



## Guatemala

### Country Reports on Human Rights Practices - [2006](#)

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Guatemala is a democratic, multiparty republic with a population of approximately 12.7 million. In 2003 national elections, generally considered by international observers to be free and fair, Oscar Berger of the Grand National Alliance coalition (GANA) won a four-year term, which began in January 2004. While the civilian authorities generally maintained control of the security forces, there were instances in which members of the security forces committed illegal acts including human rights abuses.

Although the government generally respected the human rights of its citizens, serious problems remained. The human rights and societal problems included the government's failure to investigate and punish unlawful killings committed by members of the security forces; widespread societal violence, including numerous killings; corruption and substantial inadequacies in the police and judicial sectors; police involvement in kidnappings; impunity for criminal activity; harsh and dangerous prison conditions; arbitrary arrest and detention; failure of the judicial system to ensure full and timely investigation, or fair trials; failure to protect judicial sector officials, witnesses, and civil society organizations from intimidation; discrimination and violence against women; discrimination and violence against gay, transvestite, and transgender persons, trafficking in persons; ethnic discrimination; and ineffective enforcement of labor laws, including child labor provisions.

#### RESPECT FOR HUMAN RIGHTS

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

###### a. Arbitrary or Unlawful Deprivation of Life

Although there were no reports that the government or its agents committed any politically motivated killings, members of the police force committed a number of unlawful killings. Corruption, intimidation, and ineffectiveness within the police and other authorities prevented adequate investigation of many such killings and other crimes, as well as the arrest and successful prosecution of perpetrators (see sections 1.c. and 1.e.).

During the year the National Civilian Police (PNC) Office of Professional Responsibility (ORP) reported that it had investigated 37 accusations of killings involving PNC personnel.

On March 27, police inspector Marvin Wilfredo Mendez Mayorga was arrested for the alleged extrajudicial killing of two youths in Villa Nueva, a suburb of Guatemala City.

On March 29, police agent Leonel Giovany Herrera Reyes was sentenced to 90 years in jail for sexually abusing one woman and sexually abusing and killing another woman.

On June 11, the Public Ministry Office for Crime reported to the press that 86 bodies found in the course of the year in Guatemala City had indications that the victims had been tortured before dying.

On June 17, five transvestites were shot, one of them fatally (see section 5). By year's end there was no information on any investigation. There were no developments regarding any investigation of the December 2005 killing of one transvestite and the wounding of another allegedly by persons dressed as police officers.

On June 20, four off-duty police officers in Escuintla were rescued from a mob attempting to lynch them after they allegedly killed Cristian Oswaldo Rodriguez Alvarez.

On July 7, Spanish Judge Santiago Pedraz issued an international arrest warrant for former heads of state Efraim Rios Montt and Oscar Humberto Mejia Victores, as well as Angel Anibal Guevara Rodriguez, German Chupina Barahona, Pedro Garcia Arredondo, Benedicto Lucas Garcia, Donald Alvarez, and Fernando Lucas Garcia for genocide, terrorism, torture, and illegal detention during the country's 1960-96 conflict. On November 7, the Supreme Court acted on the Spanish judicial request by ordering the arrest of all persons named in the Spanish warrant except Rios Montt. Subsequent court decisions excluded former heads of state Efraim Rios Montt and Oscar Humberto Mejia Victores from the warrant, although these decisions were under appeal at year's end. Another court decision suspended the arrest order against Pedro Garcia Arredondo. By December Angel Anibal Guevara Rodriguez and German Chupina Barahona were in detention, receiving medical care. Guevara Rodriguez and Chupina Barahona were appealing their cases at year's end.

There were no new developments, and none were expected, regarding the 2004 confrontation between peasants and members of the PNC at Nueva Linda plantation, in which three police and seven workers were killed.

There were no new developments, and none were expected, concerning any investigation of the 2004 killing reportedly by police of former gang member David Ixcol Escobar.

There were no new developments, and none were expected, regarding the search for fugitive Colonel Juan Valencia Osorio, whose 25-year prison sentence for being the intellectual author of the 1990 killing of anthropologist Myrna Mack Chang was reinstated by the Supreme Court of Justice in 2004. At year's end Valencia had been at large for almost three years.

The government reported that during the year the National Reparations Program disbursed approximately \$16 million (120 million quetzales) to families of victims of the 1960-96 armed conflict.

At year's end the case of the 1982 military massacre of 250 civilians at Dos Erres, Peten, remained stalled in court due to appeals made by defendants.

During the year two justice sector workers were killed (see section 1.e.).

By December the police had completed an investigation of the September 2005 killing of Casa Alianza's legal advisor Harold Perez Gallardo by unknown gunmen and were transferring the report to the Public Ministry for legal action.

Societal violence occurred widely throughout the country. Nonstate actors with links to organized crime, gangs, private security companies, and alleged "clandestine groups" committed hundreds of killings and other crimes. Human rights activists alleged that these persons also were responsible for threats, assaults, burglaries, and thefts targeted at human rights organizations. Reports also suggested that former or current members of the police condoned or were involved in some of the attacks and other abuses.

Killings, including evidence of sexual assault, torture, and mutilation, of women continued to increase, as did the overall number of killings of men and women. Although during the year there was only a slight increase in the percentage of women killed as a percentage of total killings in 2005, the actual number of women killed by year's end was substantially higher than in 2005 (see section 5).

Killings of children, particularly in Guatemala City, increased during the year (see section 5).

The human rights nongovernmental organization (NGO) Mutual Support Group reported that 59 attempted lynchings took place during the year, compared with 14 such incidents in 2005. Many observers attributed the rise in lynchings from the previous year to increased public frustration with the failure of the justice sector to guarantee security. Among the victims were civil servants or police officials who had taken unpopular actions in either enforcing or failing to enforce the law.

There were also other incidents of societal violence. On June 11, the NGO Association of Urban Transportation reported that from January to May there had been 30,200 assaults in public buses, an average of 200 assaults per day involving bus passengers and drivers.

#### b. Disappearance

Although there were no reports of politically motivated disappearances, there were reports of police involvement in kidnappings for ransom. The ORP reported that between January and December, there were 10 complaints of kidnapping by PNC personnel. The office determined that three cases had merit, with the identity of the offenders established in two of the cases. The officers identified in the two cases faced disciplinary action at year's end. On June 29, the First Appeals Court overturned the October 2005 kidnapping convictions of, and ordered a new trial for, former police commissioner Rudy Giron, former PNC official Marvin Utrilla Marin, and four other persons. Giron and Utrilla Marin remained in prison at year's end.

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

Although the constitution and the law prohibit such practices, during the year there were credible reports of torture, abuse, and other mistreatment by PNC members. Complaints typically related to the use of excessive force during police operations and arbitrary detention of suspected gang members and others targeted during extortion schemes.

On January 30, police arrested seven men accused of membership in the People's Avengers (previously known as the People's Social Cleansing Group), a group of vigilantes in San Lucas Toliman, Solola. Local residents accused the group of extortion and beatings in the Solola area.

A human rights NGO reported the alleged May 22 beatings of three homeless children by soldiers assigned to the Military Police Brigade. A military investigation was not able to substantiate the charges, and at year's end the Public Ministry was investigating the case (see section 5).

