children (Pro-Busqueda) continued investigating 499 cases of children who disappeared during the civil war and resolved 17 other cases during the year.

On November 6, the Inter-American Commission on Human Rights (IACHR) heard the government's response to Pro-Busqueda's complaints, which alleged the forced disappearances of Santos Ernesto Salinas and Emelinda Lorena Hernandez in 1981 and of Manuel Antonio Bonilla and Ricardo Ayala Abarca in 1982. At year's end the cases remained pending further information the IACHR requested from the government.

At year's end there was no additional information available regarding the Office of the Attorney General's appeal to the Supreme Court regarding a lower court's January 2008 dismissal of charges against Juan Antonio Lopez, the western regional chief of the Office of the Public Defender, in relation to the kidnapping of a 12-year-old boy.

At year's end the government had not responded to the Inter-American Court of Human Rights' published findings in 2006 regarding the Jose Adrian Hernandez Rochac 1980 disappearance case.

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

The constitution prohibits such practices; however, during the year the PDDH received 562 complaints alleging the use of excessive force or mistreatment of detainees, compared with 591 such complaints during 2008. The PDDH received 61 complaints specifically against PNC officers for excessive use of force. It also received 13 complaints of alleged torture and 10 complaints of alleged extrajudicial killings.

Prison and Detention Center Conditions

Prison conditions remained harsh and dangerous. Overcrowding constituted a serious threat to prisoners' health and lives.

The prison authority reported that as of August, there were 22,101 prisoners held in 22 correctional facilities and two secure hospital wards, with a combined designed capacity for 8,227; of these inmates, 14,451 had been convicted, and 7,650 were in pretrial detention. There were 733 inmates in four prisons for juvenile offenders with a capacity of 763 inmates.

Prison authorities reported that 47 prisoners died during the year--five by homicide, one by suicide, and 41 from natural causes.

Prison authorities reported nine inmates were found guilty and 11 not guilty in connection with the 2007 gang-on-gang confrontation in Apanteos Prison, in which 21 inmates were killed.

There were no developments, and none were expected, in the investigation into the 2007 death of a 15-year-old inmate and injuries to two others at the Juvenile Offenders Prison in Ilobasco.

There was no new information available regarding the investigation of the alleged beating by police officers in 2007 of a minor prisoner in Tonacatepeque Juvenile Prison.

Gang activities in prisons and juvenile-holding facilities remained a serious problem. Of the total population in detention center facilities, 7,555 inmates were current or former gang members. Gang members routinely were separated from the regular prison population when possible. Gangs continued to exercise influence within the prisons and the judicial system.

Prisoners reportedly conducted criminal activities from their cells, at times with the complicity of prison guards. Smuggling of weapons, drugs, and contraband such as cell phones and cell phone chips was a major problem in the prisons.

Through August prison authorities dismissed charges of wrongdoing against three prison guards and continued criminal investigations against an additional eight guards. On August 17, as a means to combat increased inmate extortion using cell phones, authorities resumed body cavity searches of prisoners to detect the devices.

There was no additional information regarding the July 28 charges against police officers Jose Juan Cruz Carias and Julio German Garcia for raping a woman held in custody in April.

Due to a lack of holding cells, pretrial detainees were often held in regular prisons together with violent criminals.

The government permitted prison monitoring visits by independent human rights observers, NGOs, and the media, and such visits occurred during the year.

d. Arbitrary Arrest or Detention

Although the constitution prohibits arbitrary arrest and detention, there were complaints that the PNC arbitrarily arrested and detained persons. By year's end the PDDH reported receiving 185 complaints of arbitrary arrest or detention and 140 complaints of illegal detentions.

At year's end there were no new developments regarding the August 2008 case involving the reported police beating of Abraham Kattan.

At year's end there were no new developments regarding the May 2008 Hector Ventura murder case.

Role of the Police and Security Apparatus

The PNC is responsible for maintaining public security and the Ministry of Defense for maintaining national security. The military provided support for some PNC patrols in rural areas and gave support to law enforcement agencies for specific activities, including antinarcotics and antigang efforts. The Ministry of Public Security headed the antigang task force. Approximately 5,000 military personnel were deployed to join the police on antigang and other task forces, including an estimated 3,000 additional soldiers deployed on November 6. Military personnel, however, do not have arrest authority.

Through November the PNC Office of the Inspector General had received 2,230 complaints of alleged police misconduct, referred 47 cases of these to special investigation units, and sanctioned 1,181 officers in response to complaints filed during the year and prior years. These sanctions included 156 officers dismissed for misconduct and 762 suspended without pay for minor infractions.

By year's end the Attorney General's Office had prosecuted 462 police officers as a result of investigations begun during the year and in 2008. Inadequate training, insufficient government funding, lack of a uniform code of evidence, and isolated instances of corruption and outright criminality interfered with the PNC's effectiveness.

