



2008 Human Rights Reports: Guatemala

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

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Guatemala is a democratic, multiparty republic with a population of approximately 13.7 million. In November 2007 national elections, generally considered by international observers to be free and fair, Alvaro Colom of the National Unity of Hope (UNE) party won a four-year presidential term, which began on January 14. While 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. 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 investigations and fair trials; failure to protect judicial sector officials, witnesses, and civil society representatives from intimidation; threats and intimidation against and killings of journalists and trade unionists; discrimination and violence against women; trafficking in persons; discrimination against indigenous communities; discrimination and violence against gay, lesbian, transvestite, and transgender persons; and ineffective enforcement of labor laws and 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 unlawful killings. Corruption, intimidation, and ineffectiveness within the police and other institutions prevented adequate investigation of many such killings, as well as the arrest and successful prosecution of perpetrators.

At year's end the National Civilian Police (PNC) and its Office of Professional Responsibility (ORP) reported that they had investigated 32 accusations of killings involving PNC personnel and had investigated a total of 185 agents. The investigations determined that PNC personnel were responsible for the deaths in 18 of the 32 cases, and 14 cases remained under investigation.

On September 30, the Fourth Sentencing Court sentenced police agent Jose Corado to 25 years in prison for the February 7 extrajudicial killing of bus assistant Jose Angel Hernandez, who was participating in a demonstration to protest violence against bus drivers. On February 11, the PNC arrested and charged two other police agents for their involvement in the crime; at year's end they remained in custody.

On April 7, unidentified gunmen in Guatemala City killed Victor Rivera, former advisor to the minister of government and former head of the PNC antikidnapping unit, who was reportedly involved in investigating a number of high-profile cases. A Public Ministry investigation was pending at year's end.

On July 21, the PNC arrested and charged Criminal Investigation Division (DINC) detectives Victor Manuel Alvarado, Nicolas Camaja Bach, and Carlos Leonel Costop Gonzalez with the June 29 extrajudicial killings of the adult son and former husband of Edilma Navarizo, mayor of Ocos, San Marcos. Two other DINC agents were identified as suspects in the case but had not been arrested by year's end.

At year's end the nine PNC officers arrested as suspects in the alleged January 2007 extrajudicial killing of Antonio de Leon Lopez in Huehuetenango during an antinarcotics operation remained in custody, while a tenth officer remained at large.

On January 3, police arrested Carlos Alberto Gutierrez ("Montana 3"), assistant to former Jutiapa mayor Manuel Castillo, for his alleged involvement as one of the masterminds of the February 2007 killings of three Salvadoran Central American Parliament (PARLACEN) representatives and their driver. Gutierrez remained in custody at year's end. On August 29, the PNC arrested Manuel Castillo, a fugitive for more than seven months, for his alleged involvement in the PARLACEN killings. At year's end Castillo remained in custody and faced seven charges, including murder.

At year's end the director and deputy director of El Boqueron Prison, as well as several police officers with alleged ties to narcotics trafficking in Jutiapa, remained in custody in connection with the killing of four PNC suspects in the PARLACEN case.

On November 19, the First Sentencing Court sentenced PNC chief Dionisio Balam and PNC officers Wilson Tobar Valenzuela and Sabino Ramos Ramirez to 30 years each in prison for the September 2007 extrajudicial killings of five alleged gang members in Guatemala City.

There were no new developments regarding investigation of the 2006 shootings, one fatal, of five transvestites in Guatemala City.

On May 28, a court convicted and sentenced five former Civil Defense Patrol (PAC) members to 780 years each in prison for the 1982 killings of 177 civilians in Rio Negro, Baja Verapaz. The court ordered the defendants to pay 100,000 quetzales (\$12,937) to the families of the 26 identified victims. It also ordered the capture of former army captain Jose Antonio Solares Gonzalez, who remained at large despite a 1999 court order for his arrest, and former PAC members Ambrosio Perez Laju and Domingo Chen. At year's end all three remained at large.

Societal violence was rampant. Nonstate actors, with links to organized crime, narcotics trafficking, gangs, private security companies, and alleged "clandestine" or "social cleansing" groups, committed hundreds of killings during the year.

Killings and extortion of public bus drivers, assistants, and owners continued unabated, forcing some to move out of their homes or even to flee the country. As of December, according to the Guatemalan Association of Urban Bus Companies, 63 bus drivers had been killed in Guatemala City, and as of mid-October 255 bus drivers and assistants nationwide reportedly had been killed.

The nongovernmental organization (NGO) Human Rights Defenders Protection Unit (UPDDDH) reported that at year's end there were 221 threats and other acts of intimidation against human rights defenders, including 12 killings. Reports also suggested that former or current members of the police were involved in some of the attacks

and other abuses. Killings of all types, including those with evidence of sexual assault, torture, and mutilation of women, continued to occur. The NGO Grupo Guatemalteco de Mujeres reported that from January to December, 722 women were killed. At year's end the PNC reported a total of 6,292 killings, including 687 killings of women, compared with 5,781 total killings, including 559 women, in 2007.

The Mutual Support Group (GAM) reported that at year's end there were 105 killings of children nationwide.

GAM also reported that at year's end 138 lynchings had taken place, 19 of which resulted in death. Many observers attributed the lynchings to continued public frustration with the failure of police and judicial authorities to guarantee security. Among the victims were municipal government employees and police officials who had taken unpopular actions in either enforcing or failing to enforce the law. There were also reports of community lynchings of individuals suspected of rape, kidnapping, or attempting to kidnap children to sell for adoption.

On January 20, a vigilante group in San Juan Sacatepequez shot and killed a 17-year-old whom they suspected of being a gang member. The group also killed the minor's brother and father who attempted to intercede.

On September 16, community members of San Pedro Yepocapa in Chimaltenango lynched a 22-year-old man accused of assaulting and robbing passengers on a public bus and raping four women. At year's end there was no investigation into the lynching and no suspects had been identified.

On June 7, the Chiquimula Sentencing Court sentenced Ingrid Martinez and Jesus Recinos to 50 years each in prison for kidnapping and killing nine-year-old Alba Mishel Espana Diaz in June 2007. Shortly after the disappearance of Espana Diaz, mobs lynched a woman suspected of kidnapping the girl. In 2007 a mob had lynched another woman whom they had suspected of kidnapping another child.

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 at year's end there were nine complaints of kidnapping by PNC personnel.

There were no developments in the January 2007 disappearance of security guard Marcos de Jesus Garcia Sarmiento from the alleged hiding place of former fugitive Gustavo Herrera.

There were no known developments in the Public Ministry's investigation of the February 2007 kidnapping of Marco Tulio Moreno Ramirez, who was reportedly kidnapped by four armed men wearing PNC-type uniforms.

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

Although the constitution and the law prohibit such practices, 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.