There were credible reports that PNC officials or persons disguised as police officers stopped cars and buses to demand bribes or steal private property. In some cases the supposed police officers assaulted and raped victims.

## Prison and Detention Center Conditions

Prison conditions remained harsh and dangerous. The prison system continued to suffer from a severe lack of resources, particularly in the areas of prison security and medical facilities. Prisoners complained of inadequate food and medical care. Corruption, especially drug-related, was widespread. Prison officials reported frequent escape attempts and other manifestations of prisoner unrest.

Prison overcrowding was a problem. According to the registry maintained by the prison system, at the end of the year there were 7,477 persons held in 40 prisons and jails designed to hold 6,974. Approximately 44 percent of the national penitentiary system population was held in pretrial detention. The media and NGOs reported physical and sexual abuse of women and juvenile inmates as a serious problem in detention cells at police precincts. Many of the abused juvenile inmates were suspected gang members.

There were no new developments regarding any investigation of the identities of persons who smuggled weapons into the prisons or of the August 2005 simultaneous incidents involving violence in four prisons that claimed 36 lives.

On June 22, in an outbreak of violence between rival gang member inmates at the San Jose Pinula Juvenile Detention Center, four juvenile inmates were killed and five others were injured. The Office of the Human Rights Ombudsman (PDH) alleged the prison guards were involved in the killings.

There were no developments regarding any investigation of a December 2005 intragang dispute in a prison in Mazatenango resulting in the killing of one gang member inmate.

On September 25, 3,000 members of the security forces, including police, military, and prison guards, recovered control of El Pavon prison farm from inmates who had been operating organized crime activities throughout the Guatemala City area from within the prison. There was minimal violence. Seven inmates were reportedly killed in acts of armed resistance against the government takeover. Some prisoners alleged that the dead inmates were the victims of extrajudicial killings that occurred after the prison was occupied by security forces. The PDH supported this claim and reported that security forces had committed extrajudicial killings in the immediate aftermath of the recovery effort. By year's end the Public Ministry had announced that it was investigating these accusations. The approximately 1,650 remaining prisoners at El Pavon were moved temporarily to nearby prison facilities while the authorities rebuilt El Pavon. By December prison authorities had reportedly returned approximately 495 prisoners to El Pavon.

On rare occasions male and female detainees in immigration facilities were held together. Pretrial detainees sometimes were held in the same prison blocks with the general prison population.

The government permitted prison monitoring visits by local and international human rights groups, the Organization of American States, public defenders, religious groups, and family members, and such visits took place throughout the year.

### d. Arbitrary Arrest or Detention

The constitution and the law prohibit arbitrary arrest and detention, but there were credible reports of arrests without judicial warrants, illegal detentions, and failure to adhere to prescribed time limits in legal proceedings. In practice arresting officers often failed to satisfy legal requirements due to the failure of magistrates to receive the case within the legally mandated timeframe of six hours.

## Role of the Police and Security Apparatus

The 18,000-member PNC, headed by a director appointed by the president, remained understaffed, poorly trained, and severely underfunded. As of December the PNC reported 118 deaths of PNC personnel during the year, with 60 of these deaths due to firearms and two due to lynching.

Police corruption was a serious problem, and there were credible allegations of involvement by individual police officers in criminal activity, including rapes, killings, and kidnappings. Police impunity remained a serious problem. When ORP investigations failed to elicit successful administrative or judicial punishment, the PNC often transferred suspected officers to different parts of the country. Attempts to curb impunity included placing 157 officers in employment dismissal proceedings.

While no active members of the military served in the police command structure, the government continued to employ the military to support police units in response to rising rates of violent crime. Joint police and military operations under operational control of the PNC continued in areas of Guatemala City with the highest crime rates, as well as in other regions of the country. Under presidential instructions, in March and April the military trained and equipped approximately 3,000 military reservists and former soldiers to form the Special Corps for Citizen Security, which military commanders deployed in Guatemala City and several other areas of the country to undertake joint patrols with police units.

On June 30, PDH and 16 civil society organizations requested that President Berger end combined patrols between army and police units due to concerns about the potential for abuses. During the year there were no credible reports of abuses conducted by the joint patrols, which continued to operate.

Police threatened persons engaged in prostitution and other commercial sexual activities with false drug charges to extort money or sexual favors and harassed homosexuals or transvestites with similar threats of false charges (see section 5). Critics accused the police of indiscriminate and illegal detentions when conducting antigang operations in specific high-crime neighborhoods. Suspected gang members

allegedly were arrested and imprisoned without charges or on the basis of false drug charges, and in some instances were arrested without a warrant and not during the commission of a crime.

On June 29, the security reform NGO Instance of Monitoring and Support for Public Security reported personnel and technical resource deficiencies in police internal investigation processes.

The ORP undertook internal investigations of misconduct by police officers. Although the ORP increased its professionalism, its independence and effectiveness were hampered by a lack of material resources and the absence of cooperation from other PNC units. The ORP reported that at year's end it had received 1,571 complaints, which included: 37 killings, 36 forced disappearances, 10 kidnappings, 51 illegal detentions, 260 thefts, 16 rapes, 124 instances of bribery, 80 threats, 274 cases of abuse of authority, and 51 instances of illegal detention.

Although cases with sufficient evidence of criminal activity were forwarded to the Public Ministry for further investigation and prosecution, few cases went to trial. Throughout the year ORP investigations resulted in the removal from duty of 157 police officers and exoneration of 175 officers.

Immigration and police officials often subjected persons attempting to enter the country illegally to extortion and mistreatment. Many civil society and media observers believed this mistreatment was underreported.

During the year the PNC trained 954 cadets in courses that included human rights and professional ethics. The army developed a manual for human rights training, and the military continued to incorporate human rights training into its curriculum and developed relevant courses with the PDH. Civil affairs officers at each command were required to plan and document human rights training provided to soldiers, and the officers met this requirement during the year.

Approximately two-thirds of the police districts remained understaffed. Indigenous rights advocates asserted that police authorities' continuing lack of sensitivity to indigenous cultural norms and practices engendered misunderstandings in dealing with indigenous groups and that few indigenous police officers worked in their own ethnic-linguistic communities.

#### Arrest and Detention

The constitution and the law require that a court-issued arrest warrant be presented to a suspect prior to arrest unless the suspect is caught in the act of committing a crime. Police may not detain a suspect for more than six hours without bringing the case before a judge. Detainees often were not promptly informed of the charges filed against them. Once a suspect has been arraigned, the prosecutor generally has three months to complete the investigation and file the case in court or seek a formal extension of the detention period. The law provides for access to lawyers and bail for most crimes. The government provided legal representation for indigent detainees, and detainees had access to family members.

Through December the ORP had received 46 accusations of illegal detention. There were no reliable data on the number of arbitrary detentions, although most accounts indicated that police forces routinely ignored writs of habeas corpus in cases of illegal detention, particularly during neighborhood antigang operations.

