



## 2008 Human Rights Report: El Salvador

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

**2008 Country Report on Human Rights Practices**

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El Salvador is a constitutional, multiparty democracy with a population of approximately 5.8 million. In 2004 voters elected Elias Antonio Saca of the Nationalist Republican Alliance (ARENA) as president for a five-year term in generally free and fair elections. 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 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; and inadequate enforcement of labor rights.

### 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 reports that the government or its agents committed any politically motivated killings; however, there were reports that security forces were involved in unlawful killings.

During the year the Office of the Ombudsman for Human Rights (PDDH) stated that the National Civilian Police (PNC) was responsible for 559 cases of abuse of human integrity, which included unlawful killings, attempted unlawful killings, assaults, and other offenses causing bodily harm. During the year the PDDH received 11 complaints of alleged unlawful killings. As of August the Office of the PNC Inspector General reported that security forces killed 10 persons, compared with 24 in 2007.

On July 2, six individuals dressed as police officers in San Bartolo, Ilopango, fatally shot Walter Alexander Ayala Rivas and Jolman Ernesto Ayala Rivas. Authorities apprehended six suspects and determined that the killings were gang-related. The Office of the Attorney General reported that the accused were sentenced each to 35 years' imprisonment.

On July 24, an unknown individual fatally shot Rafaela Hernandez Delgado, the wife of a Frente Farabundo Marti para la Liberacion Nacional (FMLN) San Salvador municipal council member, while she was riding a public bus. At year's end the case remained under investigation.

On January 14, Nelson Antonio Arriaza Delgado, a PNC sergeant and former chief of its regional criminal investigation unit, and Carlos Geovanny Chevez Hidalgo each were sentenced to 35 years' imprisonment for the July 2007 murder-for-hire killing of Amado Garcia Amaya, an alleged gang member in Nueva Esparta. On March 20, authorities also sentenced Arriaza Delgado to 40 years' imprisonment for the 2007 killings in Jocoro, Morazan, of

Pedro Antonio Sosa Flores, Oscar Rene Bonilla Machado, and Mario Humberto Diaz Bonilla, and the attempted killing of Jose Rigoberto Diaz Benitez. By year's end authorities had dismissed charges against police officer Shefick Cruz Vasque, who was also charged with the killing of Garcia Amaya. As of December the Office of the Attorney General was appealing the decision to dismiss charges against Cruz Vasquez. There was no information available regarding the status of police officer Edilberto Paiz Morales, who was also charged with the killing of Garcia Amaya.

On July 25, PNC officer Jose Vidal Reyes Escobar was sentenced to 30 years' imprisonment for the August 2007 beating and killing of Jose Napoleon Aviles, while in custody in Mejicanos. At year's end the whereabouts of PNC officer Luis Alfonso Rubi Canales, also allegedly involved in the August 2007 killing, were unknown.

On January 15, a judge ordered a stay of proceedings for PNC officers Edilberto Alexander Cruz Chavez and Angel Antonio Garcia Hernandez, who testified that in 2006, PNC officer Leonidas Beltran Diaz killed Cesar Anaya Vanegas. The whereabouts of PNC officer Elmer Vladimir Lovato Ramos, also implicated in the killing of Anaya Vengas, were unknown, and the case remained pending at year's end.

On July 22, a tribunal cleared Edwin Rene Sanchez Canjura of two counts of murder and 17 counts of attempted murder in relation to the 2006 killings of two police officers. By year's end the Office of the Attorney General had appealed the tribunal's decision to the Supreme Court.

On March 14, the government filed a petition with the Inter-American Court of Human Rights to reverse the court's November 2007 ruling against the government for violations of judicial guarantees and rights in the 1994 killing of Mauricio Garcia Prieto. In June the Human Rights Institute of the University of Central America (IDHUCA) submitted a complaint to the Office of the Attorney General, asking the government to observe the November 2007 ruling. On November 24, the court dismissed the government's petition and upheld its previous ruling that the government compensate Prieto family members for legal costs and provide them with medical treatment. The government was given six months from November 24 to comply with the ruling.