On November 28, the Tenth Penal Court opened a trial against PNC chief Elias Lemus Guerra, deputy inspector Jose Lopez Hernandez, and agents Jorge Garcia Ortiz and Dennis Gueiry Godinez for the April 9 illegal detention of Eleazar Rodas. The PNC officials allegedly threatened Rodas with false drug charges if he did not give the officials 10,000 quetzales (\$1,294) that he had in his possession at the time of his detention. The officials were also charged with theft and abuse of authority and remained in custody at year's end.

According to press accounts, in an attempt to gather information about a protest, police detained and beat two bus assistants who had participated in a February 7 demonstration on violence against bus drivers and assistants.

At year's end there were no known developments in the Public Ministry's investigation of the alleged beatings in 2006 of three homeless children by soldiers assigned to the Military Police Brigade.

On April 16, a court in Quiche sentenced PNC officer Antonio Rutilio Matias Lopez to 20 years in prison for the 2005 aggravated rape of Juana Mendez, who was in police custody.

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 services and facilities. Prisoners complained of inadequate food and medical care. Corruption, especially related to illegal drug sales and use, was widespread. Prison officials reported frequent escape attempts, gang fights, and other manifestations of prisoner unrest. Prisoners frequently used cellular telephones to demand extortion payments and to direct other criminal activity both inside and outside the prison. Several prisons installed equipment to block such calls, but by year's end the final installation for equipment activation had not been completed.

Prison overcrowding continued to be a problem. The prison system registry reported that at year's end 8,242 persons were held in 19 prisons and jails designed to hold 6,974 persons. Approximately 45 percent of the national penitentiary system population was in pretrial detention.

Inadequate security measures undermined the penitentiary system's ability to effectively control prisoners. According to prison officials, there were 1,200 prison guards nationwide. Prisoners with access to cellular telephones reportedly coordinated a significant number of the country's kidnappings and some of the killings of bus drivers and assistants. Sixteen percent of prisoners reportedly belonged to gangs, which were active in prisons and occasionally attacked prison guards. Prison work and educational programs were inadequate to rehabilitate prisoners and decrease the 90 percent recidivism rate.

The media and NGOs reported that physical and sexual abuse of women and juvenile inmates was a serious problem. Many of the abused juvenile inmates were suspected gang members.

On May 1, gang-member inmates killed Jorge Augusto Mendoza, deputy director of the Preventive Detention Center in Chimaltenango. Prisoners reportedly rioted after prison officials detained two women who attempted to bring marijuana into the prison for members of the M-18 Gang.

On June 13, gang-member inmates killed two fellow inmates and injured four others during a fight at the Quetzaltenango Preventive Detention Center for men. During the three-hour confrontation, gang-member inmates held 28 non-gang-member inmates hostage and threatened them with guns and grenades.

On November 22, armed non-gang-member inmates at Pavoncito Preventive Detention Center killed and then decapitated and burned the bodies of five gang-member inmates to protest the transfer of the gang members from El Boqueron prison. Two additional inmates died during the confrontation. An estimated 100 PNC antiriot agents reportedly took four hours to retake control of the prison and remove the bodies.

There were no known developments in the investigation of the March 2007 killing of prisoner Jose de la Cruz Lara Diaz and injuring of prisoner Carlos Arturo Escaray by inmates at Pavoncito Prison.

At year's end the Public Ministry continued investigating the October 2007 case of prison guard Irma Barrientos, who allegedly prostituted female prisoners in the jail for women in Jalapa and extorted a 30 percent commission on money sent to prisoners by their relatives.

At year's end prison authorities had taken no action against prison guards allegedly involved in the 2006 killing of four juvenile inmates and injuring of five other rival gang-member inmates during a riot at San Jose Pinula Juvenile Detention Center.

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 sometimes failed to bring suspects before magistrates within the legally mandated six-hour timeframe, and magistrates sometimes failed to hold a hearing within the legally mandated 24-hour timeframe.

Role of the Police and Security Apparatus

The 19,671 member PNC, headed by a director appointed by the minister of government, remained understaffed, inadequately trained, and insufficiently funded. At year's end the PNC reported 78 deaths of PNC personnel, 22 in the line of duty.

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 crime. Joint police and military operations under operational control of the PNC continued in high-crime areas of Guatemala City, as well as in other regions of the country.

Police corruption remained a serious problem, and there were credible allegations of involvement by individual police officers and some police units in criminal activity, including rapes, killings, and kidnappings. Police and immigration officials reportedly extorted and mistreated persons attempting to enter the country illegally.

Police impunity remained a serious problem. The PNC routinely transferred officers suspected of wrongdoing rather than investigating and punishing them.

There were credible reports that PNC officers 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.

On June 9, the PNC arrested one senior police officer and three patrol officers for their alleged involvement in a criminal gang known as the "Crazy Mariachi" that had engaged in robberies and other crimes, including the April 9 illegal detention of Eleazar Rodas, in Guatemala City. On November 28, the Tenth Penal Court opened a trial against these PNC officials for their alleged involvement in the illegal detention. The officials remained in custody at year's end.

On September 18, the ORP arrested two PNC deputy commissioners for their alleged involvement in a criminal group operating in an affluent sector of Guatemala City. At year's end 12 other police officers were under investigation by the Public Ministry for possible involvement with this group.

Police threatened persons engaged in prostitution and other commercial sexual activities with false drug charges to extort money or sexual favors and harassed homosexuals and transvestites with similar threats of false charges. Critics accused the police of indiscriminate and illegal detentions when conducting antigang operations in some high-crime neighborhoods. Security officials allegedly arrested and imprisoned without charges, or sometimes using false drug charges, suspected gang members.

The ORP conducted internal investigations of misconduct by police officers. At year's end the ORP reported receiving 1,510 complaints, which included 12 complaints of killings, seven forced disappearances, nine kidnappings, eight illegal detentions, 119 thefts, seven rapes, 150 threats, and 183 cases of abuse of authority.

Although the ORP forwarded to the Public Ministry for further investigation and prosecution cases with sufficient evidence of criminal activity, few such cases went to trial. At year's end the ORP had investigated 185 police officers. The PNC did not provide statistics on the resolution of these cases, some of which were ongoing.

The PNC trained 2,810 cadets in human rights and professional ethics, compared with 2,635 in 2007. The army required civil affairs officers at each command to plan and document human rights training provided to soldiers. At year's end 1,035 military officers and soldiers had received human rights training.

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

At year's end the ORP had received eight 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.

In high-crime areas of Guatemala City, Mixco, and Villa Nueva, the government operated three 24-hour court pilot projects that significantly reduced the number of cases dismissed for lack of merit or on technical grounds and increased the prosecution rate in the Guatemala City metropolitan area. These projects enhanced the government's ability to comply with legal requirements to bring suspects before a judge within six hours of initial detention.

Although the law establishes a three-month limit for pretrial detention, prisoners often were detained past their legal trial or release dates. 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 due to other bureaucratic problems. A judge has the discretion to determine whether bail is necessary or permissible for pretrial detainees depending on

the circumstances of the charges.