The PNC Inspector General reported that most PNC officers and police academy cadets received human rights awareness training during the year, including training by the Salvadoran Institute for the Development of Women (ISDEMU) concerning rape prevention, child abuse, and related offenses. By year's end the PNC Human Rights Unit had trained 21,072 police officers on general human rights topics. The International Law Enforcement Academy's training of 14 police officers, 17 prosecutors, eight judges, and 22 technical advisors, including workers in the immigration, customs, and airport authorities, included human rights awareness components.

Arrest Procedures and Treatment While in Detention

The constitution requires a written warrant for arrest, except in cases where an individual is arrested in the act of committing a crime. In practice authorities apprehended persons openly and with warrants based on sufficient evidence and issued by a duly authorized official and brought them before appropriate judicial officials. The constitution grants detainees the right to a prompt judicial determination of the legality of their detention, and authorities generally respected this right in practice. In general detainees were promptly informed of charges against them.

The law permits release on bail for detainees who are unlikely to flee or whose release would not impede the investigation of the case. The bail system functioned adequately in most cases. Because it may take several years for a case to come

to trial, some prisoners were incarcerated longer than the maximum legal sentences for their crimes. In such circumstances, detainees could request a Supreme Court review of their continued detention.

The courts generally enforced a ruling that interrogation without the presence of counsel is considered coercion and that any evidence obtained in such a manner is inadmissible. As a result, PNC authorities generally delayed questioning until a public defender or an attorney arrived. Family members were allowed prompt access to detainees. Detainees generally had prompt access to counsel of their choosing or to an attorney provided by the state.

The constitution permits the PNC to hold a person for 72 hours before delivering the suspect to court, after which the judge may order detention for an additional 72 hours to determine if an investigation is warranted. The law allows up to six months for investigation of serious crimes before requiring either a trial or dismissal of the case. In exceptionally complicated cases, the prosecutor may ask an appeals court to extend the deadline for three or six months, depending on the seriousness of the crime. Many cases were not completed within the legally prescribed time frame. As of August there were 7,229 inmates in pretrial detention or in detention awaiting final judgment.

e. Denial of Fair Public Trial

Although the constitution provides for an independent judiciary, the judiciary suffered from inefficiency, corruption, and insufficient resources. Substantial corruption in the judicial system contributed to a high level of impunity, undermining the rule of law and the public's respect for the judiciary. Inadequate government funding of the PNC, combined with intimidation and killing of victims and witnesses, made it difficult to identify, arrest, and prosecute perpetrators of human rights abuses and other crimes, thus diminishing public confidence in the justice system.

The government operated police witness and victim protection programs that provided protection to 4,205 persons during the year. However, street gang intimidation and violence against witnesses contributed to a climate of impunity from criminal prosecution.

At year's end there were no new developments regarding pending criminal investigations of nine gang members against whom charges were dropped in 2008 after the killing of "Afrodita," a key government witness in their cases.

By year's end the PDDH had received complaints that the Attorney General's Office prevented access to justice in 57 cases, violated due process in 10 cases, and violated administrative process in 11 cases.

By year's end Fredis Osmin Escobar Alvarenga, one of three judges accused of rendering controversial decisions in the prosecutions of the Los Perrones narcotrafficking organization, was found guilty of money laundering. The Attorney General's Office reported that the cases of the other two judges, Jose Israel Bonilla Granados and Wilfredo Antonio Reyes Martinez, remained pending.

The Office of the Attorney General investigated five judges and three magistrates for alleged misconduct. At year's end these cases remained under investigation. The Supreme Court received 170 complaints from private citizens against judges for alleged irregularities and sanctioned three judges for improper conduct.

By year's end, the Office of the Attorney General had investigated 261 complaints against prosecutors for misconduct, compared with 203 complaints during 2008, resulting in the dismissal of two prosecutors and suspensions of 13 others for corruption and other serious infractions.

The court system has three levels. The first level includes justices of the peace, judges of instruction, and judges of sentence. The other two levels include appellate courts and the Supreme Court. The Supreme Court oversees the budget and administration of the court system and selects justices of the peace, trial judges, and appellate judges from a list of nominees proposed by the National Judiciary Council, an independent body that nominates, trains, and evaluates justices. There are separate court systems for family matters and juvenile offenders. The law requires that minors from 12 to 17 years of age be tried in juvenile courts. There are no military or security tribunals that are separate from the military court system. Military courts cannot try civilians.

Trial Procedures

In general the law provides for trial by jury only in select cases. Although juries were used for specific charges, including environmental pollution and certain misdemeanors, judges decided most cases. By law juries hear only cases that the law does not assign to sentencing courts. After the jury's determination of innocence or guilt, a tribunal decides the sentence.