#### b. Disappearance

There were no reports of politically motivated disappearances.

The government Interinstitutional Committee for the Search for Missing Children Resulting from the Armed Conflict in El Salvador reported that it has resolved 56 of 165 cases under investigation. The nongovernmental organization (NGO) Association for the Search for Missing Children (Pro-Busqueda) continued to investigate 818 cases of children who disappeared during the 1980-92 civil war. The Inter-American Commission on Human Rights (IACHR) accepted Pro-Busqueda's complaints against the government, 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. By year's end Pro-Busqueda had resolved six other cases.

On January 22, a court cleared of all charges and dismissed the case against Juan Antonio Lopez, the western regional chief of the Office of the Public Defender, relating to his alleged participation in the January 2007 kidnapping of a 12-year-old boy. By year's end the Office of the Attorney General had appealed the decision to the Supreme Court.

At year's end the IACHR had not published any findings 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 652 complaints, most against PNC officers, alleging the use of excessive force or mistreatment of detainees, compared with 839 such complaints in 2007. The PDDH received 59 complaints against PNC officers for excessive use of force. During the year the PDDH received 19 complaints of alleged torture and eight complaints of alleged extrajudicial killings.

The PDDH and Office of the Inspector General reported that on February 15, students blocked the police from entering the Romero Albergue School in San Jacinto during the arrest of a student's father. The police reportedly then used excessive force against the students. The Office of the Inspector General concluded that officers Jose Matias Salazar and Carlos Alberto Flores Portal used excessive force during the incident and submitted the case to a disciplinary tribunal, which on December 3 dismissed all charges against the officers.

#### Prison and Detention Center Conditions

Prison conditions remained harsh and dangerous. Overcrowding constituted a serious threat to prisoners' health and lives, and the prison population continued to increase during the year.

At year's end there were 19,814 prisoners held in 22 correctional facilities and two secure hospital wards, with a combined designed capacity for 8,227; of these inmates, 12,702 had been convicted, 7,112 were in pretrial detention, and 6,801 were current or former gang members. There were 561 inmates in four prisons for juvenile offenders with a capacity of 763 inmates.

On April 14, a judge sentenced police officer Saul Humberto Zacapa Carias to six years' imprisonment for sexually abusing a woman in police custody in June 2007.

There were no developments regarding an investigation by the Office of the Attorney General of the February 2007 death of a 15-year-old inmate and injuries to two others at the Juvenile Offenders Prison in Ilobasco. By December authorities had not identified a suspect in the killing.

Prison authorities reported that 57 prisoners died during the year, 20 by homicide, one by suicide, and 36 from natural causes. Nine inmates were convicted of homicide and a stay of proceedings was declared for the other 10 inmates charged in connection with the January 2007 gang-on-gang confrontation in Apanteos Prison, in which 21 inmates were killed.

Gang activities in prisons and juvenile-holding facilities remained a serious problem. Gang members were routinely 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 cellular telephones and cellular telephone chips, was a major problem in the prisons. During the year prison authorities convicted one prison guard, dismissed charges of wrongdoing against three others, and continued criminal investigations against an additional two guards.

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. The PDDH reported receiving 193 complaints of arbitrary arrest or detention during the year; it also received complaints of 121 illegal detentions.

On August 1, the Office of the Inspector General opened an investigation of four PNC officers for allegedly beating Abraham Kattan during a vehicle inspection in Sonsonate. The case remained pending at year's end.

On February 19, the justice of the peace in Suchitoto dismissed public disorder charges against 14 protesters originally accused of terrorism in connection with a July 2007 antigovernment protest.