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. Most serious crimes were not investigated or punished. According to credible estimates, less than 3 percent of reported crimes were prosecuted, and fewer resulted in convictions. The UN-led International Commission Against Impunity in Guatemala (CICIG) estimated that perpetrators of homicides were convicted in only 7 percent of cases. Many high-profile criminal cases remained pending in the courts for long periods as defense attorneys employed successive appeals and motions.

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 judicial workers received 129 cases of threats or aggression against workers in the judicial branch, compared with 125 in 2007.

As of October the Ministry of Government had assigned 30 police officers to CICIG to augment security, and the Public Ministry created a new CICIG-vetted unit of prosecutors working under the direct supervision of a senior CICIG prosecutor. At year's end CICIG continued its investigation of 15 high-profile cases, two prosecutions, and various cases involving killing of women, killings of bus drivers and assistants, trafficking in persons, and attacks against and killings of unionists and human rights defenders.

Judge Eduardo Cojulum of the Eleventh Court of First Instance reportedly received death threats throughout the year for his assistance in the Spanish national court case brought by Rigoberta Menchu, in collaboration with NGOs, against five retired military officers and two civilians for alleged human rights violations committed during the internal conflict.

On March 11, unknown assailants shot and killed Ingrid Judith Borrayo, a clerk in the Homicide Division of the Public Ministry, on a street near her office in Guatemala City. Hugo Rolando Toj, a PNC officer assigned to the Human Rights Division of the Ministry of Government, was also shot while walking with Borrayo and died days later in a hospital.

On May 8, two unidentified gunmen shot and killed Judge Jose Vidal Barillas Monzon, president of the Appeals Court of Retalhuleu, as he was driving near his residence. Judge Barillas had presided over cases involving organized crime, drug trafficking, and land disputes.

On July 14, unknown assailants shot and killed assistant homicide prosecutor Juan Carlos Martinez. Martinez was the chief prosecutor in the PARLACEN and Victor Rivera homicide cases.

There were credible reports of killings of witnesses. There were no known developments in the February 2007 killing of Dalia Evangelina Garcia Illescas, a witness in the murder trial of PNC officer Jorge Macario Mazariegos.

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. The Judicial Disciplinary Unit investigated 914 complaints of wrongdoing and held hearings for 398 complaints through October. 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 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. There were 379 justices of the peace 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.

At year's end the Public Ministry had 249 persons in its witness protection program. There were no new developments in the 2006 case in which a 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 mandates language interpretation for those needing it, in particular the large number of indigenous persons who are not fluent in Spanish. Inadequate government funding limited the effective application of this legal requirement. The Public Ministry utilized 18 interpreters nationwide, including in former conflict areas of the country, and the Office of the Public Defender employed 15 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 plaintiffs. Lengthy investigations and frequent procedural motions used by both defense and prosecution often led to excessively long pretrial detention, 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 such orders; some killings resulted from PNC failure to promptly enforce restraining orders.

Property Restitution

On November 20, the president signed an agreement with leaders of the group of families that lost relatives during the Rio Negro massacres in the early 1980s, known as the Coordinator of the Communities Affected by the Construction of the Chixoy Dam. In the agreement the government acknowledged "damages and violations" and accepted responsibility to provide reparations to families of the victims.

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 September 4, former chief of presidential security Carlos Quintanilla and former head of the Secretariat of

Strategic Analysis (SAE) Gustavo Solano resigned from their posts following the alleged discovery of listening devices in the offices of the president and first lady. Two days later both men were indicted on charges of espionage and became fugitives. Quintanilla voluntarily surrendered to court officials on December 22 and at year's end was under preventive house arrest awaiting trial.

On November 18, unknown individuals broke into the home of Ruth del Valle, the presidential human rights commissioner. Del Valle denounced this invasion as a targeted attack in response to her human rights work. At year's end there were no new developments in the case.

At year's end there were no developments in the February 2007 break-in of the offices of the NGOs Human Rights Defenders Protection Unit, National Movement for Human Rights, and Association of Communication for Art and Peace.

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.

Although the independent media, including international media, operated freely, were active and expressed a wide variety of views without government restriction, there were reports that unknown actors frequently threatened and intimidated members of the media. At year's end the Special Prosecutor's Unit for Crimes Against Journalists and Unionists had received 35 complaints of attacks and other acts of intimidation against journalists, particularly in the provinces and including aggression by the PNC and the Transit Police. The Public Ministry reported 10 incidents of intimidation of journalists, compared with 11 during 2007. A September 10 report by the UN Development Program categorized the country as a "country of risk" for journalists, based on violence against the media and violations of freedom of expression.

In September Congress passed a law providing for a 66 percent reduction on import taxes on materials used by public television networks, a measure that reportedly exclusively benefitted businessman Angel Gonzalez, a Mexican national who has lived abroad for numerous years and who owns four frequencies to broadcast in the national open access television network. Congress subsequently passed a second measure, the Law of Televised Frequencies, which prohibits the two national open access frequencies not owned by Gonzalez from selling publicity to cover its expenses. Journalist Gustavo Berganza denounced both measures in opinion columns and claimed that Congress passed the measures in return for favorable coverage on Gonzalez's open access networks for the members of congress and political parties that supported the measures. Television channels owned by Gonzalez began broadcasting negative news reports on Berganza in what some civil society members called a slander campaign.

On May 10, an unknown assailant shot and killed Prensa Libre correspondent Jorge Merida Perez in his home in Coatepeque, Quetzaltenango. Merida had reported on corruption in the municipality of Coatepeque and the mayor's alleged connection to drug trafficking.

On July 18, Prensa Libre news correspondent Danilo Lopez reportedly received a death threat from the former governor of Suchitepequez, Leonor Toledo. Lopez had reported on corruption in the governor's office.

On July 27, unknown assailants fired shots into the home of Edin Rodelmiro Maaz Bol, news correspondent for Radio Punto in Coban.

There were no known developments, and none were expected, in the February 2007 case of the attempted killing of Nuestro Diario correspondent Wilder Jordan or in the investigation of the March 2007 anonymous death threats against the staff of Guatevision and their family members for Guatevision's coverage of the PARLACEN killings.

The Public Ministry reported that it had no further information regarding the 2006 wounding by gunshot of radio journalist Vinicio Aguilar.

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 engaged in the peaceful expression of views via the Internet, including by e-mail. The International Telecommunication Union reported that in 2007 approximately 10 percent of the population accessed the Internet.

Academic Freedom and Cultural Events

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 of inaction by the police during violent demonstrations. During the year, on three different occasions, the government declared a state of prevention, which suspended freedom of assembly, the right to protest, and the right to bear arms in limited areas of the country: in May to restore order after truck drivers blocked highways in protest over restrictions on the hours when heavy trucks can enter Guatemala City; in June to end violent protests against the construction of a new cement factory in San Juan Sacatepequez; and in October to restore order when street vendors in Coatepeque violently protested police attempts to evict them from their informal market.