Defendants have the right to be present in court, question witnesses, and present witnesses and evidence. Although the constitution further provides for the presumption of innocence, protection from self-incrimination, the right to legal counsel, freedom from coercion, and government-provided legal counsel for the indigent, these legal rights and protections were not always respected in practice. Although a jury's verdict is final, a judge's verdict can be appealed. Trials are public. The law extends these rights to all citizens.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Although the law provides for access to the courts, enabling litigants to bring civil lawsuits seeking damages for, as well as cessation of, human rights violations, the judiciary was not independent or impartial. Judges were subject to outside influence. Some persons sought to bring their cases before international bodies, such as the IACHR and the Inter-American Court, because they believed that these organizations would adjudicate their claims with greater fairness and impartiality. The law provides administrative remedies for alleged wrongs through the PDDH, the Solicitor's Office, the Government Ethics Tribunal, and the Center for Consumer Protection, as well as administrative offices within the various ministries. There were problems in enforcing domestic court orders.

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

The constitution prohibits such actions, and the government generally respected these prohibitions in practice.

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 respected these rights in practice. Individuals could criticize the government publicly or privately without reprisal, and the government generally did not interfere with such criticism.

The independent media were active and expressed a variety of views without restriction. The Salvadoran Journalists' Association noted that journalists reporting on narcotics trafficking were subject to threats and intimidation, which led to media self-censorship in reporting about the drug trade.

Although international NGOs generally commented positively on the status of press freedom in the country, newspaper editors and radio directors occasionally discouraged journalists from reporting on topics that the owners or publishers might not view favorably.

The law permits the executive branch to use the emergency broadcasting service to take over temporarily all broadcast and cable networks to televise political programming.

In July unknown actors made death threats against radio journalists Ludwing Iraheta, Jose Beltran, and Vladimir Abarca, allegedly related to their reporting on the killing of community activist Marcelo Rivera. By year's end authorities had provided the journalists protection under the Program for the Protection of Victims and Witnesses but had not apprehended any suspects.

On September 2, unknown assailants shot and killed French-Spanish documentary filmmaker Christian Poveda in Soyapango. By year's end authorities had arrested 15 alleged gang members, one PNC officer, and 10 imprisoned gang members in relation to the killing. At year's end authorities continued to investigate the case.

In February the justice of the peace in Huizucar, La Libertad, closed the case against municipal advisor Jose Antonio Arias Hernandez, who was accused of attacking two journalists in September 2008 while they filmed a documentary about potable water. Arias Hernandez agreed to a settlement by which he would obey a restraining order and repair video equipment damaged during the dispute.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet service was available in the major cities. According to International Telecommunication Union statistics for 2008, approximately 13 percent of the country's inhabitants used the Internet.

Academic and Cultural Freedom

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

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

Freedom of Association

Although the constitution provides for freedom of association, there were concerns regarding registration delays of certain types of civil society groups. NGOs asserted that the Ministry of Governance delayed approval of, or denied legal status for, NGOs with particular human rights or political agendas.

c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right in practice. The Ministry of Governance has responsibility for registering, regulating, and overseeing the finances of nonprofit organizations, non-Catholic churches, and other religious groups. The constitution exempts the Roman Catholic Church

from this registration requirement. Although non-Catholic religious groups are not required to register, they must do so if they wish to incorporate formally. Noncitizens in the country primarily for the purpose of proselytizing must obtain a special residence visa for religious activities. In practice the government did not enforce this requirement. The penal code imposes criminal sentences on those who publicly offend or insult the religious beliefs of others or damage or destroy religious objects.

Societal Abuses and Discrimination

There were no reports of societal abuses or discrimination, including anti-Semitic acts. The Jewish community totaled approximately 150 persons.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf.

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

The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

The constitution prohibits forced exile, and the government observed this prohibition in practice.

Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 protocol, and the law provides for the granting refugee status or asylum in accordance with those international instruments. The government has established a system for providing protection to refugees. During the year the government received 102 refugee petitions but did not grant refugee protection to any of the petitioners. Approximately 33 petitions remained pending at year's end.

The law provides protection against the expulsion or return of persons to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

The government received no requests for temporary protection for individuals who may not qualify as refugees under the 1951 UN Convention and its 1967 protocol. The law does not provide this type of temporary protection.

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

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

Elections and Political Participation

In March FMLN candidate Carlos Mauricio Funes Cartagena won the presidential election, which the Organization of American States and other international observers reported was generally free and fair with few irregularities.

In the January legislative elections, described as free and fair by international observers, no party won an outright majority. Political parties could operate without restrictions or outside interference.

There were 16 women in the 84-member Legislative Assembly, five women on the 15-member Supreme Court, and two women in the 13-member cabinet. No persons in the Supreme Court, legislature, or other government entities identified

themselves as members of an ethnic minority or indigenous community, and there were no political party positions or parliamentary seats designated for ethnic minorities.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials, particularly in the judicial system, reportedly engaged in corrupt practices with impunity.

NGOs, such as the Foundation for Studies in Legal Application and the Salvadoran Foundation for Economic and Social Development (FUSADES), alleged that the Supreme Court did not adequately address judicial delays, inefficiency, and unqualified and corrupt judges. FUSADES reported that the public had minimal confidence in the judicial system due to a lack of access to justice and accountability, a judicial backlog, and corruption. FUSADES launched a website that made judicial proceedings and records available to the public.