The PDDH reported that on May 3, unknown assailants used a sharp instrument to kill Hector Ventura, one of the protestors arrested in Suchitoto. Based on a PDDH petition, the Office of the Attorney General granted special protection to two witnesses to the killing: Oscar David Casco Rivera, who was injured in the attack, and Mariana Estefany Casco Rivera. However, the witnesses fled before entering the protection program. At year's end their whereabouts were unknown. Authorities identified Julio Adalberto Bernal, a member of the MS-13 street gang, as one of the alleged killers of Ventura. A police investigation found no relationship between Venutra's killing and the 2007 protests at Suchitoto.

#### Role of the Police and Security Apparatus

The PNC is responsible for maintaining public security and the Ministry of Defense maintains 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 efforts. The Ministry of Public Security headed the antigang task force. Approximately 2,150 military personnel were deployed to join the police on antigang and other task forces. Military personnel, however, do not have arrest authority.

During the year the PNC Inspector General received 1,717 complaints of alleged police misconduct (involving 2,363 officers), referred 200 cases of these to special investigation units, and sanctioned 1,320 officers in response to complaints filed during the year and prior years. These sanctions included 162 officers dismissed for misconduct and 736 suspended without pay for minor infractions.

The Attorney General's Office prosecuted 10 police officers as a result of investigations begun in 2007 and 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.

On May 19, authorities arrested two police officers and four members of the armed forces for the shooting death of 18-year-old Rene Gil Santos Diaz. On November 12, a magistrate sent two of the accused to trial and ordered stays of proceedings for the others. On December 5, Vidal Antonio Chavez Garay of the armed forces was sentenced to 10 years' imprisonment. Charges were dropped against the other defendant.

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. As of August the PNC Human Rights Unit had trained 17,914 police officers regarding the rights of women and 484 officers on torture topics. The PNC Office of the Inspector General trained 352 police officers on the human rights of vulnerable groups. The International Law Enforcement Academy's training of 77 police officers, 30 prosecutors, 63 judges, and 46 technical advisors, including workers in the immigration, customs, and airport authorities, included human rights awareness components.

#### Arrest and Detention

The constitution requires a written warrant for arrest, except in cases where an individual is arrested in the commission of 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 provides that a detainee has the right to a prompt judicial determination of the legality of the 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. 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. At year's end there were 7,112 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.

During the year the government Program for the Protection of Victims and Witnesses received 2,347 requests for protection. At year's end 3,110 persons were in some type of police witness or victim protection program. However, street gang intimidation and violence against witnesses contributed to a climate of impunity from criminal prosecution.

On March 1, several assailants fatally shot Alicia Belmira Gonzalez, a witness identified as "Afrodita," who was in a government protection program. In 2006 Gonzalez agreed to cooperate with police in investigating a series of killings perpetrated by the M-18 street gang. Following Gonzalez's killing, the criminal court in San Salvador dismissed charges against 11 gang members due to insufficient evidence. At year's end nine of the 11 gang members remained in detention, facing criminal charges in relation to other cases.

During the year the PDDH received complaints that the Attorney General's Office had prevented access to justice in 115 cases, violated due process in five cases, and violated administrative process in 59 cases.

On June 18, the Supreme Court began investigating two judges and one justice of the peace for rendering controversial decisions during the prosecution of the Los Perrones narco-trafficking organization.

During the year the Office of the Attorney General investigated 73 judges and nine magistrates for corruption. The Supreme Court received 169 complaints from private citizens against judges for alleged irregularities and sanctioned three judges for improper conduct.

NGOs, such as the Foundation for Studies in Legal Application, the Salvadoran Foundation for Economic and Social Development (FUSADES), and IDHUCA continued to allege that the Supreme Court did not adequately address judicial delays, inefficiency, and unqualified and corrupt judges. FUSADES reported that the public had no faith in the judicial system due to a lack of access to justice and accountability, a judicial backlog, and corruption.

During the year the Office of the Attorney General received 203 complaints against prosecutors for misconduct, compared with 222 complaints during 2007, resulting in the dismissal of one prosecutor and the 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 12-17 years of age be tried in juvenile courts.