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.

On August 1, the Immigration Service again denied entry to Puerto Rican Jose Luis de Jesus Miranda, who claimed to be the Antichrist and planned to participate in a conference. Miranda's church was registered and recognized by the government and continued operating in Guatemala City.

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 2008 International Religious Freedom Report at www.state.gov/g/drl/irf/rpt.

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

The constitution and the law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations.

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 the expulsion or return of refugees to countries where their lives or freedom would be threatened.

During the year the government received 20 requests for refugee status but did not accord temporary protection, asylum, or refugee status to anyone.

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

The constitution and the law provide 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 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 November 2007 Alvaro Colom of the UNE party won a four-year term as president with approximately 53 percent of the vote. The Organization of American States' international observation mission characterized the elections as generally free and fair. Amnesty International reported an estimated 26 killings of political activists in the context of the election.

There were 20 women in the 158-seat Congress, two women on the Supreme Court of Justice, one woman on the Constitutional Court, and 197 women serving as judges. There was one woman in the 12-member cabinet. Six of the country's 332 mayors were women.

There was one indigenous cabinet member, one indigenous supreme court judge, 113 indigenous mayors, and approximately 20 indigenous members in Congress. On August 18, a prominent indigenous leader became head of the new Human Rights Office in the Ministry of Foreign Affairs.

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 World Bank's Worldwide Governance Indicators reflected that government corruption was a very serious problem. The Public Ministry continued to investigate corruption charges against former president Alfonso Portillo, former vice

president Reyes Lopez, and other senior members of previous governments.

On August 6, President of Congress Eduardo Meyer of the governing UNE party resigned from office after acknowledging on June 9 that his private secretary, Byron Sanchez, had illegally transferred 82.8 million quetzales (\$11 million) of public funds to a private investment house, Mercado de Futuros (MDF). The Supreme Court stripped Meyer of his congressional immunity on October 22. Raul Giron, MDF's general manager and legal representative, fled after failing to meet a July 31 deadline to return the money. Giron voluntarily surrendered to court officials on August 22, and at year's end remained in a preventive detention center awaiting trial on charges of money laundering and fraud. The Public Ministry issued arrest warrants for Sanchez and former congressional chief financial officer Jose Conde, both of whom remained at large at year's end. Congressman and former president of congress Ruben Dario Morales allegedly received a 300,000-quetzal (\$39,000) commission from MDF in 2007 for investing congressional funds there. At year's end Meyer, under a court order, was restricted in his movements to Guatemala City. Meyer faced charges of embezzlement, mismanagement of public funds, and fraud and awaited a court date for trial.

On September 17, police found and arrested former congressman Hector Loaiza Gramajo, who had been in hiding since January 15 when he was stripped of his parliamentary immunity at the end of his term in office. Loaiza faced five charges, including money laundering, fraud, and tax evasion, for his alleged involvement in the theft of gasoline trucks in 2006.

On October 7, after more than four years of evading justice, Mexican authorities extradited former president Portillo (2000-04) to Guatemala to face corruption charges. Portillo had fled to Mexico in 2004 after being charged in several cases of official corruption. Within a few hours of his return to Guatemala, Portillo was released on bail of one million quetzales (\$129,366) on condition that he report to the court once a month and not leave the country.

Public officials who earn more than 8,000 quetzales (\$1,035) per month or who manage public funds are subject to financial disclosure laws. The Controller General's Office is responsible for oversight and enforcement of these laws. Lack of political will and rampant impunity facilitated government corruption.

The constitution provides for the right of citizens to access public information. On September 23, Congress passed the Free Access to Public Information Law, which regulates the provision of and facilitates access to information held by public institutions. The law covers all branches of government and requires all public and private entities that receive public funds to respond to public requests for information on their operations and administration of resources. The law also establishes sanctions for officials who obstruct public access to 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 generally cooperative and open to their views.

On March 5, the Constitutional Court unanimously rejected the appeal of former president General Efraim Rios Montt and affirmed the decision of an appeals court to declassify four military plans executed during the early 1980s at the height of the country's 36-year internal conflict. At year's end the Ministry of Defense was seeking a constitutional opinion on how to implement this decision.

In a November 26 decision, the Inter-American Court of Human Rights (IACHR) held the government accountable for the 1990 forced disappearances of Maria Tiu Tojin and her daughter. The IACHR recognized that the

government had complied with some of its recommendations, including providing a letter of apology to the victims' family, the payment of 2,000,000 quetzales (\$259,000) to family members, and the construction of a monument in the victims' memory. The IACHR found, however, that the government had not done enough to establish the identities of those responsible or to locate the victims' remains.

Many NGOs and human rights workers, as well as a number of trade unionists, reported threats or intimidation by unidentified persons, many with reputed links to organized crime, private security companies, and "social cleansing" groups, and complained that the government did little to investigate these reports or to prevent further incidents.

In a preliminary report following her February visit, the UN special representative on human rights defenders expressed concern over the level of impunity and institutional weakness the country while acknowledging positive measures that provide greater protection to human rights defenders, such as the creation of a new analytical unit in the Ministry of Government to focus on attacks against human rights defenders.

UPDDDH highlighted the four cases below, among others, as examples of violence and intimidation against human rights defenders and urged the government to take action to protect those who work to promote human rights. Investigations by the Public Ministry were pending at year's end.

On March 31, an unidentified gunman accosted a member of Bishop Alvaro Ramazzini's diocese and conveyed a death threat to the bishop through the diocese member. Bishop Ramazzini has supported rural communities in conflicts over land use.

On August 1, unidentified masked gunmen threatened to kill indigenous leader Amilcar Pop, president of the Guatemalan Association of Mayan Lawyers.

On August 7, unidentified assailants in Colotenango, Huehuetenango, shot and killed indigenous community leader Antonio Morales Lopez. Morales, a member of the Committee of Peasant Unity, was an activist for indigenous rights, in particular defending natural resources and opposing mining projects in Huehuetenango. He had received death threats from local criminal groups.

On October 19, a family member of Norma Cruz, director of the Survivors Foundation, was abducted in Guatemala City by masked men in a vehicle, who drove him around and threatened him with death. They released him shortly after near the home of Cruz. An investigation by the Public Ministry was pending at year's end.

On April 24, the government replaced Secretariat of Security and Administrative Affairs (SAAS) security details for private citizens, including human rights defenders, with PNC agents from the Division of Personal Protection. Human rights defenders receiving such protection included representatives of the Myrna Mack Foundation and the Guatemalan Forensic Anthropology Foundation (FAFG). During the year FAFG staff members and their family members continued to receive death threats. FAFG believed these threats were linked to the group's forensic exhumation work to identify victims of massacres of the internal armed conflict.

The Office of the Special Prosecutor for Human Rights opened several new cases involving anonymous telephone or written threats, physical assaults, and 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.

