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Guatemala

Country Reports on Human Rights Practices - [2005](#)

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Guatemala is a democratic republic with a population of approximately 12.7 million. In 2003 national elections, generally considered by international observers to be free and fair, Oscar Berger of the Grand National Alliance coalition (GANNA) won a four-year term, which began in January 2004. While the civilian authorities generally maintained control of the security forces, there were some instances in which members of the police force acted independently.

While the government generally respected the human rights of its citizens, serious problems remained. Corruption and substantial inadequacies in the police and judicial sectors, widespread societal violence, and impunity for criminal activity continued. The following human rights and societal problems were reported:

- unlawful killings committed by members of the security forces
- widespread societal violence, including numerous killings
- police involvement in kidnappings
- harsh and dangerous prison conditions
- arbitrary arrest and detention
- failure of the judicial system to ensure full and timely investigation, fair trials, or due process
- failure to protect judicial sector officials, witnesses, and civil society organizations from intimidation
- impunity
- discrimination and violence against women
- trafficking in persons, including commercial sexual exploitation of children
- ethnic discrimination, particularly against indigenous people
- ineffective enforcement of labor laws, including child labor provisions

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

Although the government and its agents did not commit any politically motivated killings, members of the police force committed a number of unlawful killings. A weak investigative, enforcement, and prosecutorial system, however, prevented adequate investigation of many such killings and other crimes, as well as the arrest and successful prosecution of perpetrators (see sections 1.c. and 1.e.).

During the year the National Civilian Police (PNC) Office of Professional Responsibility (ORP) investigated 24 reports of police involvement in killings.

On December 17, a transvestite was shot and killed and another injured by four individuals that some non-governmental organizations (NGOs) alleged were dressed as police officers (see section 5).

On December 7, the High Impact Court of Chiquimula convicted 2 police officers for the October 2004 beating and killing of a detainee in the police substation and sentenced each officer to 25 years in prison.

There were no significant developments regarding the August 2004 confrontation between peasants and members of the PNC at Nueva Linda plantation, in which 3 police and 7 workers were killed.

There were no new developments and none were expected concerning any investigation into the January 2004 killing of former gang member David Ixcol Escobar.

In June Colonel Luis Carvajal, former head of the Army's protocol office, was sentenced to 25 years in prison for the 2003 killing of his wife, Ingrid Lima de Carvajal. Other suspects in the case were released for lack of evidence.

On October 28, Juan Carlos Munoz Castillo was found guilty and sentenced to 40 years in prison for the 2003 killing of Josue Israel Lopez, auxiliary human rights ombudsman for Chimaltenango Province. The other defendant in the case was acquitted.

On June 2, a court convicted 5 men and sentenced them to 100 years each in prison for their involvement in the 2002 abduction and murder of Antonio Pop Caal, an activist for indigenous rights.

Most cases of political killings from past years remained unresolved, such as the 2001 killing of Luis Garcia, a witness in the 1998 killing of Bishop Juan Gerardi. On March 23, an appeals court changed the sentence for Byron Lima Estrada and Byron Lima Oliva from coauthors of the 1998 murder of Bishop Juan Gerardi to accessories, thus reducing the sentence delivered in 2001 from 30 to 20 years each in prison. The 20-year sentence of the other accessory, Father Mario Orantes, remained unchanged.

On October 22, the Supreme Court of Justice confirmed the July 2004 ruling of a lower court convicting 14 military personnel, including 1 lieutenant, to 40 years in prison each for the murder of 11 and injury of 35 civilians during the 1995 Xaman massacre.

There were no new developments regarding the search for fugitive Colonel Juan Valencia Osorio, whose 25-year prison sentence for being the intellectual author of the 1990 killing of anthropologist Myrna Mack Chang was reinstated by the Supreme Court of Justice in January 2004. At year's end Valencia had been at large for almost two years. In February the government paid its first installment to the Mack family towards the \$820 thousand (6.2 million quetzales) reparations judgment ordered by the Inter-American Court of Human Rights.

On August 29, in response to an Inter-American Court of Human Rights ruling, the government formally accepted responsibility for the kidnapping and killing of 10 university students in 1989. At year's end there remained 72 other cases involving the country before the Inter-American Court of Human Rights, most regarding events from the period of the internal armed conflict.

On July 18, the anniversary of the 1982 Plan de Sanchez massacre in which the army and paramilitary civilian self-defense patrols (PACs) killed 268 people, the government issued a formal apology and statement of responsibility, as ordered by the Inter-American Court of Human Rights.

During her July visit, the vice president and rapporteur for Guatemala of the Inter-American Commission on Human Rights stressed the government's positive attitude in its dialogue with the organs of the Inter-American human rights system and underscored the need for the National Reparations Commission to move effectively and decisively ahead with a plan to compensate victims of the armed conflict.