Public officials were not subject to financial disclosure laws. The Court of Accounts, the Anticorruption Unit of the Office of the Attorney General, and the Government Ethics Tribunal (TEG) are the three agencies that combat corruption. During the year the Office of the Attorney General investigated three judges for corruption and continued investigating 120 cases opened in 2008 involving court officials. Of these cases, three were dismissed, two were sentenced, and 95 remained under investigation at year's end. There was a public perception that government corruption was a serious problem.

The Legislative Assembly has not audited the Court of Accounts, the government agency charged with auditing the National Treasury and the Federal Budget, since 1995, despite a law mandating an annual audit. In July the Court of Accounts rejected a budget and procedural audit based on legal technicalities.

The Legislative Assembly restricted public access to its monthly committee reports and required that a Board of Directors member approve such requests. By year's end the Government Ethics Tribunal (TEG) opened 140 investigations into government ethics complaints, resulting in public reprimands for 11 government officials. To combat public sector corruption, the TEG operated ethics commissions within 77 government entities.

Although the law provides for public access to government information, in practice inconsistent legislation impeded such access. There is no freedom of information law. Citizens could access some information via the Internet regarding the national budget and certain cases before the Supreme Court. The government usually did not give reasons for denying public access to information. There are no mechanisms to appeal denials.

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

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Although government officials generally were cooperative and responsive to these groups, officials at times were reluctant to discuss worker rights issues with NGOs and the PDDH. Domestic and international NGOs were required to register with the government, and some reported difficulties (see section 6).

The government cooperated with the UN Development Program, UN Children's Fund, UN Population Fund, International Labor Organization, Organization of American States, Central American Integration System, and other international governmental organizations and permitted visits by UN representatives.

The principal human rights investigative and monitoring body is the autonomous PDDH, whose head is elected by the Legislative Assembly to a three-year term. The PDDH regularly issued reports and press releases on prominent human rights cases and monitored the year's presidential and legislative elections.

The PDDH maintained a constructive dialogue with the president's office. The government publicly acknowledged receipt of the PDDH's reports, although in some cases it did not take action on PDDH recommendations, which are not legally binding. The public generally trusted the PDDH.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

Although the constitution and the legal code establish that all persons are equal before the law and prohibit discrimination regardless of race, gender, disability, language, or social status, in practice the government did not effectively enforce these prohibitions. There was discrimination against women, persons with disabilities, gay and lesbian persons, and indigenous people.

Women

The law criminalizes rape. While not specifically addressed in the law, spousal rape may be considered a crime if the actions meet the criminal code definition of rape. The Office of the Attorney General may prosecute rape cases with or without a complaint from the victim, and the law does not permit the victim's pardon to nullify the criminal charge. The penalty for rape is six to 10 years' imprisonment, but the law provides for a maximum sentence of 20 years for rape of certain classes of victims, including children and persons with disabilities. Incidents of rape continued to be underreported for a number of reasons, including societal and cultural pressures against victims, fears of reprisal, ineffective and unsupportive responses by the authorities toward victims, fear of publicity, and a perception among victims that cases were unlikely to be prosecuted. Laws against rape were not effectively enforced.

Rape and other sexual crimes against women were widespread. The PNC received reports of 2,211 cases of rape of adults, which, according to the Attorney General's Office, resulted in 127 trials and 63 convictions.

By year's end ISDEMU had provided health and psychological assistance to 1,013 women and girls who suffered sexual abuse and 2,512 girls who suffered physical abuse.

The law prohibits domestic violence and provides for sentences ranging from one to three years in prison. The law also permits obtaining restraining orders against offenders. Domestic violence was considered socially acceptable by a large portion of the population, and, as with rape, its incidence was underreported.

Violence against women, including domestic violence, was a widespread and serious problem. Laws against domestic violence were not well enforced, and cases were not effectively prosecuted. Through August ISDEMU received 6,514 reports of domestic violence, compared with 6,051 complaints in 2008. Through July the Office of the Attorney General investigated 740 cases of domestic violence, which resulted in eight convictions and 80 cases resolved through mediation.

ISDEMU coordinated with the judicial and executive branches and civil society groups to conduct public awareness campaigns against domestic violence and sexual abuse. The PDDH, Attorney General's Office, Supreme Court, Public Defender's Office, and PNC collaborated with NGOs and other organizations to combat violence against women through education, increased enforcement of the law, and NGO support programs for victims. The National Secretariat for the Family, through ISDEMU, defined policies, programs, and projects on domestic violence and continued to maintain a telephone hotline and a shelter for victims of domestic abuse and child victims of commercial sexual exploitation. The government's efforts to combat domestic violence were minimally effective.

Although prostitution is legal, the law prohibits inducing, facilitating, promoting, giving incentives to a person to work as a prostitute, or paying anyone under the age of 18 for sexual services. Prostitution remained common, and there were credible reports that some women and girls were forced into prostitution.