On March 17, the government began a pilot project of a 24-hour court in the basement of the Supreme Court of Justice building in Guatemala City, staffed with police, prosecutors, public defenders, and judges. In the jurisdictional area of the 24-hour court, the pilot project significantly reduced the number of cases dismissed by judges for lack of evidence and increased the government's ability to comply with legal requirements to bring suspects before a judge within six hours of the start of detention.

Although the law sets a limit of three months for pretrial detention, prisoners often were detained past their legal trial or release dates, sometimes for years. During the year approximately 44 percent of persons incarcerated were in pretrial detention. Some prisoners were not released in a timely fashion after completing their full sentences due to the failure of judges to issue the necessary court order or to other bureaucratic problems. On April 18, Carlos Bermudez Lopez was released from jail nine months after a court had ordered his release in July 2005. A judge has the discretion to determine whether bail is necessary or permissible for pretrial detainees depending on the circumstances of the charges. Detainees who are offered bail but are unable to pay, or choose not to pay, must remain in jail.

#### e. Denial of Fair Public Trial

While the constitution and the law provide for an independent judiciary, the judicial system often failed to provide fair or timely trials due to inefficiency, corruption, insufficient personnel and funds, and intimidation of judges, prosecutors, and witnesses. The majority of serious crimes were not investigated or punished. Many high-profile criminal cases remained pending in the courts for long periods as defense attorneys employed successive appeals and motions.

During the year there were numerous reports of corruption, ineffectiveness and manipulation of the judiciary. Judges, prosecutors, plaintiffs, and witnesses also continued to report threats, intimidation, and surveillance. The special prosecutor for crimes against justice sector workers received 71 cases of threats or aggression against judges, compared with 79 in 2005. During the year two judicial sector workers were killed by unknown assailants.

There were no developments regarding the investigations of the March 2005 killing of Justice of the Peace Jose Antonio Cruz Hernandez by unknown assailants or of the April 2005 killing of High Impact Court Judge Jose Victor Bautista Orozco. There were credible reports of

killings of witnesses. Less than 3 percent of reported crimes were prosecuted, and significantly fewer received convictions.

On May 2, a judge sentenced Julio Cesar Roque Villela and Jose Romilio Moscoso Lemus to 300 years in prison for the 2002 killing of six persons in Xororagua, Chiquimula. Two other persons, Kenneth Vanegas and Fredy Osorio, were released from police custody for lack of evidence. During the prosecution of the case in February, witnesses disappeared, were killed, or refused to present testimony for fear of losing their lives. Two relatives of the victims refused to testify against Vanegas in court after previously identifying him in written statements.

On May 11, Judge Maria Ester Roldan stated that she had received threats from a police lawyer for ordering the transfer of the recently discovered historical police archive to the custody of the PDH. By year's end the case had been transferred to the Public Ministry for review.

There were no developments, and none were expected, regarding the 2004 killing of Jesus Mendoza, cousin of Bamaca case witness Otoniel de la Roca Mendoza.

The Supreme Court of Justice continued to seek the suspension of judges and to conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. During the year the Judicial Discipline Unit investigated and held hearings for 266 complaints of wrongdoing, including 94 for judges, 95 for justices of the peace, 105 for judicial auxiliaries, and 12 for administrative personnel. The Supreme Court did not provide statistics on the resolution of these cases.

Prosecutors remained susceptible to intimidation and corruption and were often ineffective. The law's failure to differentiate between the responsibilities of the PNC and the Public Ministry regarding investigating crimes led to organizational rivalries and the duplication of investigative efforts.

The judiciary consisted of the Supreme Court of Justice, appellate courts, trial courts, and probable-cause judges (with a function similar to that of a grand jury), as well as courts of special jurisdiction, including labor courts and family courts. More than 350 justices of the peace were located throughout the country. Some of the justices specialized in administering traditional and indigenous law in community courts, which were under the jurisdiction of the Supreme Court of Justice. The Constitutional Court, which reviews legislation and court decisions for compatibility with the constitution, is independent of the rest of the judiciary.

Between January and December, the Public Ministry had approximately 139 persons in its witness protection program. In November one witness under police protection was killed at her home in Palencia.

#### Trial Procedures

The constitution provides for the right to a fair, public trial, the presumption of innocence, the right to be present at trial, and the right to counsel. The law provides for plea-bargaining, the possibility of release on bail, and the right to an appeal. Three-judge panels render verdicts. The law provides for oral trials and requires language interpretation for those needing it, in particular the large number of indigenous persons who were not fluent in Spanish (see section 5). Inadequate government funding limited the effective application of this legal requirement. The Public Ministry concentrated 16 interpreters in former conflict areas of the country, and the Office of the Public Defender employed bilingual public defenders in locations where they could serve as translators in addition to defending clients.

The Public Ministry, semi-independent of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as co-plaintiffs. Lengthy investigations and frequent procedural motions used by both defense and prosecution often led to excessively long pretrial detention (see section 1.d.), frequently delaying trials for months or years.

#### Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

#### Civil Judicial Procedures and Remedies

The law does not provide for jury trials in civil matters. The law provides for administrative and judicial remedies for alleged wrongs, including the enforcement of domestic court orders, but there were problems in enforcing domestic court orders.

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

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

On May 30, police raided a residence of Gustavo Adolfo Herrera, a fugitive from justice in an embezzlement case, and although Herrera avoided capture, his family accused the police of kidnapping Herrera's son and briefly detaining his grandson to compel Herrera's surrender.

Human rights defenders alleged that individuals affiliated with clandestine armed groups participated in a number of illegal entries into their homes and offices. The Public Ministry investigated a number of these cases but failed to identify suspects for prosecution.

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

#### a. Freedom of Speech and Press

The constitution and the law provide for freedom of speech and press, and the government generally respected these rights in practice.

On February 1, the Constitutional Court declared void three articles of the Penal Code that criminalized disrespect for public officers, holding that these articles violated freedom of expression guaranteed in the constitution.

On March 28, Juan Carlos Aquino, a reporter for Radio Novedad, alleged that he received death threats for his news coverage of an exhumation in Zacapa of victims of the 1960-96 internal armed conflict.

On March 21, the NGO Reporters Without Borders reported that the Office of the Special Prosecutor for Crimes against Journalists and Unionists, with the support of the Telecommunications Authority and the National Broadcast Commission, closed nine community radio stations for failing to have a broadcasting license and usurping airwaves belonging to others. Critics asserted that the government's action represented discrimination against indigenous groups that largely operated the unlicensed radio stations.

On August 23, radio journalist Vinicio Aguila was shot and wounded while he was jogging in Mixco. Preliminary investigations could not determine a motive for the shooting, but robbery was ruled out. The two assailants fled immediately after firing a single shot.

Although the independent media, including international media, operated freely and were active and expressed a wide variety of views without government restriction, there were reports that members of the media were targets of threats and intimidation from unidentified persons. The Public Ministry reported 67 incidents of intimidation against journalists, compared with 26 during 2005.

Reporters Without Borders reported that in July 2005 former members of the civil defense patrols assaulted Prensa Libre correspondent Edwin Paxtor with machetes while he filmed a demonstration in Chiquimula Department. Paxtor also claimed to have received anonymous death threats on September 23. The threats were reported to the PDH.