#### 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.

#### 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-matter lawsuits, including seeking damages for, or 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. Independent media were active and expressed a variety of views without restriction.

Following a Reporters Without Borders request that the government investigate the September 2007 killing of radio journalist Salvador Sanchez Roque, on May 12, a court sentenced three gang members to 35 years' imprisonment each for homicide.

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.

On September 19, while journalists Roberto Guzman Miguel and Allan Antonio Martell Pereira were filming a documentary on problems with potable water in Huizucar, La Libertad, municipal advisor Jose Arias damaged their camera and threatened to kill them with a machete. On November 6, a judge issued a restraining order against Arias and ordered that he pay for camera repairs.

### 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 primarily available in the major cities. The International Telecommunication Union reported that in 2007, there were approximately 11 Internet users per 100 inhabitants nationwide.

### 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. On February 19, the government dismissed charges against several persons who were arrested and charged under the counterterrorism law during July 2007 demonstrations in Suchitoto against President Saca.

#### 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. The government continued to deny the legal registration application of the homosexual rights NGO Entre Amigos.

#### 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 churches 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.

#### 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 2008 International Religious Freedom Report at [www.state.gov/g/drl/irf/rpt](http://www.state.gov/g/drl/irf/rpt).

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

#### Protection of Refugees

The law provides for the granting refugee status or asylum in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. 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, asylum seekers, stateless persons, and other persons of concern. During the year the government received six refugee petitions and granted one person refugee protection; two petitions were dismissed, and the remaining three petitions were pending at year's end.

In practice the government provided protection against the expulsion or return of persons to countries where their lives or freedom would be threatened.

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.

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

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

In 2004 ARENA party candidate Elias Antonio Saca won the presidential election, which the Organization of American States and other international observers reported was generally free and fair with few irregularities.

Political parties could operate without restrictions or outside interference. In March 2006 elections, described as free and fair by international observers, the ARENA party won a plurality of 34 deputy seats in the 84-seat unicameral Legislative Assembly and later negotiated with the 10 deputies of the National Conciliation Party and the five deputies of the Christian Democratic Party to maintain a simple working majority. The opposition FMLN Party won 32 seats.

The country's vice president was a woman, and there were 13 women in the Legislative Assembly and five women on the 15-member Supreme Court. 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.

#### Government Corruption and 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. Public officials are 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 brought eight judicial corruption cases before the Supreme Court. Through December there was no information on the status of these cases.

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. The attorney general criticized the administration of the Court of Accounts on various occasions, alleging corruption and mismanagement. In July the Court of Accounts rejected a budget and procedure audit on legal technicalities. FUSADES criticized the court's decision as lacking in transparency and accountability.

In contrast with its practices in previous years, the Legislative Assembly restricted public access to its monthly committee reports and required that a Board of Directors member approve such requests. The TEG opened investigations against 186 public officials and resolved 112 of these cases. To combat public sector corruption, the TEG operated tribunals within government entities.

On November 12, the TEG rejected a motion, based on a petition filed by a private citizen, to sanction President Saca for attending a fundraising lunch for the ARENA party while on an official visit to Los Angeles. The TEG stated that the president was not representing the government at the lunch.

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 4 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. The government continued to deny legal registration to the gay rights NGO Entre Amigos.

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, including an analysis of use of the counterterrorism law during the July 2007 Suchitoto demonstration, and press releases.

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 5 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 attorney general opened the investigations of 1,002 cases of rape of adults, which resulted in 189 trials and 71 convictions. The Office of the Attorney General investigated 444 cases of rape of minors and persons with disabilities, resulting in 100 trials and 33 convictions. Through December the PNC received reports of 364 cases of rape against adults. By year's end the Office of the Attorney General was investigating 1,657 cases of sexual crimes (including the aforementioned rape cases), resulting in 266 trials and 109 convictions.