On June 2, a three-judge panel of the Court of First Instance sentenced Erwin Gudiel Arias to 20 years in prison for the August 2007 killing of Jose Emanuel Mendez Dardon, son of former congressman and human rights leader Amilcar Mendez. On October 1, an appeals court overturned the conviction and ordered a retrial based on

deficiencies in the Public Ministry's investigation. At year's end Arias remained in custody pending the start of a new trial.

The resident Office of the UN High Commissioner for Human Rights assisted the government in investigating various matters, including threats and other acts of intimidation against human rights advocates, land conflicts, and discrimination against indigenous persons. The government cooperated with the office and other international organizations, including CICIG, and in September extended the office's mandate for another three-year term.

The human rights ombudsman (PDH), Sergio Morales, whom Congress reelected in 2007 to a second five-year term, reports to the Congress and monitors the human rights guaranteed by the constitution. The ombudsman'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 ombudsman issued reports and recommendations that were made public, including its annual report to the Congress on the fulfillment of its mandate.

The President's Commission on Human Rights (COPREDEH), led by Ruth del Valle, is charged with formulating and promoting the government's human rights policy, representing the government on past human rights abuse cases before the IACHR, and negotiating amicable settlements in cases before the court. COPREDEH took a leading role in coordinating police protection for various human rights and labor activists throughout the year.

The Congressional Committee on Human Rights drafts and provides advice on legislation regarding human rights matters. By law all political parties represented in the Congress are required to have a representative on the committee. NGOs reported that they considered the committee to be an effective public forum for promoting and protecting human rights.

On August 18, the Ministry of Foreign Affairs created a new office to coordinate the country's human rights agenda with national institutions, multilateral organizations, and embassies; indigenous leader Francisco Cali Tzay headed the office.

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 resources, corruption, and a dysfunctional judicial system.

Women

Sexual offenses remained a serious problem. The law criminalizes rape, including spousal rape and aggravated rape, and establishes penalties between six and 50 years in prison. On April 9, Congress passed the Law Against Femicide and Other Forms of Violence Against Women, which establishes penalties for physical, economic, and psychological violence committed against women because of their gender. Prosecutors from the Special Unit for Crimes against Women noted that reports of rapes had decreased by 10.8 percent over the previous year. At year's end 37 cases of economic violence and 220 cases of sexual abuse and other forms of physical violence were reportedly under investigation since passage of the new law.

Police had minimal training or capacity for investigating sexual crimes or assisting victims of sexual crimes. The government maintained the PNC Special Unit for Sex Crimes, the Office of Attention to Victims, the Office of the Special Prosecutor for Crimes against Women, and a special unit for trafficking in persons and illegal adoptions

within the Special Prosecutor's Office for Organized Crime. Rape victims sometimes did not report the crime for lack of confidence in the justice system and fear of reprisals.

By year's end the prosecutor reported receiving 5,985 complaints of sexual crimes. The government reported 237 convictions of sexual offenders. The Public Ministry did not provide data on average sentences and years of imprisonment.

Violence against women, including domestic violence, remained a common and serious problem. The law prohibits domestic abuse. On May 23, the Public Ministry inaugurated the "Comprehensive Model of Attention" project to coordinate legal, psychological, and medical assistance to victims of domestic violence and sexual crimes.

The law provides for the issuance of restraining orders against alleged aggressors and police protection for victims, and it 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 commented that few officers were trained to deal with domestic violence or to assist victims.

The Institute of Public Criminal Defense continued to provide free legal, medical, and psychological assistance to victims of domestic violence. By year's end the project had attended to 10,506 cases of domestic violence.

According to press reports, the Program for Prevention and Eradication of Intrafamily Violence, a government program under the First Lady's Secretariat of Social Work, received 250 daily calls from battered women and children via its three emergency hotlines. At year's end the Public Ministry reported that it received more than 12,269 complaints of violence against women and children, including domestic violence, economic violence, and sexual crimes, and prosecuted 352 cases, with convictions reached in 283 cases.

Justices of the peace issued an unspecified number of restraining orders against domestic violence aggressors and ordered police protection for victims. Full investigation and prosecution of domestic violence and rape cases usually took an average of one year. Although the law affords protection, including shelter, to victims of domestic violence, in practice there were insufficient facilities for this purpose.

The Office of the Ombudsman for Indigenous Women within COPREDEH provided social services for victims of domestic or social violence, as well as mediation, conflict resolution, and legal services for indigenous women. The 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. There were no firm statistics available on the number of cases the office handled.

There were 18 prosecutions of killings of women in Guatemala City in 2007. Few prosecutions resulted in convictions. At year's end there were no updated figures available for 2008.

The Ministry of Government continued to operate eight shelters for victims of abuse in departments with the greatest incidence of domestic violence. The centers provided legal and psychological support and temporary accommodation. On November 25, the Guatemalan Institute of Public Criminal Defense inaugurated a hotline to assist female victims of physical violence.

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 widely recognized problem.

The law does not prohibit sexual harassment, and there were no accurate estimates of its incidence. 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 sectors; it was also a problem in the police force. On September 21, a woman was named to head the PNC for the first time in the organization's history. While the law establishes the principle of gender equality, in practice women faced job discrimination and were less likely to hold management positions.

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

A women's shelter, inaugurated in 2007 in Guatemala City for victims of violence, continued to operate during the year and had the capacity to house 20 victims and their families for six months at a time.

Children

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

The UNHCR reported that there were problems in registering births, especially in indigenous communities, due to inadequate government registration and documentation systems. Cultural factors, such as the need to travel to unfamiliar urban areas and interact with nonindigenous male government officials, at times inhibited indigenous women from registering themselves and their children. Lack of registration sometimes restricted children's access to public services.

Although the constitution and the law provide for free, compulsory education for all children up to the ninth grade, less than half the population over the age of 13 had completed primary education. The Ministry of Education reported that in 2007, 42 percent of children who entered first grade completed sixth grade, and 45 percent of those entering seventh grade completed the ninth grade. Completion rates were lower in rural and indigenous areas. While the average nonindigenous child from seven to 17 years of age had received 4.4 years of schooling, indigenous children of the same age range had received an average of 3.7 years, according to the National Statistics Institute's (INE) 2006 National Survey of Life Conditions (ENCOVI) report.

Child abuse remained a serious problem. The Special Prosecutor's Office for Women, Unit of Adolescent and Child Victims, investigated cases of child abuse. It achieved 45 convictions in the 57 child abuse cases it opened between January and December. 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 juveniles who had criminal records. Due to an overwhelmed and underfunded public welfare system, as of the end of September the government had referred 245 minors to the NGO Casa Alianza, out of a total of 430 cases that the organization handled. Casa Alianza provided vocational training, social and psychological support, and temporary shelter for street children and child victims of abuse.

Authorities investigated and prosecuted numerous cases of abduction or purchase of children for purposes of offering them for adoption. For example, on October 1, Karen Evelyn Velasquez Garcia and Gloria Elizabeth Giron were arrested during police raids in Mixco and Guatemala City for their alleged involvement in the sale and

purchase of minors. Authorities charged that Velasquez was involved in the sale of at least three children for adoption through the Internet, including a child whom she delivered to Panama.