By year's end one of the defendants, who was convicted and sentenced to 16 years in prison in February 2005 in connection with the 2003 home invasion of Jose Ruben Zamora, publisher of El Peridico, had appealed the conviction but remained in custody. The other defendant was acquitted. Zamora filed an appeal challenging the acquittal.

#### Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chatrooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by electronic mail.

#### 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

Although the constitution and the law provide for freedom of assembly, and the government generally respected these rights in practice, there were some allegations of unnecessary use of force or inaction by the police during violent demonstrations.

Although between September 25 and 29, the government restricted freedom of assembly in Fraijanes municipality in connection with the takeover of El Pavon prison (see sections 1.c and 2.d.); this restriction was not enforced.

Between August 29 and September 12, the government declared and enforced a state of exception that restricted freedom of assembly during a counternarcotics operation in five municipalities in San Marcos Department. The state of exception was imposed to forestall armed opposition to poppy eradication and related operations.

There were no new developments, and none were expected, regarding the investigation of the January 2005 death of a protester in Solola. By year's end the authorities had not released a report on the investigation of the March 2005 killing of a protester in Huehuetenango.

##### Freedom of Association

The constitution and the law provide for freedom of association, and the government generally respected this right in practice.

#### c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right in practice. There is no state religion; however, the constitution recognizes explicitly the distinct legal personality of the Catholic Church. The government does not establish

requirements for religious recognition, nor does it impose registration requirements for religious members to worship together. The government requires religious congregations, nonreligious associations, and NGOs to register as legal entities in order to transact business.

#### Societal Abuses and Discrimination

There were no reports of societal abuses or discrimination against persons for their religious beliefs or practices, and no reports of anti-Semitic acts. The Jewish population numbered approximately 2,000 persons.

For a more detailed discussion, see the [2006 International Religious Freedom Report](#).

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

The constitution and the law provide for these rights, and the government generally respected them in practice.

On September 25, the government declared a state of exception in the Fraijanes Municipality around El Pavon prison to support the security authorities' reassertion of control of that facility (see sections 1.c and 2.b.). The declaration restricted freedom of movement and assembly and arms possession within the boundaries of the municipality as a public security measure but was not enforced. Between August 29 and September 12, the government enforced restrictions on freedom of movement during a declared state of exception in five municipalities in San Marcos Department (see section 2.b.).

The law prohibits forced exile, and the government did not use exile in practice.

#### Protection of Refugees

The constitution and the law provide for the granting of asylum or refugee status 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. In practice the government provided protection against refoulement, the return of persons to a country where they feared persecution. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations.

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

The constitution and the law provide citizens with 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 nearly universal suffrage for those 18 years of age and older. Members of the armed forces and police are not permitted to vote.

#### Elections and Political Participation

In the 2003 national elections, Oscar Berger of the GANA coalition won a four-year term as president with approximately 54 percent of the vote in the second round. Despite some irregularities in the electoral registry, the Organization of American States' international observation mission categorized the elections as generally free and fair.

There were 14 women in the 158-seat Congress of the Republic, two women on the Supreme Court of Justice, including the president of the court, and one woman on the Constitutional Court. There were 197 women serving as judges. There was one female minister in the cabinet and seven female presidential secretaries. Of the country's 331 mayors, nine were women. There was one indigenous member in the cabinet, and two presidential secretaries were indigenous. There were 15 indigenous members of the Congress of the Republic. Of the 331 mayors, 120 were indigenous.

#### Government Corruption and Transparency

Government corruption was widely perceived to be a serious problem, with public surveys noting a lack of confidence in almost all government institutions including those in the legislative and judicial branches. The Public Ministry continued to investigate corruption charges against former vice president Reyes Lopez, former President Alfonso Portillo, former minister of government Byron Barrientos, and other senior members of the previous government.

On December 13, Jorge Mario Nufio, a former board member of the Social Security Institute, arrested on embezzlement charges, was sentenced to 13 years in prison. By year's end Nufio's lawyer had announced that he would appeal the sentence.

On October 26, Manuel Abundio Maldonado, former director of the General Directorate of Civil Aviation, was sentenced to two years in prison, or payment of \$7,200 (54,000 quetzales), for abuse of authority in connection with a 2003 diversion of \$160,000 (1.2 million quetzales) from civil aviation funds through payments to nonexistent workers. Three other former civil aviation employees, including the finance director, were sentenced to prison terms or ordered to pay fines.

There were no new developments regarding the appeal of the acquittal of former Social Security Institute head Carlos Wohlers who had been charged with corruption and abuse of authority or of the appeal of the conviction for material falsification in transferring funds of former minister of finance Eduardo Weymann.

There were no new developments regarding the whereabouts of former director of the National Transit Authority, Arnaldo Heriberto Quezada Chapeton, who remained at large after failing to appear at a September 2005 hearing on charges of corruption.

Judicial authorities continued to restrict the movements of former defense ministers Eduardo Arevalo Lacs and Alvaro Lionel Mendez Estrada, who remained under investigation for corruption in relation to alleged embezzlement of \$121 million (906 million quetzales) of Ministry of Defense funds between 2001 and 2003.

In May police discovered stolen gasoline trucks at a gas station owned by Congressman Hector Loaiza Gramajo. Based on subsequent investigations, the Public Ministry charged Loaiza with fraud, tax evasion, and other crimes. At year's end the Supreme Court of Justice was reviewing government evidence seeking to strip Loaiza of his parliamentary immunity.

At year's end former director of the tax administration body Marco Tulio Abadio, who had been in prison since 2004, was still awaiting trial for embezzlement of tax administration funds.

Although the constitution provides for the right of citizens to access public information, there are no laws regulating provision or facilitating access to information held by public institutions and no other established mechanisms to enable citizens or noncitizens to access government information.

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

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views, including civil society advocacy for the election of members to the Constitutional Court and the negotiation of the International Commission Against Impunity in Guatemala (CICIG). Many NGOs and human rights workers and a number of trade unionists (see section 6.a.) reported threats or intimidation by unidentified persons and complained that the government did little to investigate these reports or to prevent further incidents. Only a small number of these cases were officially reported to authorities.

The resident Office of the UN High Commissioner for Human Rights assisted the government in investigating various issues, including land use conflicts, and discrimination against indigenous persons.

The government continued to provide security to homes and offices of human rights activists who received threats. The Myrna Mack Foundation and the Guatemalan Forensic Anthropology Foundation (FAFG) received ongoing security protection. Staff members of FAFG continued to receive death threats throughout the year.

During the year the Office of the Special Prosecutor for Human Rights opened several new cases on matters involving anonymous telephoned or written threats, break-ins, physical assaults, as well as surveillance of workplaces, residences, and vehicular movements. The majority of such cases remained pending for lengthy periods without investigation or languished in the court system as defense attorneys filed successive motions and appeals to delay trials.

Substantial threats were made against the lives and safety of persons involved in the exhumation of often secret burial sites containing the bodies of victims of the 36-year internal armed conflict that concluded with the signing of peace accords in 1996. Forensics groups used the information obtained from the exhumations to verify eyewitness reports of massacres during the conflict.