ISDEMU provided health and psychological assistance to 943 women who suffered sexual abuse. It also provided assistance to 5,901 girls who suffered physical abuse during the year.

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. During the year ISDEMU received 6,051 reports of domestic violence, compared with 5,906 complaints in 2007. The Office of the Attorney General investigated 1,201 cases, which resulted in 12 trials and four convictions.

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, the Attorney General's Office, the Supreme Court, the Public Defender's Office, and the 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 hot line and a shelter for victims of domestic abuse and child victims of commercial sexual exploitation.

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.

Trafficking in women and girls for purposes of sexual exploitation was a problem. The attorney general reported that it had investigated approximately 80 cases of sexual exploitation.

The law prohibits discrimination based on gender; however, it does not specifically prohibit sexual harassment. The law broadly defines sexual harassment as any unwanted verbal or physical sexual conduct 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). 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; however, ISDEMU estimated that 40 percent of incidents of sexual abuse and rape were preceded by sexual harassment.

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, it was difficult for employees to report such violations because they feared 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 and societal discrimination and had reduced economic opportunities. 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, home industries, and small businesses.

Gender-based wage disparity remained a problem. Data from the 2007 Household Survey indicated that, on average, women's monthly wages were \$265.81 (the U.S. dollar is the national currency), and men's were \$308.73. 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.

ISDEMU provided awareness training on public policies relating to gender and, along with the Foundation for Small and Medium-Sized Enterprises and the Salvadoran Institute for Professional Training, also provided technical and financial assistance to female heads of household throughout the country.

Children

The government was committed to improving children's rights and welfare. However, it allocated insufficient resources and suffered from poor interagency coordination in its child welfare activities. The Salvadoran Institute for Children and Adolescents (ISNA), an autonomous entity, has primary responsibility for child welfare issues.

There were reports that not all births were registered, but there were no current statistics to confirm the extent of the problem.

Child abuse was a serious and widespread problem. Through June ISNA reported 1,114 cases of child abuse, including 357 cases of negligence, 227 cases of mistreatment, 138 cases of children living on the streets, 192 cases of sexual abuse, 122 cases of abandonment, 34 cases of children employed as beggars, and 44 cases of commercial sexual exploitation.

On April 29, Pablo Urias Torres, a schoolteacher in San Vicente, was sentenced to 34 years' imprisonment for the rape of three minor students. On May 21, Juan Fernando Elias, a schoolteacher from San Salvador, was sentenced to six years' imprisonment for the rape of a minor student.

There was no information available regarding the status of the Office of the Attorney General's investigation of the alleged beating by police officers in 2007 of a minor prisoner in Tonacatepeque juvenile prison.

The law prohibits participating in, facilitating, or purchasing materials containing child pornography and provides for prison sentences of up to 16 years' imprisonment; however, this law was not enforced effectively.

On August 20, infant Erick Amaya died of pneumonia and malnutrition while in the care of ISNA. At year's end the Office of the Attorney General was investigating whether ISNA employees should be charged with negligence regarding the child's death. Media reports throughout the year focused on ISNA's poor management, and the need for the government to pass new legislation to protect children's welfare.

#### Trafficking in Persons

Although the law prohibits trafficking in persons, there were reports that persons were trafficked to, from, and within the country.

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. There was also evidence that the country was a transit point for girls trafficked to Mexico, the United States, neighboring Central American countries, and elsewhere.

Most international trafficking victims came from Nicaragua, Honduras, and South America. 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 sexually exploited commercially in San Salvador and San Miguel.

Trafficking remained a significant problem, but due to the country's porous borders, there were no firm estimates on its full extent. Groups at special risk for trafficking were girls and young women from 12-18 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 offered inducements for work in beauty salons, as models, in gyms, as maids, or in factories.

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 job offers to work as domestic servants but were forced into prostitution on arrival.

Trafficking in persons and forced prostitution are felonies, penalized by four to eight years' imprisonment. If the trafficking victim is under 18, has physical or mental disabilities, suffers violations of freedom of transit in a foreign country, 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.