Child prostitution remained a problem.

In collaboration with Casa Alianza, the government conducted 15 rescue operations through the end of September, resulting in the rescue of 24 sexually exploited minors under age 18. The authorities referred the rescued minors for protection and attention to Casa Alianza. The government referred 245 additional cases to Casa Alianza. Through the end of September, Casa Alianza had handled 24 cases of sexually exploited minors and continued attending to 64 cases from previous years. The Secretariat of Social Welfare handled 504 child protection cases, including cases of sexually exploited minors. Of the 88 cases referred to Casa Alianza, government authorities detained seven alleged perpetrators, six of whom were later released pending trial.

Casa Alianza estimated that there were more than 3,000 street children in Guatemala City. Most street children had left home after being abused. Casa Alianza reported that increased gang recruitment decreased the number of street children in the capital because after joining gangs, street children often lived with fellow gang members. GAM reported that 105 minors suffered violent deaths nationwide during the year. Criminals often recruited street children for purposes of stealing, transporting contraband, prostitution, and illegal drug activities. Credible estimates put the number of children who were members of street gangs at 3,000 nationwide. NGOs dealing with gangs and other youth reported concerns that street youth detained by police were subject to abusive treatment, including physical assaults.

The government operated a shelter for girls in Antigua and a shelter for boys in San Jose Pinula. 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. Security authorities incarcerated juvenile offenders 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 establishes prison terms of six to 12 years for persons found guilty of trafficking. The government reported that trafficking was a significant problem.

The country was a source, transit, and destination country for citizens and other Central Americans trafficked for purposes of commercial sexual exploitation and forced labor.

Women and children were trafficked within the country for sexual exploitation; children were also trafficked for labor exploitation, including for begging rings in Guatemala City, but there were no reliable estimates on the extent of the problem. The NGO End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT) reported that children between the ages of eight and 14 were sold for 750 to 1,500 quetzals (\$97 to \$194) to work in various economic activities, but primarily for sexual exploitation. According to ECPAT, the incidents of trafficking in persons and the sale of children for sexual exploitation likely increased due to higher unemployment rates and increasing numbers of individuals living in extreme poverty.

Trafficking was particularly a problem in towns along the country's borders. 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 groups for sexual exploitation were girls and young women from poor families.

Trafficking organizations ranged from family businesses to highly organized international networks. 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.

Traffickers often approached individuals with promises of economic rewards, jobs in cafeterias or beauty parlors, or employment in other countries. They used flyers, newspaper advertisements, and verbal or personal recommendations.

The Public Ministry operated a special unit within the Prosecutor's Office of Organized Crime to investigate and prosecute trafficking. A task force, which included the Public Ministry, immigration authorities, PNC, and Casa Alianza, conducted an unspecified number of raids on bars and other commercial establishments.

The PNC and Public Ministry units responsible for combating trafficking were severely understaffed and underfunded. At year's end the Public Ministry's Special Unit Against Trafficking in Persons received and investigated 136 trafficking cases, compared with 51 during the first seven months of 2007. During the year the Public Ministry prosecuted and the courts sentenced one person for trafficking offenses.

There were credible reports that some police and immigration service agents were complicit in trafficking of persons. ECPAT reported that some minor victims of trafficking claimed 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 immigration officials to have sex with minor victims without charge. Casa Alianza reported that business owners of massage clubs and other establishments that sexually exploited adolescents had good relations with some government authorities who warned these businesses of upcoming police raids.

The government's Secretariat for Social Welfare operated shelters in Antigua, San Jose Pinula, Quetzaltenango, and Zacapa that housed victims of trafficking and offered social services, job training, and counseling. During the year the NGO shelter Casa del Migrante assisted 49 victims of trafficking in persons, including four cases involving minors.

Immigration officials generally deported foreign adult trafficking victims and 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.

The Interagency Commission to Combat Trafficking in Persons and Related Crimes, headed by the Ministry of Foreign Affairs and including representatives of the executive, legislative, and judicial branches, as well as NGOs and international organizations, coordinated initiatives to combat trafficking.

The government gave increased attention to rescuing minors from commercial sexual exploitation in bars, brothels, and other establishments. The minors were referred to 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.

The country cooperated with Mexico to assist victims. 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 Public Ministry worked with ECPAT to train government officials on crimes of sexual and commercial exploitation with an emphasis on trafficking of children. ECPAT provided numerous courses to more than 320 government officials nationwide, including to all employees of the National Tourism Institute.

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

Persons with Disabilities

The constitution contains 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. In many cases persons with physical and mental disabilities did not enjoy these rights, and the government devoted few resources to combat this problem.

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 health-care provider for persons with mental illness, lacked basic supplies, equipment, hygienic living conditions, and adequate professional staffing. The National Council for the Disabled, composed of representatives of relevant government ministries and agencies, met regularly to discuss initiatives, had a budget of 5.5 million quetzales (\$712,000), and estimated that there were 1.2 million persons with disabilities in the country.

Indigenous People

Indigenous persons from 22 ethnic groups constituted an estimated 43 percent of the population. In addition to the many Mayan communities, there were also the Garifuna, descendents 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 persons and obliges the government to recognize, respect, and promote their lifestyles, customs, traditions, social organization, and manner of dress.

Although some indigenous persons 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, lack of awareness of their rights, and pervasive discrimination. While the indigenous population increased its political participation, some civil society representatives questioned whether such participation had resulted in greater influence in the national political party structure.

The NGO Human Rights First noted a tendency to criminalize social movements, especially community mobilizations against large-scale industrial projects that would negatively impact the livelihood of their community. Several indigenous community members of San Juan Sacatepequez have been arrested over the past few years because of their opposition to the construction of a cement factory. In July authorities issued arrest warrants for eight individuals as a result of a dispute between a landowner and a mining company, the second time in 18 months that residents opposed to the mine were targeted for arrest. At year's end there were no new developments in the case.

According to INE's 2006 ENCOVI report, 51 percent of the population lived in poverty. Of those living in poverty, 56 percent were indigenous.

Rural indigenous persons had limited educational opportunities and fewer employment opportunities. Many of the indigenous were illiterate, and approximately 29 percent did not speak Spanish, according to INE's 2006 ENCOVI report. More than 50 percent of indigenous women over the age of 15 were illiterate, and a disproportionate number of indigenous girls did not attend school. According to the Ministry of Education, 76,232 preschool- and

kindergarten-age indigenous children were enrolled in Spanish-indigenous language bilingual education programs.

The Department of Indigenous People in the Ministry of Labor, tasked with investigating cases of discrimination and representing indigenous rights, counseled indigenous persons on their rights. This department had a budget of 40,000 quetzales (\$5,175), only four employees, and insufficient resources to investigate discrimination claims.