In June UN High Commissioner for Human Rights Louise Arbour and in September UN Rapporteur for Extrajudicial Executions Philip Alston visited the country. In July the Inter-American Commission on Human Rights (IACHR) held a special session in the country to analyze petitions, cases, precautionary measures, and thematic and general reports on human rights and also met with representatives of the government and civil society.

Human Rights Ombudsman Sergio Morales, elected by the Congress of the Republic, reports to the Congress of the Republic and monitors the rights recognized under the constitution. The PDH's rulings do not have the force of law. The PDH operated without government or party interference, had adequate resources to undertake its duties, and had the government's cooperation.

The PDH issued reports and recommendations that were made public, including its annual report on the fulfillment of the PHD's mandate to the Congress of the Republic. During the year the PDH also issued reports on femicide in Central America, the death of Claudia Isabel Madrid, July 18 disturbances at a juvenile detention center, and the discovery of the National Police Archives. There were no developments, and none were expected, in the investigation to identify individuals who made threats in 2004 against PDH field staff.

The President's Commission on Human Rights (COPREDEH), directed by human rights leader Frank La Rue, is charged with formulating and promoting the government's human rights policy, representing the government for past human rights abuse cases before the Inter-American Court of Human Rights, and negotiating amicable settlements in those cases before the IACHR. COPREDEH took a leading role in coordinating police protection for various human rights and labor activists throughout the year and in consultations for redrafting the provisions of the CICIG.

The Congressional Committee on Human Rights also drafts and provides advice on legislation regarding human rights issues. By law all political parties represented in the Congress of the Republic are required to have a representative on the committee. NGOs reported that they considered the committee to be valuable.

## Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The constitution and the law prohibit discrimination based on race, gender, disability, language, or social status. In practice the government frequently did not enforce these provisions due to inadequate resource allocations, corruption, and a dysfunctional judicial system (see sections 1.c. and 1.e.).

### Women

Violence against women, including domestic violence, remained a common and serious problem. The law prohibits domestic abuse but does not provide prison sentences for cases of domestic abuse. Prosecutors noted that the law permits the charging of abusers with assault only if bruises from the abuse remained visible for at least 10 days. The law provides for the issuance of restraining orders against alleged aggressors, police protection for victims, and requires the PNC to intervene in violent situations in the home. In practice, however, the PNC often failed to respond to requests for assistance related to domestic violence. Women's groups noted that few officers were trained to deal with domestic violence or provide victims' assistance.

The Program for Prevention and Eradication of Intrafamily Violence, a government program under the Presidential Spouse's Secretariat of Social Work, reported receiving approximately four calls a day via its emergency hot line from battered women and children. The Public Ministry reportedly received more than 9,657 complaints of family violence against women and children through December. During the year the Public Ministry achieved convictions in 79 of the 3,547 cases it opened during the year.

Justices of the peace issued an unspecified number of orders of restraint against domestic violence aggressors and police protection for victims. Full investigation and prosecution of domestic violence and rape cases usually took an average of one year, and prosecutors noted that half of the victims of domestic violence who filed complaints failed to pursue their cases after their initial visit to the Public Ministry. The Public Ministry handled 6,281 cases against perpetrators of domestic violence, but there was no information on the number of prosecutions or convictions. Although the law affords victims of domestic violence with protection, such as shelter, during the period of investigation, in practice there were insufficient facilities for this purpose.

The ombudsman for indigenous women, an office of COPREDEH, provided social services for victims of domestic or social violence, as well as mediation, conflict resolution, and legal services for indigenous women. This office also coordinated and promoted action by government institutions and NGOs to prevent violence and discrimination against indigenous women but lacked human resources and logistical capacity to perform its functions on a national level. The office handled 1,425 cases between January and September, including labor conflicts and domestic violence.

Sexual offenses remained a serious problem. The law criminalized rape, including spousal rape and aggravated rape, and establishes penalties between six and 50 years in prison. Prosecutors from the Special Unit for Crimes against Women noted that reports of rapes had increased by 30 percent over the past four years, although some observers suggested that the increases might reflect improved record-keeping of crime statistics. Until 2004 the law provided that a rapist could escape charges by marrying the victim. Although the law no longer allows for this, judicial processes that were entered into before the law changed are judged according to the old law. During the year there were cases in which this occurred.

Police had minimal training or capacity for investigating or assisting victims of sexual crimes. The government maintained a PNC Special Unit for Sex Crimes, an Office of Attention to Victims, and a Special Prosecutor for Crimes against Women, Children, and Trafficking in Persons, but none of these units were effective in reducing sexual violence. The PNC in Guatemala Department reported opening 342 cases against sexual offenders and making 64 arrests relating to sexual violence. The Public Ministry did not provide data on the number of convictions in cases of rape and sexual abuse of women and minors. The UN Children's Fund (UNICEF) reported that rape victims sometimes did not report the crime for lack of confidence in the prosecution system and fear of reprisals.

Between January and December the prosecutor's office reported receiving 581 cases of rape and sexual assault in Guatemala City. Of these, 74 cases went to trial resulting in 63 convictions with an average sentence of six to 20 years' imprisonment, 21 persons were absolved, and 25 cases were settled out of court.

The PNC reported that by year's end there were 603 killings of women, constituting approximately 10 percent of the total number of 5,885 killings reported during that period, compared with approximately 10 percent (552 women out of 5,747 total killings) during 2005, and approximately 11 percent (509 women out of 4,519 total killings) during 2004. Although the PNC attributed gang violence, narcotics trafficking, and domestic abuse as the probable causes for many of the killings, authorities were unable to identify the perpetrator or motives for over half of the killings. Through December female victims represented 21.5 percent (75 of 349) of the reported killings by strangulation. A study during the year by the NGO Grupo Guatemalteco de Mujeres reported that 11 percent of killings of women in the country could be identified as targeted killings based on gender. The overall number of killings of both men and women continued to rise, as did the rate of victims of killings per 100,000 persons.

Due to weaknesses throughout the judicial and law enforcement systems, including inadequate governmental allocation of resources to criminal investigation authorities, government investigations of killings of women and of homicides generally were extremely ineffective, resulting in the erosion of public confidence in these governmental institutions and in the ability of the government to resolve crimes and protect citizens.

Although prostitution is legal, procuring and inducing a person into prostitution are crimes that can result in fines or imprisonment, with heavier penalties if minors are involved. Trafficking in women and minors, primarily for the purpose of prostitution, is illegal and was a broadly recognized problem (see section 5, Trafficking).

Sexual harassment is not specified as a crime in the penal code, and during the year there were no accurate estimates of the incidence of sexual harassment. Human rights organizations reported, however, that sexual harassment was widespread, especially in industries in which the workforce was primarily female, such as the textile and apparel assembly sector. While the law establishes the principle of gender equality, in practice women faced job discrimination and were less likely to hold management positions. The 2002 National Study on Income and Spending, the most recent available, showed that indigenous women earned 58 percent of what indigenous men earned and that nonindigenous women earned 71 percent of what nonindigenous men earned. Women were employed primarily in low-wage jobs in agriculture, retail businesses, the service sector, the textile and apparel industries, and the government and were more likely than men to be employed in the informal sector, where pay and benefits generally were lower. Women may legally own, manage, and inherit property on an equal basis with men, including in situations involving divorce.