The law prohibits discrimination based on gender. The law defines sexual harassment as any unwanted physical sexual contact and stipulates penalties of three to five years in prison (or four to eight years in cases where the victim is under the age of 15 at the time of the offense). The law, however, does not clearly recognize nonphysical sexual harassment as a crime. Fines are added to the prison term in cases where the perpetrator is in a position of authority or trust over the victim.

The government did not enforce sexual harassment laws effectively. Since underreporting by victims of sexual harassment appeared to be widespread, it was difficult to estimate the extent of the problem.

Couples and individuals had the right to decide the number, spacing, and timing of children, and information about and access to contraception was widely available. Access to contraception was free from discrimination, violence, and coercion. Prenatal care and skilled attendance at delivery were also widely available. However, the Population Reference Bureau reported that 8 percent of births were not attended by trained medical professionals. Women and men were given equal access to diagnostic services and treatment for sexually transmitted infections.

The constitution grants women and men the same legal rights under family and property law, but women did not receive equal treatment in practice. The law establishes sentences of one to three years in prison for public officials who deny a person's civil rights based on gender, and six months to two years for employers who discriminate against women in the workplace. However, employees generally did not report such violations due to fear of employer reprisals.

Pregnancy testing as a condition for employment is illegal. There were allegations that some businesses, including apparel assembly factories required female job applicants to present pregnancy test results and fired pregnant workers.

Women suffered from cultural, economic, and societal discrimination. Men often received priority in job placement and promotions, and women were not accorded equal respect or stature in traditional male-dominated sectors, such as agriculture and business. Training for women generally was confined to low-wage occupational areas where women already held most positions, in fields such as teaching, nursing, apparel assembly, home industries, and small businesses.

Gender-based wage disparity remained a problem. Data from the 2007 Household Survey, the latest available, indicated that, on average, women's monthly wages were \$266 (the U.S. dollar is the national currency), and men's were \$309. In the apparel assembly sector, where women made up the majority of the labor force, men held most positions in management and in departments where employees received higher wages.

Children

Citizenship is derived by birth within the country and from one's parents. The law requires parents to register a child within 15 days of birth or else pay a \$2.86 fine. There were no firm statistics, but there was information that many births were not registered. Unregistered children had access to public health care but not to public education.

Child abuse was a serious and widespread problem. At year's end the Salvadoran Institute for Children and Adolescents (ISNA), an autonomous government entity, reported sheltering 894 abused children, including 184 cases of negligence, 602 cases of mistreatment, 39 cases of children living on the street, 54 cases of sexual abuse, 184 cases of abandonment, 13 cases of children employed as beggars, and 2 cases of commercial sexual exploitation. ISNA defined

policies, programs, and projects on child abuse, maintained a shelter for child victims of abuse and commercial sexual exploitation, and in June initiated a violence awareness campaign to combat child abuse.

There was no new information available regarding the investigation of the alleged beating by police officers in 2007 of a minor prisoner in Tonacatepeque juvenile prison.

The law classifies statutory rape as sexual relations with anyone under 18 years of age and provides for penalties between four and 20 years' imprisonment for those convicted of the crime. The law prohibits participating in, facilitating, or purchasing materials containing child pornography and provides for prison sentences of up to 16 years' imprisonment. The PNC and Attorney General's Office cooperated with INTERPOL to make at least two arrests against persons for child pornography.

On September 24, ISNA nurses Ana Gladis Argeta de Ruano and Maria Silvia Amaya de Murcia were each sentenced to one year of community service and a fine of \$1,000 for negligence in the August 2008 death of infant Erick Amaya.

Trafficking in Persons

Although the law prohibits trafficking in persons, there were reports that persons were trafficked to, from, and within the country. Trafficking remained a significant problem, but due to the country's porous borders, there were no firm estimates on its full extent.

The country was a source, transit, and destination country for women and children trafficked primarily for the purpose of sexual exploitation. There were reports of internal trafficking and evidence that persons were trafficked for agricultural work, fraudulent adoptions, and organ harvesting. There was also evidence that the country was a transit point for girls trafficked to Mexico, the United States, neighboring Central American countries, Spain, and Italy.

Most international trafficking victims came from Nicaragua, Guatemala, Honduras, and the Dominican Republic. Some children were trafficked internally to cities, particularly to Acajutla and San Miguel, and to border regions. Sex trafficking of minors occurred within the country's borders, as did sex trafficking induced by force, fraud, or coercion. According to the International Labor Organization's (ILO) International Program to Eliminate the Worst Forms of Child Labor, girls were commercially sexually exploited in San Salvador and San Miguel.

Groups at special risk for trafficking were girls and young women from 12 to 18 years of age, persons from rural and poor areas, single mothers in poor areas, adolescents without formal schooling, adolescent mothers, unemployed young men, and young foreign girls.

According to immigration authorities, the principal traffickers in the country were the owners of topless bars, brothels, and employment agencies that made fraudulent offers of employment for work in beauty salons, as models, in gyms, as maids, or in factories. There was evidence that members of organized crime were involved in trafficking.