By year's end the PNC had arrested 408 persons on trafficking charges. The Office of the Attorney General investigated 81 new cases of trafficking and obtained seven convictions. In its 2008 observations, the ILO Committee of Experts requested that the government provide information on court cases under way, copies of judicial rulings made, and penalties imposed to combat trafficking in persons.

During the year the government, in cooperation with Interpol and foreign authorities, detained 372 persons for trafficking. In February a court sentenced a former PNC official to seven years' imprisonment, and two other persons to eight and six years' imprisonment respectively, for trafficking a 16-year-old girl and a woman for the purpose of sexual exploitation.

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 42 persons during the year.

The ISDEMU human rights program assisted 9,211 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 antitrafficking training, information programs, and assistance to victims.

During the year the government, Catholic Relief Services, and Save the Children conducted a pilot program to provide financial assistance to trafficking victims to foster their reintegration into society. The program also developed an interagency manual to train police, lawyers, and judges on combating trafficking. The government also reported that the UN Children's Fund and an international NGO trained 38 government and NGO officials to combat trafficking. The government stated that by year's end, it had trained 5,231 public officials involved with

combating trafficking.

The State Department's annual Trafficking in Persons Report can be found at [www.state.gov/g/tip](http://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. The government, however, did not allocate sufficient resources to enforce effectively these prohibitions, particularly in education and employment, nor did it 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.

Throughout the year CONAIPD conducted awareness campaigns, provided sensitivity training to 1,240 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 gave financial support to 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, continued to operate a treatment center for persons with disabilities. The government provided minimal funding for these programs.

#### 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. There were reports that indigenous persons comprise approximately 0.21 percent of the national population and form three principal groups: Nahua-Pipiles in western and central areas of the country, and Lencas and Cacaoperas in the eastern region. 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.

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 government housing and population censuses.

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 were no government programs dedicated to combating discrimination against indigenous persons.

#### Other Societal Abuses and Discrimination

There were reports that sexual abuse of males was substantially underreported to authorities. During the year ISDEMU provided health and psychological assistance to three men and 64 boys who were victims of physical or sexual abuse.

The law prohibits discrimination on the basis of HIV status and sexual orientation, although in practice discrimination was widespread. The homosexual rights group Entre Amigos reported that public and private actors

engaged in violence and discrimination against sexual minorities and persons with HIV/AIDS, including the government's continued denial of Entre Amigos' application for legal registration. Entre Amigos also reported that throughout the year, persons vandalized and robbed the group's offices, necessitating that the organization move locations regularly.

Lack of public information remained a problem in confronting discrimination against persons with HIV/AIDS or in assisting persons suffering from HIV/AIDS.

## Section 6 Worker Rights

### a. The Right of Association

While the constitution provides for the right of workers, except military personnel, national police, and government workers, to form unions without previous authorization, there were problems in the exercise of this right.

Union leaders asserted that the government and judges continued to use excessive formalities as a justification to deny applications for legal standing to unions and federations. Among the requirements to obtain legal standing, unions must have a minimum of 35 members in the workplace, hold a convention, and elect officers. According to Ministry of Labor statistics, there were 386 registered unions.

There was no new information available regarding the September 2007 request by SITCOM communications union members that the Office of the Attorney General prosecute the minister of labor for not complying with a July 2007 order by the Supreme Court that SITCOM be granted legal status.

With the exception of public workers who provide vital community services, the constitution recognizes the right to strike, and workers 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 notifies the employer before striking. The law prohibits workers from appealing a government decision declaring a strike illegal.

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

The law provides for collective bargaining by employees in the private sector and by certain categories of workers in autonomous government agencies, such as utilities and the port authority. The Ministry of Labor reported 290 collective bargaining agreements covering 60,226 workers. Labor leaders asserted that the government had an unfair advantage in arbitration of public sector labor disputes because the government holds two of three seats on arbitration panels.