Legally mandated court interpreters for criminal proceedings were rarely available, placing indigenous persons arrested for crimes at a disadvantage due to their sometimes limited comprehension of Spanish. There was one indigenous supreme court judge, and there were 114 judges who spoke Mayan languages among the 561 tribunals in the country. There were 84 court interpreters, including 44 bilingual Mayan speakers, and the Supreme Court of Justice reported that the judicial system had 907 employees who spoke indigenous languages. However, 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 or expressly include sexual orientation among the categories prohibited from discrimination. There was social discrimination against gay, lesbian, and transgender persons. 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. 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.

The law does not expressly include HIV status among the categories prohibited from discrimination, and there was social discrimination against persons with HIV/AIDS.

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. Workers continued to live under threat from their employers, and labor unions were weakened by lack of enforcement of labor and employment laws and violence against unionists and worker activists. Local and international unions and labor rights advocacy groups reported a significant increase in the number of killings of trade union activists and their family members compared with previous years, and they criticized the government's application of antiterrorism regulations against unions and trade unionists.

UPDDDH reported that at year's end 47 trade unionists had been attacked and three killed by unknown assailants. It was generally difficult to identify motives for killings, since most killings, including killings of labor leaders, were not well investigated and went unprosecuted. Local unions urged investigation of the killings of these unionists and called for increased security for union leaders and members. A petition filed under the Central American Free Trade Agreement involving six local unions alleged that the government failed to effectively enforce its labor laws with regard to freedom of association, the right to organize and bargain collectively, and acceptable conditions of work in five cases. A review of the petition found that despite several recent efforts by the government to improve enforcement of labor laws, significant weaknesses in the government's ability to enforce its labor laws remained.

On March 2, armed assailants killed Miguel Angel Ramirez Enriquez after forcibly entering his home. Ramirez was one of the founders of the SITRABANSUR (Union of Banana Workers of the South). Four months after its founding, the union was formally recognized in November 2007. According to SITRABANSUR, company management received

a list of names of all the workers who had participated in the formation of the union and, through its private security, reportedly threatened the members at work and at home. At the end of November, they were fired. Ramirez was among the workers pressured to sign a letter of resignation. An investigation by the Public Ministry was pending at year's end.

On April 29, Carlos Enrique Cruz Hernandez, an active member of SITRABI (Union of Banana Workers of Izabal), was killed at his workplace. Two unidentified persons reportedly entered the area where he was having lunch and fired shots. The killing occurred just one week after the union's April 23 meeting with the Ministry of Government to complain that armed, masked assailants had intimidated and threatened another SITRABI member, Danilo Mendez. An investigation by the Public Ministry was pending at year's end.

On June 8, an unknown assailant shot and seriously injured Freddy Morales Villagran, a member of the Consultative Council of the Peten Distributor Employees Union. Villagran died from his injuries a few weeks later. The attack occurred amid the union's attempts to be recognized by the Castillo Brothers Company, to obtain reinstatement of allegedly illegally dismissed union leaders and members, and to challenge the company's efforts to dissolve the company.

On August 7, two unidentified assailants in Puerto Barrios, Izabal, shot and killed Edvin Portillo, treasurer of the Pension Administration Board and member of the port workers union of the National Santo Tomas Port Company. Portillo had reportedly been collecting signatures for a petition, which workers were to present on the day of the killing, opposing the new assistant to the deputy director of maritime operations. A Public Ministry investigation was pending at year's end. With the exception of members of the security forces, all workers have the right to form or join unions, but only 8 percent of the formal sector workforce was unionized.

Labor leaders reported receiving death threats and being targets of other acts of intimidation. A three-prosecutor Special Prosecutor's Unit for Crimes Against Journalists and Unionists within the Office of the Special Prosecutor for Human Rights accepted several new union-related cases during the year. There was one conviction for a crime against a trade unionist. Organized labor viewed the restructuring of the Special Prosecutor's Unit for Crimes Against Journalists and Unionists as reflecting a reduced commitment to prosecuting crimes against unionists. On November 6, the Ministry of Labor reactivated the Interagency Commission on Labor Relations, which was created in 2003 to investigate cases of violence against unionists.

There were no known developments in the following cases from 2007: the killing in January of Pedro Zamora, secretary general of the Dock Workers Union of Puerto Quetzal; the killings in February of street vendors Walter Anibal Ixcaquic Mendoza and Norma Sente de Ixcaquic, members of the Sixth Avenue Union of the National Front of Vendors of Guatemala; and the killing in September of Marco Tulio Ramirez Portela, a SITRABI leader and brother of SITRABI Secretary General Noe Ramirez.

As of early December, the Ministry of Labor granted legal status to 53 new labor unions, compared with 36 in 2007. Most of the new unions were small unions in the provinces, primarily in the agricultural or municipal sector. Although there were 1,882 legally registered labor unions, 597 appeared to be active at year's end based on administrative registration records.

At year's end an active "Solidarismo" (solidarity association movement) claimed to have 83 associations with approximately 30,000 members, and 90 independent associations with approximately 50,000 members. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to choose between them or to belong to both. Although the law stipulates that trade unions have an exclusive right to negotiate work conditions on behalf of workers, unions asserted that management promoted solidarity associations to discourage the formation of trade unions or to compete with existing labor unions.

Workers have the right to strike, but due to the low level of unionization and procedural hurdles, there were only two legal strikes, according to the judicial branch's statistical department. However, teachers, health-care workers, farm workers, and other labor groups organized and participated in various protests, marches, and demonstrations throughout the year.

The law empowers the president and his cabinet to suspend any strike deemed "gravely prejudicial to the country's essential activities and public services." 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 through 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. Organized labor protested the use of national security interests and emergency situation arguments by the government to enjoin what they considered "legal" strikes, such as the truck drivers' protest in the spring and demonstrations by teachers and health-care workers. It criticized arrests, incarcerations, and fines imposed against protesters and regarded such actions as violations of the International Labor Organization (ILO) conventions on the right to strike.

The 2008 International Trade Union Confederation's (ITUC) annual survey found insufficient labor inspections, a weak judicial system, and impunity. The survey reported that, according to workers, the inspectors were more likely to persuade them to renounce their rights than seek to protect them and often gave employers advance warning of their visits. The labor courts had a backlog of applications for the reinstatement of workers, and cases can last more than ten years. Employers tended to ignore court rulings, and courts did not take action to ensure that their decisions were respected. An ILO technical assistance mission in April concluded that the Ministry of Labor was very weak and was made even more so since a 2004 ruling by the Constitutional Court that it cannot impose sanctions on employers for violations of labor laws.

b. The Right to Organize and Bargain Collectively

The law allows unions to conduct their activities without interference. The government sought to protect this right in practice but had limited means to do so. The law requires that union members approve a collective bargaining agreement by simple majority. Although workers have the right to organize and bargain collectively, the small number of unionized workers limited the practice of organizing and bargaining.