The Secretariat for Women's Affairs advised President Berger on interagency coordination of policies affecting women and their development. The secretariat's activities included seminars, outreach, and providing information on discrimination against women.

## Children

The government devoted insufficient resources to ensure adequate educational and health services for children.

Although the constitution and the law provide for free compulsory education for all children up to the sixth grade, less than half the population had received a primary education. The UN Development Program's 2003 Human Development Report, the most recent available, estimated that 40 percent of children who entered primary school finished their third year and 30 percent were promoted beyond sixth grade. Completion rates were lower in rural and indigenous areas. According to the Population Council's annual report, the average education level attained varied widely based on background and geographic region. Although the average nonindigenous child received 4.2 years of schooling, indigenous children received an average of 1.3 years.

Boys and girls had equal access to medical care. UNICEF statistics reported that 67 percent of indigenous children suffered from chronic malnutrition.

Child abuse remained a serious problem. The Public Ministry did not provide a figure on the number of cases of child abuse during the year. The Social Secretariat for the Welfare of Children, with oversight for children's treatment, training, special education, and welfare programs provided shelter and assistance to children who were victims of abuse but sometimes placed children under its care in shelters with other youths who had criminal records. Due to an overwhelmed public welfare system, family courts during the year referred 329 minors to Casa Alianza, an NGO focusing on issues regarding street children. The Special Prosecutor's Office for Women included a unit that investigated only child abuse cases.

Child prostitution was a problem (see section 5, Trafficking and section 6.c.).

Child labor was a widespread and serious problem. According to the International Labor Organization (ILO), during the year almost one quarter of children had to work to survive (see section 6.d.).

Credible estimates put the number of street children at 5,000 nationwide, approximately 3,000 of them in Guatemala City. Most street children ran away from home after being abused. Casa Alianza reported that increased gang recruitment decreased the number of street children in the capital, because after joining a gang, street children often lived with fellow gang members and no longer slept on the streets. Casa Alianza reported that by year's end approximately 377 minors suffered violent deaths in Guatemala City. Criminals often recruited street children for purposes of stealing, transporting contraband, prostitution, and illegal drug activities. Approximately 10,000 children were members of street gangs. NGOs dealing with gangs and other youth reported concerns that street youth detained by police were subject to abusive treatment, including physical assaults (see section 1.d.).

The government closed its two shelters in Guatemala City and moved their functions to a shelter for girls in Antigua and a shelter in San Jose Pinula for boys. Two other shelters in Quetzaltenango and Zacapa served both boys and girls.

The government devoted insufficient funds to its shelters, and governmental authorities often preferred to send juveniles to youth shelters operated by Casa Alianza and other NGOs. The government provided no funding assistance for shelter costs to these NGOs. Juvenile offenders were incarcerated at separate youth detention facilities.

## Trafficking in Persons

While the law prohibits trafficking in persons, there were reports that persons were trafficked to, from, through, and within the country. The law criminalizes all forms of trafficking, defines the categories of persons responsible for trafficking offenses, and mandates jail time for traffickers. The government acknowledged that trafficking was a significant and growing problem in the country.

The Public Ministry operated the Office of Special Prosecutor for Crimes against Women, Children, and Victims of Trafficking. During the year a task force, which included the Office of the Special Prosecutor, immigration authorities, PNC, and Casa Alianza, conducted an unspecified number of bar raids.

The country cooperated with Mexico on an annual work plan to care for victims and regularize cooperation between the respective government agencies. This cooperation included ensuring that the repatriation of trafficking victims was handled separately from deportations. The country had repatriation agreements for minor victims of trafficking with El Salvador, Nicaragua, Honduras, Costa Rica,

and Panama.

The country was a source, transit, and destination country for women and children trafficked for purposes of sexual exploitation and child labor. One 2004 NGO report, which contained the most recent data available, identified 600 to 700 minors who were victims of trafficking in centers of prostitution across the country. There were no reliable estimates of forced labor trafficking, mainly involving children used in begging rings in Guatemala City.

Trafficking was particularly a problem in the capital and in towns along the borders with Mexico and El Salvador. Child migrants who did not cross the border into Mexico often remained in the country and resorted to or were forced into prostitution. Many women and children also were brought into the country from El Salvador, Nicaragua, and Honduras by organized rings that forced them into prostitution. The primary target population for sexual exploitation was minor boys and girls or young women from poor families. Traffickers often approached individuals with promises of economic rewards, jobs in cafeterias or beauty parlors, or employment in other countries. The means of promotion included flyers, newspaper advertisements, and verbal or personal recommendations.

Brothel owners often were responsible for transporting and employing victims of trafficking. Traffickers frequently had links to other organized crime, including drug trafficking and migrant smuggling.

There were credible reports that police and immigration service agents were complicit in trafficking of persons. In a 2002 study by the NGO End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes, some minor victims of trafficking reported that immigration officials took bribes from traffickers, gave the victims falsified identification papers, and allowed them to cross borders. There were credible reports that brothel owners allowed police and migration officials to have sex with minor victims without charge. There were no further developments, and none were expected, regarding the investigation of former PNC official Rudy Giron Lima's ownership of three bars where underage persons were engaged in prostitution. During the year Giron Lima remained in prison under a 63-year sentence for an unrelated kidnapping conviction.

The Secretariat for Social Welfare, a government institution, operated shelters in Antigua, San Jose Pinula, Quetzaltenango and Zacapa that housed victims of trafficking and offered social casework, job training, and counseling.

Immigration officials generally deported foreign adult trafficking victims but did not treat them as criminals. Immigration officials deported an unspecified number of women found during bar raids back to Honduras, Nicaragua, and El Salvador. Victims were not prosecuted and were not required to testify against traffickers.

During the year the government undertook efforts to address the problem of trafficking in persons, including increased attention to rescuing minors from commercial sexual exploitation in bars, brothels, and other establishments. The government released minor trafficking victims rescued in bar raids primarily to the custody of Casa Alianza, which provided shelter, medical treatment, psychological counseling, and job training. Other NGOs provided similar services and, along with Casa Alianza, lobbied for legislation, protection of victims, and prevention of trafficking.

#### Persons with Disabilities

The constitution and the law contain no specific prohibitions against discrimination based on physical disability in employment, education, access to health care, or the provision of other state services. The law, however, mandates equal access to public facilities and provides some other legal protections, such as equal hiring opportunities. In many cases persons with physical and mental disabilities did not enjoy these rights, and the government devoted few resources to combat this problem. A 2004 report by the International Disability Rights Monitor, the most recent available, noted that the government discriminated against persons with disabilities by not providing adequate protection.

There were minimal educational resources for those with special needs, and the majority of universities were not made accessible to persons with disabilities. The National Hospital for Mental Health, the principal healthcare provider for persons with mental illness, lacked basic supplies, equipment, hygienic living conditions, and adequate professional staffing. Although the National Council for the Disabled, composed of representatives of relevant government ministries and agencies, met regularly to discuss initiatives, the government devoted no resources to the implementation of the council's recommendations.