The PNC reported that the most common methods of obtaining victims were kidnapping, lucrative job offers, and inducement into prostitution by family, friends, and smugglers. While some traffickers transported victims, some foreign victims entered the country on their own from Nicaragua, Honduras, and other neighboring countries in response to fraudulent job offers to work as domestic servants but were forced into prostitution on arrival.

Trafficking in persons and forced prostitution are felonies, carrying criminal penalties between four and eight years' imprisonment. By law perpetrators are liable for civil damages. However, in practice civil penalties for trafficking were rarely imposed. If the trafficking victim is under 18, has physical or mental disabilities, dies as a consequence of negligence or imprudence, or if the perpetrator is a law enforcement agent or public officer, the maximum sentence increases by one-

third. The government's enforcement of trafficking laws was poor and impeded by corruption and administrative disorganization.

The PNC reported 281 cases of trafficking during the year. The Office of the Attorney General investigated 67 new cases of trafficking and obtained 11 convictions

During September and October public hearings, a court sentenced four defendants in the Cerron Grande case to eight years in prison each for trafficking in persons. At year's end the Attorney General's Office reported that pursuant to an investigation conducted with INTERPOL in Guatemala, authorities sentenced four defendants in a fraudulent adoption case to sentences between three and six years each in prison.

There were credible reports that some government officials in the department of Chalatenango were involved in trafficking. The government sponsored regular antitrafficking awareness training for government officials aimed at eliminating official involvement in trafficking in persons.

The government detained illegal migrants, including those who might have been trafficking victims. Persons under age 18 were repatriated through ISNA cooperation with its counterpart organizations. The PNC encouraged trafficking victims to press charges against traffickers. Victims could apply for temporary residence or refugee status if they were likely to face persecution in their country of origin. Adult illegal immigrant victims of trafficking who did not request assistance or express fear for their lives were deported under immigration law.

The government provided legal, medical, and psychological services upon request. Victims of trafficking were not treated as criminals unless they were undocumented workers of legal age. Although the government provided assistance to its repatriated citizens who were victims of trafficking, victims faced societal discrimination due to having engaged in prostitution or other commercial sexual activities.

The Salvadoran Network Against Trafficking, made up of the ILO, Catholic Relief Services, Save the Children, the Anglican Church of El Salvador, CARECEN International, Caritas, and the Salvadoran National Women's Commission, provided legal counseling and human rights awareness to victims of trafficking. The government's shelter for victims of trafficking provided protection to 18 persons during the year.

The ISDEMU human rights program assisted approximately 11,443 at-risk persons. The National Committee to Combat Trafficking in Persons, a task force made up of the government agencies responsible for addressing trafficking in persons, collected data on trafficking, and its member agencies conducted extensive anti-trafficking training, information programs, and assistance to victims. The government stated that by year's end, it had trained 4,532 public officials involved with combating trafficking.

The Department of State's annual *Trafficking in Persons Report* can be found at www.state.gov/g/tip.

Persons with Disabilities

The law prohibits discrimination against persons with physical and mental disabilities in employment, education, access to health care, or the provision of other state services. According to the NGO Survivors Network, the government did not allocate sufficient resources to enforce these prohibitions effectively, particularly in education, employment, and transportation, and did not effectively enforce legal requirements for access to buildings for persons with disabilities.

Several public and private organizations promoted the rights of persons with disabilities. The National Council for Disabled Persons (CONAIPD) is the government agency responsible for protecting those rights.

CONAIPD conducted awareness campaigns, provided sensitivity training to 1,991 persons from the public and private sectors, and promoted the hiring of persons with disabilities. The government Fund for the Protection of Persons with Disabilities assisted financially people who were wounded or had a disability as a result of the civil war. The Rehabilitation Foundation, in cooperation with the Salvadoran Institute for the Rehabilitation of the Disabled (ISRI), continued to operate a treatment center for persons with disabilities. However, CONAIPD reported that the government provided minimal funding for ISRI.

Indigenous People

While the constitution states that native languages are part of the national heritage and should be preserved and respected, the law does not recognize indigenous communities and accords no special rights to indigenous people. According to 2007 census, the most recent available, indigenous persons formed approximately 0.21 percent of the national population in three principal groups: Nahua-Pipiles in western and central areas of the country, and Lencas and Cacaoperas in the eastern region. Indigenous rights groups and the PDDH complained that the government's methodology used to determine indigenous self-identification underestimated the actual size of the indigenous population. Although few individuals publicly identified themselves as indigenous, there were a few small indigenous communities whose members continued to maintain traditional customs without repression or interference by the government or nonindigenous groups. Government estimates in 2004, the most recent available, indicated that approximately 99 percent of indigenous persons lived below the poverty level.

The government did not effectively protect the civil and political rights of indigenous people. There are no domestic laws giving indigenous people rights to share in revenue from exploitation of natural resources on indigenous lands. The government did not demarcate any lands as belonging to indigenous communities. Access to land was a problem for indigenous persons. Because few possessed title to land, opportunities for bank loans and other forms of credit were extremely limited.