While the law prohibits antiunion discrimination, these provisions were rarely enforced, and there was discrimination against labor union organizers.

There were 120 apparel assembly plants, including those located in free trade zones (FTZs). There are no special laws or exemptions from regular labor laws inside the FTZs. There were credible reports that some factories in the

FTZs dismissed union organizers. There were no collective bargaining agreements among the 67,000 workers in the apparel assembly sector. Apparel assembly workers reported verbal and physical abuse, as well as sexual harassment by supervisors. The Ministries of Labor and the Economy concurred that during the year approximately 10,000 workers in the apparel assembly sector were not receiving social security and other payment benefits to which they were legally entitled. The Attorney General's Office reported receiving 308 complaints and prosecuting 125 cases of nonpayment.

The government did not allocate sufficient resources for adequate inspection and oversight to ensure respect for association and collective bargaining rights in FTZs. There continued to be allegations of corruption among labor inspectors in the apparel assembly industry. During the year the government conducted 28,314 labor inspections and imposed fines for labor violations in 1,004 cases.

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.

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 dismissal of labor activists and blacklisting workers who were union members.

There was no further information available regarding the failure of the Calvo Tuna Company to rehire dismissed workers who had formed a union, despite a July 2007 Ministry of Labor order granting the union legal status.

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

The constitution prohibits forced or compulsory labor, including by children, 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 from the age of 12 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 Ministry of Labor was responsible for enforcing child labor laws. In practice labor inspectors focused almost exclusively on the formal sector, where child labor was rare.

The government did not devote adequate resources to enforce effectively child labor laws in agricultural activities, especially coffee and sugarcane production, or in the large informal sector. Orphans and children from poor families frequently worked for survival as street vendors and general laborers in small businesses. Officials of the Ministry of Labor reported that the ministry received few complaints of violations of child labor laws, primarily because many citizens perceived child labor as an essential component of family income rather than a human rights abuse.

There were credible reports of trafficking in children and child prostitution. Child labor in its worst forms was a serious problem in coffee and sugar cane cultivation, fishing, mollusk extraction, and fireworks production.

The Ministry of Labor reported that it had 159 labor inspectors distributed nationwide; however, none specifically worked on child labor issues. The Ministry of Labor reported conducting 338 inspections of coffee plantations, 265 inspections of sugar cane plantations, three inspections of fireworks factories, and two inspections in the fishing and mollusk sectors.

The government operated child labor awareness programs to encourage school attendance. The Ministry of Labor reported that when inspectors encountered child labor, the government removed the victims and placed them in educational programs. The ILO's International Program on the Elimination of Child Labor continued operating programs to combat commercial sexual exploitation of children.

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. The minimum monthly wage was \$192.10 for retail employees, \$187.73 for industrial laborers, and \$166.82 for apparel assembly workers. The agricultural minimum wage was \$89.86. The national minimum wage did not provide a sufficient standard of living for a worker and family.

There was no new information available regarding the 2006 outstanding fine of \$144,724 imposed by the Third Sentencing Court against Joaquin Salvador Montalvo Machado for retaining illegally worker social security and pension payments at the Hermosa Manufacturing apparel assembly plant. There also was no new information available regarding an October 2007 Ministry of Labor order that Hermosa Manufacturing pay a \$2,400 fine for outstanding wages and related benefits owed to company workers.

In general the Ministry of Labor did not enforce effectively minimum wage laws. It reported conducting 7,938 inspections and sanctioning 81 employers in the industrial, commercial, and service sectors due to nonpayment of minimum wages. The average fine was \$134.97.

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, and many workers were not paid overtime.

Sources reported that some apparel assembly plants underpaid workers and failed to compensate for mandatory overtime. Corruption among labor inspectors and in the labor courts remained barriers to enforcing the minimum wage laws.

The Ministry of Labor 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. During the year the Ministry of Labor reported inspecting 3,774 workplaces for working conditions.