#### Indigenous People

Indigenous people from approximately 22 ethnic groups constituted an estimated 43 percent of the population. In addition to the many Mayan communities, there were also the Garifuna, descendants of Africans brought to the Caribbean region as slaves who intermarried with Amerindians, and the indigenous Xinca community. The law provides for equal rights for indigenous people and obliges the government to recognize, respect, and promote their lifestyles, customs, traditions, social organization, and manner of dress. Although some indigenous people attained high positions as judges and government officials, they generally were underrepresented in politics and remained largely outside the country's political, economic, social, and cultural mainstream due to limited educational opportunities, poverty, and pervasive discrimination.

In a session during the year, the UN Committee on the Elimination of Racial Discrimination (CERD) reported its deep concern at the extent to which racism and racial discrimination against the Maya, Xinca, and Garifuna communities was entrenched in the country, and at the inadequacy of public policies to eliminate racial discrimination. The CERD recommended that the government adopt specific legislation to punish dissemination of ideas based on notions of superiority or racial hatred, incitement of racial discrimination, and violent acts directed against indigenous people and persons of African descent.

The CERD also stated that it was concerned about the low level of political participation among indigenous people, problems expressed by indigenous people in gaining access to the justice system, the lack of access by indigenous people to land, the lack of respect shown for their traditional lands, and difficulties surrounding restitution of lands to indigenous people displaced by armed conflict or economic development. The committee recommended that the government take steps to return lands and territories traditionally owned by indigenous persons and to adopt a national land bill so that indigenous communities could be identified and demarcated.

A 2004 World Bank study, the most recent available, found that 76 percent of the indigenous population lived in poverty, compared with 41 percent of the nonindigenous population.

Rural indigenous persons had limited educational opportunities and fewer employment opportunities. Many of the indigenous were illiterate, and approximately 33 percent did not speak Spanish. More than 50 percent of indigenous women were illiterate and a disproportionate number of indigenous girls did not attend school (see section 5, Women, and Children). According to a 2005 report of the Ministry of Education, the most recent available, 309,764 preschool and kindergarten aged indigenous children were enrolled in bilingual education programs. The government devoted less than 10 percent of the total budget to bilingual education.

The Department of Indigenous People in the Ministry of Labor, tasked with investigating cases of discrimination, representing indigenous rights, and promoting implementation of ILO Convention 169 on the rights of indigenous people, counseled indigenous persons on their rights. This department had no separate budget, only four employees, and lacked resources to investigate any discrimination claims.

Legally mandated court interpreters for criminal proceedings were rarely available, placing indigenous people arrested for crimes at a disadvantage due to their limited comprehension of Spanish (see section 1.e.). There were 63 judges who spoke Mayan languages among the 561 tribunals in the country. There were 62 court interpreters, and the Supreme Court of Justice reported that the judicial system had 689 employees who spoke indigenous languages. In many instances bilingual judicial personnel continued to be assigned to areas where their second language was not spoken.

#### Other Societal Abuses and Discrimination

The law does not criminalize homosexuality, but it also does not expressly include sexual orientation or HIV status among the categories prohibited from discrimination. There was social discrimination against gay, lesbian, and transgender persons and persons with HIV/AIDS. Homosexual rights support groups alleged that members of the police regularly waited outside clubs and bars frequented by sexual minorities and demanded that patrons and persons engaged in commercial sexual activities provide protection money. These groups also complained that police at times raped lesbians and transvestites, but that due to a lack of trust in the judicial system and out of fear of further persecution or social recrimination, victims were unwilling to file complaints.

On June 17, five transvestites were shot in Guatemala City, one of them fatally. A human rights group claimed that the victims were attacked because of their sexual preferences. By year's end police authorities had investigated the attack but had not identified any suspects. A December 2005 incident involving the killing of one transvestite person and the injuring of another remained under investigation. Members of the gay rights group OASIS asserted that the perpetrators were wearing police uniforms (see section 1.d.).

#### Section 6 Worker Rights

##### a. The Right of Association

While the law provides for freedom of association and the right to form and join trade unions, in practice enforcement remained weak and ineffective. With the exception of members of the security forces, all workers have the right to form or join unions, but less than 3 percent of the formal sector work force was unionized.

Legal recognition of a new industry wide union requires that the membership constitute 50 percent plus one of the workers in an industry. In its annual report, the ILO Committee of Experts (COE) recalled that for many years it had been commenting on this requirement as among "restrictions on the formation of organizations in full freedom." Labor rights activists considered this number to be a nearly insurmountable barrier to the formation of new industry wide unions.

Enforcement of legal prohibitions on retribution for forming unions and for participating in trade union activities was weak. To hold union office, the law requires that a person must be both a citizen of the country and actively employed by the enterprise or economic activity. Many employers routinely sought to circumvent legal provisions for union organizing by resisting union formation attempts or by ignoring judicial orders to enforce them. An ineffective legal system and inadequate penalties for violations continued to undermine enforcement of the right to form unions and participate in trade union activities.

There were credible reports of retaliation by employers against workers who tried to exercise internationally recognized labor rights. There were no new developments, and none were expected, regarding the status of a 2004 case involving 20 workers dismissed by the Secretariat for Social Welfare while trying to form a public sector union, despite a court order calling for their reinstatement.

Some workers who suffered illegal dismissal took their cases to the labor courts and won 6,037 injunctions ordering reinstatement. The law requires employers to reinstate workers dismissed illegally for union organizing activities. In practice employers often failed to comply with reinstatement orders. Appeals by employers, along with legal recourse such as reincorporation as a different entity, often prolonged reinstatement proceedings. The labor courts rarely dismissed frivolous appeals, did not operate in a timely manner, or ensure enforcement of their decisions. According to labor ministry officials, employers rarely were disciplined for ignoring legally binding court orders.

The COE noted problems with failure to comply with court orders to reinstate dismissed trade union members, tardiness of the procedures to impose penalties for breaches of labor legislation, and numerous antiunion dismissals.

Labor leaders reported receiving death threats and other acts of intimidation. A three-prosecutor Office of the Special Prosecutor for Crimes Against Unionists and Journalists accepted 30 new union-related cases during the year (see section 4). During the year prosecutors secured no convictions for crimes against trade unionists and often claimed that they had minimal evidence to prosecute such cases. In its annual report the COE expressed "deep concern at the acts of violence against trade union leaders and members," emphasized that "trade union rights can only be exercised in a climate that is free of violence," and requested government information on how the government would protect trade unionists.

During the year the Ministry of Labor granted legal status to 53 new labor unions. Although there were 1,769 legally registered labor unions, fewer than 415 appeared to be active based on administrative register records.

An active *solidarismo* (solidarity association) movement claimed to have approximately 170,000 members. Its advocates claimed that these associations operated in an estimated 400 companies. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to choose between them or to belong to both. The government characterized these associations as civic organizations that need not interfere with the functioning of trade unions. Although the law stipulates that trade unions have an exclusive right to negotiate work conditions on behalf of workers, unions charged that management promoted solidarity associations to avoid the formation of trade unions or to compete with existing labor unions. Representatives of most organized labor groups criticized these associations for their inability to strike, having inadequate grievance procedures, and for displacing genuine, independent trade unions with an employer-dominated structure.