There was no information available regarding the status of a complaint that 11 self-identified indigenous persons filed in 2007 with the Supreme Court Constitutional Chamber, regarding discrimination arising out of the government housing and population censuses.

There were no government programs dedicated to combating discrimination against, or promoting the rights of, indigenous persons. The PDDH reported that indigenous persons faced employment and workplace discrimination.

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

Although the law prohibits discrimination on the basis of sexual orientation, in practice discrimination was widespread. By year's end the government had not approved the legal registration application filed in August by the gay rights NGO Entre Amigos. However, Arco Iris and Gays Sin Fronteras, NGOs that also worked with the sexual minority population, enjoyed legal status.

There was widespread official and societal discrimination based on sexual orientation in employment and access to health care. Entre Amigos reported that public officials, including the police, engaged in violence and discrimination against sexual minorities. Persons from the lesbian, gay, bisexual, and transgender (LGBT) community reported that the PNC and Attorney General's Office ridiculed them when reporting cases of violence against LGBT persons. The government's response to these abuses was primarily through PDDH reports that publicized specific cases of violence and discrimination against sexual minorities. In general violence and discrimination against sexual minorities went unpunished.

LGBT rights supporters held two gay pride marches, for which the municipality of San Salvador provided authorization. The government provided sufficient police security for marchers.

By year's end Entre Amigos reported the killings of 23 persons from the LGBT community, compared with 11 during 2008. Entre Amigos alleged that many of the victims' bodies showed signs of torture.

Entre Amigos reported that the PNC did not investigate a July attempted break-in to the group's offices by unknown actors. At year's end there was no information regarding any investigation of the incident.

Other Societal Violence or Discrimination

Although the law prohibits discrimination on the basis of HIV/AIDS status, in practice discrimination was widespread. Lack of public information remained a problem in confronting discrimination against persons with HIV/AIDS or in assisting persons suffering from HIV/AIDS. In August the Ministry of Public Health launched an awareness campaign aimed at reducing stigmatization of HIV positive persons.

Reports indicated that rape and other sexual abuse of males was substantially underreported to authorities. During the year ISDEMU provided health and psychological assistance to men and boys who were victims of physical or sexual abuse.

Section 7 Worker Rights

a. The Right of Association

The constitution provides for the right of workers, except military personnel, national police, judges, high-level public officers, and workers who are in "positions of trust," to form unions without previous authorization from their superiors. During the year the government amended the constitution to grant legal status to public worker unions.

Among the requirements to obtain legal standing, unions must have a minimum of 35 members in the workplace, hold a convention, and elect officers. The constitution permits the participation of noncitizens in unions, but requires that union leaders be citizens.

The constitution recognizes the right to strike. Although the law contains complex and cumbersome registration procedures for conducting a legal strike, workers freely exercised this right in practice.

A legal strike must be supported by 51 percent of workers in an enterprise, including workers not represented by the union. Unions may strike only after the expiration of a collective bargaining agreement or to protect professional rights. Unions must seek to resolve differences through direct negotiation, mediation, and arbitration before striking. A strike must aim to obtain or modify a collective bargaining agreement and to defend the professional interests of workers. Union members must approve a decision to strike through secret ballot, and the union must name a strike committee to serve as a negotiator and send the list of names to the Ministry of Labor, which notifies the employer. The union must wait four days from the time the Ministry of Labor (MOL) notifies the employer before striking. The law prohibits workers from appealing a government decision declaring a strike illegal. In practice, workers engaged in strikes regardless of whether the legal requirements were met. Although the MOL did not declare any strikes to be legal during the year, it did not report any instances where the right to strike was denied.

b. The Right to Organize and Bargain Collectively

The law permits collective bargaining by employees in the private and public sectors, and the government effectively enforced the law. Collective bargaining was practiced to some extent.

Although the law prohibits antiunion discrimination, the MOL did not adequately enforce these provisions and there was discrimination, including unfair dismissal, against labor union organizers.

There are no special laws or exemptions from regular labor laws inside the free trade zones (FTZs). There were credible reports that some factories in the FTZs dismissed union members.

As of August the Office of the Attorney General reported opening 529 investigations against employers for illegally retaining social security and pension payments, eight investigations for violations of labor safety conditions, one investigation for labor discrimination, and 10 investigations for violations against freedom of association and the right to strike. The government did not allocate sufficient resources for adequate inspection and oversight to ensure respect for association and collective bargaining rights in the FTZs. There continued to be allegations of corruption among labor inspectors in the apparel assembly industry.

During the year the MOL reportedly conducted 884 inspections and 413 follow-up inspections of apparel assembly facilities, pursuant to which it identified labor law violations involving failure to pay back wages, firings of union leaders and pregnant workers, and mandatory HIV tests as a condition of employment. It reportedly imposed fines for violations in six cases.

The law specifies 18 reasons for which an employer can legally suspend workers, and employers can invoke 11 of these reasons without prior administrative or judicial authorization. Workers reported instances where employers used illegal means to undermine union organizing, including dismissing labor activists and blacklisting workers who were union members.