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. This was largely due to the combination of employer-supported unions, illegal terminations or layoffs of union members, refusal to honor court reinstatement orders or rulings requiring the employer to negotiate with recognized unions, and threats and manipulations of subcontracted workers (i.e., threats not to renew a contract or offer permanent employment if the worker joins a union or refuses to disaffiliate).

The Ministry of Labor reported that there were 27 new collective bargaining agreements, including agreements reached with the teachers and health-care workers unions during the year. These agreements were reached after years of negotiations and after numerous teachers' demonstrations throughout the country.

The ILO's Committee of Experts' (COE) observations identified violations of collective bargaining agreements, acts of employer interference, acts of antiunion discrimination, and a very low number of government sanctions issued for labor violations.

Legal recognition of a new industry-wide union requires that the membership constitute 50 percent-plus-one of the

workers in an industry. The COE stated that this requirement restricts the free formation of unions. Labor rights activists considered this number to be a nearly insurmountable barrier to the formation of new industry-wide unions, effectively eliminating the possibility for workers to exercise the right to negotiate and formally engage employers at an industry level.

Enforcement of legal prohibitions on retribution for forming unions and for participating in trade union activities was weak. Many employers routinely sought to circumvent legal provisions for union organizing by resisting union formation attempts or by ignoring judicial orders to enforce them. Inadequate penalties for violations and an ineffective legal system to enforce sanctions continued to undermine the right to form unions and participate in trade union activities.

Increased violence and insecurity further undermined the ability of workers to freely exercise their labor rights. Local unions reported increased incidences of fraudulent bankruptcies, ownership substitution, and reregistration of companies by employers seeking to circumvent their legal obligation to recognize newly formed or established unions. Government institutions continued to tolerate these practices. The delay in processing legal complaints, from submission to final resolution, resulted in immunity for employers.

There were credible reports of retaliation by employers against workers who tried to exercise internationally recognized labor rights. Common practices included termination and harassment of workers who attempted to form workplace unions, creation of illegal company-supported unions to counter legally established unions, blacklisting of union organizers, threats of factory closures, refusal to permit labor inspectors to enter facilities to investigate worker complaints, and refusal to honor decisions made by labor tribunals in favor of workers, including reinstatement of wrongfully dismissed union organizers.

The law requires employers to reinstate workers dismissed illegally for union organizing activities. In practice employers often failed to comply with reinstatement orders. During the year workers who suffered illegal dismissal won 571 court injunctions ordering reinstatement. Appeals by employers, along with legal recourse such as reincorporation as a different entity, often prolonged reinstatement proceedings. The labor courts rarely dismissed frivolous cases or appeals, did not operate in a timely manner, and did not ensure enforcement of their decisions. According to labor ministry officials, authorities rarely sanctioned employers for ignoring legally binding court orders. Employers often failed to pay the full amount of legally required severances to workers.

Local unions increasingly highlighted and protested the violations of employers who failed to pay the employer and employee contributions to the national social security system despite employee contribution deductions from workers' paychecks. These violations, particularly common in the private sector and export industries, resulted in limiting or denying employees access to the public health-care system and reductions to or underpayment of workers' pension benefits during their years of retirement.

There were no special laws or exemptions from regular labor laws in the 16 active export processing zones (EPZs) and within the garment factories that operated under an EPZ-like regime. Due to inadequate enforcement of labor laws and often illegal measures taken by employers to prevent the formation of new unions or undermine existing unions, there were few successes in organizing workers in EPZs and in the garment sector. Some factories closed and then reopened under a new name and with a new tax exemption status. Of the 216 companies operating in the EPZs, only two had recognized trade unions, and none had a collective bargaining agreement. SitraCima and SitraChoi, two garment sector trade unions, were essentially eliminated through allegedly illegal employer actions and government inaction in enforcing labor, employment, and bankruptcy laws. The government did not regularly conduct labor inspections in the EPZs, and there were systemic violations of wage and hour laws, mandatory overtime at nonpremium pay, terminations of workers who tried to form unions, withholding of social security payments, and illegal pregnancy testing. The COE observations identified as a problem the requirement of

pregnancy tests in some workplaces as a condition to obtain and retain employment.

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. Organized labor equated mandatory overtime practices, which were commonplace in the private sector, particularly in the export sectors, to forced or compulsory labor.

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 persons under the age of 18 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 majority of child labor takes place in rural indigenous areas where economic necessity forced children to supplement family income. According to INE's 2006 ENCOVI report, the latest available, an estimated 528,000 children had to work to survive. Child labor was common in export industries. The informal and agricultural sectors regularly employed children below 14 years of age, usually in small family enterprises. There were credible reports that child labor was used in food processing, fresh produce, and flower production companies, as well as the gravel and pyrotechnic industries. The Ministry of Labor estimated that approximately 3,700 children were illegally employed in fireworks production.

The government did not effectively enforce laws governing the employment of minors. The situation was exacerbated by the weakness of the labor inspection and labor court systems. While in exceptional cases, the Labor Inspectorate may authorize children under the age of 14 to work, the Ministry of Labor has made a commitment, in accordance with ILO Convention 182 on the Worst Forms of Child Labor, not to provide such authorizations. In keeping with this commitment, the Labor Inspectorate reported that it had not made any such authorizations by year's end.

The COE observations expressed deep concern about the situation of children under 14 years compelled to work in the country, noted that it appeared very difficult to apply in practice the national legislation on child labor, and encouraged the government to step up efforts to improve the situation of child laborers under age 14.

The ILO's International Program on the Elimination of Child Labor continued operating programs to combat commercial sexual exploitation of children by assisting the government and local organizations to strengthen legislation, policies, and programs.

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 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 and work in garment factories. The daily minimum wage was 52 quetzales (\$6.73) per day for agricultural and nonagricultural work and 47.75 quetzales (\$6.18) per day for work in garment factories.

The minimum wage did not provide a decent standard of living for a worker and family. The National Statistics Institute estimated that the minimum food budget for a family of five was 1,976.05 quetzales (\$256) per month, 18.85 percent higher than in 2007. 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 matters 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 credible estimates, between 65 and 75 percent of the workforce continued to work in the informal sector and outside basic protections 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 forced workers to work overtime without legally mandated premium pay. Management often manipulated employer-provided transportation to force employees to work overtime, especially in EPZs located in isolated areas with limited transportation alternatives. Labor inspectors reported uncovering numerous instances of overtime abuses, but effective enforcement was undermined due to inadequate fines, inefficiencies in the labor court system, and employers' refusals to permit labor inspectors into their facilities or provide access to payroll records and other documentation.

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. The labor courts received 1,619 cases from the Labor Inspectorate and ruled in favor of reinstatement of the worker in 571 cases. Court decisions favorable to workers, however, were rarely enforced due to frequent refusals by employers to honor these decisions. Management or persons hired by management reportedly continued to harass and make death threats against workers who did not accept employer dismissals or refused to forfeit their right to reinstatement.

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 onsite 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.