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

The law allows unions to conduct their activities without interference, and the government generally strove to protect this right in practice. The law requires that union members approve a collective bargaining agreement by simple majority. Although workers had the right to organize and bargain collectively, the small number of unionized workers limited the practice of organizing and bargaining. In its annual report, the COE identified "violation of collective agreements" in the country as a restriction on the exercise of trade union rights in practice.

In a factory or business, 25 percent of the workers must be union members for collective bargaining to take place. Most workers, including those organized in trade unions, did not have collective contracts documenting their wages and working conditions, nor did they have individual contracts as required by law.

According to the Ministry of Labor, there were 17 collective bargaining agreements, covering an estimated 15,000 unionized and non-unionized workers, primarily in the public sector.

Workers have the right to strike, but due to the very low level of unionization and procedural hurdles, there were only two legal strikes by year's end. The law requires approval by simple majority of a firm's workers to call a legal strike, and it requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike. Teachers, farm workers, and other labor groups held illegal or unofficial work stoppages.

The law empowers the president and his cabinet to suspend any strike deemed "gravely prejudicial to the country's essential activities and public services," an authority that the government did not use during the year.

Workers in the essential services and public services sectors can address grievances by means of mediation and arbitration through the Ministry of Labor's General Inspectorate of Labor and also directly to the labor courts. Employers may suspend or fire workers for absence without leave if authorities have not recognized a strike as legal. The law calls for binding arbitration if no agreement is reached after 30 days of negotiation. The law prohibits employer retaliation against strikers engaged in legal strikes.

Labor laws and regulations apply throughout the country, including in the 12 active export processing zones (EPZs) and within the maquiladoras, which operated under an EPZ-like regime, although they were not located in distinctly established areas. By end of year the number of workers in the maquiladora sector decreased to approximately 85,766 businesses due to competition from producers in Asian countries.

There were no special laws or exemptions from regular labor laws in the EPZs. Due to worker mistrust of employers and union organizers, unions had minimal success in organizing workers in EPZs and in the maquiladora sector. There was one collective bargaining agreement in the EPZ sector. Only five enterprises in the maquiladora sector had legally registered unions. Labor leaders and activists asserted that employer intimidation and pressure undermined organizing activities. Among the deficiencies in the exercise of trade union rights identified in the COE's annual report were "the need to promote trade union rights (particularly collective bargaining) in export processing zones."

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

While the constitution and the law prohibit forced or compulsory labor, including by children, women and increasingly minors were trafficked for the purpose of sexual exploitation (see section 5). There were reports that employers sometimes forced workers to work overtime, often without the premium pay mandated by law (see section 6.e.).

#### d. Prohibition of Child Labor and Minimum Age for Employment

Although the law bars employment of minors under the age of 14 without written permission from parents or the Ministry of Labor, child labor was a widespread problem. The law prohibits minors from work in establishments where alcoholic beverages are served, from work in unhealthy or dangerous conditions, and from night work and overtime work. The legal workday for persons younger than 14 is six hours, and for persons 14 to 17 years of age, seven hours. Despite these protections, child laborers worked on average in excess of 45 hours per week.

The informal and agricultural sectors regularly employed children below 14 years of age, usually in small family enterprises. Economic necessity forced most families to have their children work to supplement family income, particularly in rural and indigenous communities.

Laws governing the employment of minors were not enforced effectively. The vast majority of child labor cases occurred in the informal sector. The situation was exacerbated by the weakness of the labor inspection and labor court systems, and because the law provides that parental consent alone is sufficient to permit a child to work.

The ILO's International Program on the Elimination of Child Labor (IPEC) continued to operate programs in the country to deal with commercial sexual exploitation of children, child labor in commercial agriculture, children working in garbage dumps, and child labor in quarries. During the year IPEC ended two child labor programs in Retalhuleu and San Marcos. The Ministry of Labor estimated that approximately 3,000 children were illegally employed in the very hazardous cottage-based fireworks production industry.

The Child Worker Protection Unit within the Ministry of Labor is charged with enforcing restrictions on child labor and educating minors, their parents, and employers on the rights of minors in the labor market.

The government devoted insufficient resources to prevention programs, but Guatemala City's municipal administration managed several small programs that offered scholarships and free meals during the year to encourage families to send to school children who had formerly worked in the broccoli, coffee, gravel, and fireworks industries.

#### e. Acceptable Conditions of Work

The law sets national minimum wages for agricultural and nonagricultural work. The daily minimum wage was \$6.95 (52.91 quetzales) per day for agricultural work and \$7.12 (54.15 quetzales) for nonagricultural work.

The minimum wage did not provide a decent standard of living for a worker and family. The National Statistics Institute calculated that the minimum food budget for a family of four was \$197.40 (1,502.28 quetzales) per month, significantly above the \$208 (1,587.40 quetzales) per month that could be earned at the nonagricultural minimum wage rate. The institute's estimate of a family's total needs, including housing, clothing, utilities, and healthcare, was \$360.23 (2,741.38 quetzales). Labor representatives noted that even where both parents worked, the minimum wage did not allow the family to meet its basic needs.

Noncompliance with minimum wage provisions in the informal sector was widespread. The Ministry of Labor conducted inspections to monitor compliance with minimum wage provisions, but the government allocated inadequate resources to enable inspectors to enforce the minimum wage law adequately, especially in the very large informal sector. Advocacy groups focused on rural sector issues estimated that more than half of workers in rural areas who engaged in day-long employment did not receive the wages, benefits, and social security allocations required by law.

According to the National Center for Economic Investigations, approximately 75 percent of the workforce operated in the informal sector and therefore outside of the basic protections, such as minimum wage, afforded by the law.

The legal workweek is 48 hours with at least one paid 24-hour rest period, although in certain economic sectors workers continued to operate under a tradition of longer work hours. Daily and weekly maximum hour limits did not apply to domestic workers. Time-and-a-half pay was required for overtime work. Although the law prohibits excessive compulsory overtime, trade union leaders and human rights groups charged that employers sometimes forced workers to work overtime without legally mandated premium pay. Labor inspectors reported uncovering numerous instances of overtime abuses, but effective enforcement was undermined due to inadequate fines and inefficiencies in the labor court system.

Labor courts have responsibility for sanctioning employers found violating labor laws. Labor inspectors are not empowered to adopt administrative measures or to impose fines for labor violations. During the year the labor courts received 7,119 cases from the labor inspectorate and ruled in favor of reinstatement of the worker in 6,037 cases.

The government sets occupational health and safety standards, which were inadequate and poorly enforced. When serious or fatal industrial accidents occurred, the authorities often failed to investigate fully or assign responsibility for negligence. Employers rarely were sanctioned for failing to provide a safe workplace. Legislation requiring companies with more than 50 employees to provide on-site medical facilities for their workers was not enforced. Workers have the legal right to remove themselves from dangerous work situations without reprisal. Few workers, however, were willing to jeopardize their jobs by complaining about unsafe working conditions.