The law does not require employers to reinstate illegally dismissed workers. Employers have dismissed workers who tried to form unions, and in most cases the government did not prevent their dismissal or seek their reinstatement.

By year's end the Calvo Tuna Company had provided financial compensation to two union leaders whom it had dismissed for their unionizing activities, in violation of a 2007 MOL order granting the union legal status. The company did not reinstate either of these workers.

c. Prohibition of Forced or Compulsory Labor

The constitution prohibits forced or compulsory labor except in the case of natural catastrophe and other instances specified by law. Although the government generally enforced this prohibition, there were reports of trafficking of persons for forced commercial sexual exploitation and apparel assembly labor.

d. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the employment of children under the age of 14, but child labor remained a serious and widespread problem.

Children age 12 and older are allowed to engage in light work, so long as it does not harm their health or interfere with their education. Children under 16 years of age are prohibited from working more than seven hours per day and 34 hours per week; those under age 18 are prohibited from working at night or in occupations considered hazardous. The MOL was responsible for enforcing child labor laws. In practice, labor inspectors focused almost exclusively on the formal sector.

The MOL reported receiving few complaints of violations of child labor laws, primarily because many persons perceived child labor to be an essential component of family income rather than a human rights problem. The government did not devote adequate resources to effectively enforce child labor laws in agricultural activities, especially coffee and sugarcane production, or in the large informal sector.

There were credible reports of trafficking in children and child prostitution. According to the 2008 School Registration Census, the most recent available, there were approximately 110,000 child workers, with the largest numbers engaged in coffee, sugarcane, and other agricultural activities; domestic work; street vending; and fishing. Child labor in its worst forms was a serious problem in coffee and sugarcane cultivation, fishing, mollusk extraction, and fireworks production. There were reports of children engaging in garbage scavenging and apparel assembly. Orphans and children from poor families frequently worked for survival as street vendors and general laborers in small businesses. Children also worked as domestic servants.

The MOL reported that it had 159 labor inspectors distributed nationwide, including four specialists in child labor issues. The MOL reported receiving six complaints of child labor law violations, but there was no information on specific investigations or prosecutions.

According to the Ministry of Labor, the Ministry of Education operated 134 after-school programs to promote child labor awareness and encourage school attendance. The MOL reported that when inspectors encountered incidents of child labor, the government removed the victims and placed them in educational programs.

Through April the MOL participated in a regional ILO International Program on the Elimination of Child Labor project to combat child sexual exploitation. Building on that project, the government developed with the ILO a strategic plan to eliminate the worst forms of child labor by 2015 and child labor in its entirety by 2020.

e. Acceptable Conditions of Work

The minimum wage is set by executive decree, based on recommendations from a tripartite committee comprising representatives from labor, government, and business. There is no national minimum wage; the minimum wage is determined by sector. The minimum daily wage was \$6.92 for retail and service employees, \$6.77 for industrial laborers, and \$5.79 for apparel assembly workers. The agricultural minimum wage was \$3.24. The national minimum wage did not provide a decent standard of living for a worker and family. Although during the year basic subsistence costs for food were \$169.34 per month, the highest monthly minimum wage nationally was \$207.60.

By year's end the Social Security Institute confirmed that Joaquin Salvador Montalvo Machado had complied with the Third Sentencing Court's fine of \$144,724 imposed in 2006 for illegally retaining social security and pension payments of workers at the Hermosa Manufacturing apparel assembly plant. However, Montalvo had not paid legally required severance and other payments to workers.

The ministry reported conducting 2,012 inspections and issuing six fines for nonpayment of minimum wages. The average fine was \$202. During the year the MOL conducted a pilot plan to enforce the minimum wage. The government reportedly effectively enforced the minimum wage law in the formal sector but not in the informal sector.

The law sets a maximum normal workweek of 44 hours, limited to no more than six days, and requires bonus pay for overtime. The law mandates that full-time employees be paid for an eight-hour day of rest in addition to the 44-hour normal workweek. The law prohibits compulsory overtime. These standards were not enforced effectively.

The MOL reported that it had received 658 complaints of unpaid overtime, involving 983 workers.

The government's gender and labor discrimination unit reported that assembly plants generally respected the laws on overtime. However, most of these plants required workers to work extra days in order to meet production goals, with a promise of incentive pay in addition to overtime. There were no reports of workers not receiving incentive pay.

The MOL is responsible for setting workplace safety standards, and the law on occupational health and safety standards establishes a tripartite committee to review the standards. The law requires all employers to take steps to ensure that employees are not placed at risk to their health and safety in the workplace. This includes prohibitions on the employment of persons under age 18 in occupations considered hazardous or morally dangerous.

Health and safety regulations are outdated, and enforcement was inadequate. The law does not clearly recognize the right of workers to remove themselves from hazardous situations without jeopardy to their continued employment. The MOL reported conducting 4,409 workplace inspections for working conditions.