On December 22, the National Reparations Program, headed by respected victims' advocate Rosalina Tuyuc, made its first disbursements of funding received from the government in May 2004 to families of victims of the internal conflict.

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

During the year eight justice workers, including two judges, were killed (see section 1.e.).

At least two protesters were killed during the year, reportedly by either security forces or fellow protesters (see section 2.b.).

On September 2, an unknown gunman killed in Guatemala City Harold Rafael Perez Gallardo, legal advisor to the NGO Casa Alianza. At year's end the matter remained under investigation by police authorities.

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

Killings, including evidence of sexual assault, torture and mutilation, of women continued at an alarming rate (see section 5).

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

Police sources indicated 14 lynchings took place during the year, compared with 7 such incidents in 2004. Many observers attributed the rise in lynchings from the previous year to increased public frustration with the failure of the justice sector to guarantee security. Among the victims were civil servants or police officials who had taken unpopular actions in either enforcing or not enforcing the law.

There were also other incidents of societal violence, including the October 17 burning of a police station in San Juan Ostuncalco, Quetzaltenango Department, by a mob seeking to kill two persons suspected of stealing, who were detained in the police station.

b. Disappearance

Although there were no reports of politically motivated disappearances, there were reports of police involvement in kidnappings for ransom. The PNC Office of Professional Responsibility investigated 10 police officers for involvement in kidnappings; 1 officer was found guilty and dismissed from his job with criminal charges pending at year's end. The investigations of other officers were ongoing. The Organized Crime

Unit of the prosecutor's office reported that PNC elements were involved in 11 kidnapping cases, at times in cooperation with large criminal organizations.

On October 21, a criminal court convicted former PNC official Rudy Arnulfo Giron Lima, current PNC official Marvin Utrilla Marin, and four others for kidnapping the nephew of Lizardo Sosa, President of the Bank of Guatemala. Giron Lima, Utrilla Marin, and the other individual defendant, Sergio Daniel Garcia, each received 63 year sentences (see section 5). The other three defendants each received a sentence of 53 years in prison.

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

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

There were no further developments regarding the March 2004 detention and beating of Mynor Alvarado de Leon of the NGO Center for Legal Action on Human Rights.

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

Prison and Detention Center Conditions

Prison conditions remained harsh and dangerous. The prison system continued to suffer from a severe lack of resources, particularly in the areas of prison security and medical facilities. Prisoners complained of inadequate food and medical care. Corruption, especially drug-related, was widespread. Prison officials reported frequent escape attempts and other manifestations of prisoner unrest. The Institute of Comparative Studies in Criminal Sciences, an NGO dedicated to study of the justice sector, released a report during the year that indicated 80 percent of women in detention reported abuses of some kind, including at least 5 cases of rape.

Prison overcrowding was a problem. According to the registry maintained by the prison system, there were 8,247 persons held in 40 prisons and jails designed to hold 6,974. Approximately 60 percent of the national penitentiary system population was held in pretrial detention.

On August 15, gang violence within the penitentiary system claimed 36 lives in 4 prisons. Prisoners from opposing gangs attacked each other with shotguns and edged weapons that were smuggled into the prison, in some cases reportedly with the knowledge of prison guards. The incident followed months of press reports regarding the availability of contraband items within prisons, including weapons. The special rapporteur on the rights of persons deprived of liberty of the Inter-American Commission on Human Rights stated that the "serious structural problems of the prison system together with the especially precarious conditions in which juvenile offenders were incarcerated and the lack of effective controls to prevent the entry of weapons in the detention centers were contributing factors to the violent events of August 15." At year's end the incident and the identities of those persons responsible for smuggling weapons into the prisons remained under investigation. During the year attempts by prison authorities to segregate inmates by gang affiliation did not resolve violence issues in the prison system.

On September 19, an outbreak of violence between gang member inmates at the San Jose Pinula Juvenile Detention Center claimed the lives of 14 juvenile inmates; violence at the Departmental Rehabilitation Center of Puerto Barrios, Izabal, claimed the lives of 3 adult inmates. The incidents were under investigation at year's end.

On December 16, an intra-gang dispute in a prison in Mazatenango resulted in the killing of one gang member inmate. The incident remained under investigation at year's end.

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

Role of the Police and Security Apparatus

The 18-thousand-member PNC, headed by a director appointed by the president, remained understaffed, poorly trained, and severely underfunded. During the year the Public Ministry determined that the death of a PNC officer, during July 2004 police officer protests about poor living conditions at the Police Academy, was a suicide.

Police corruption was a serious problem and there were credible allegations of involvement by individual police officers in criminal activity,

including rapes, killings, and kidnappings. Police impunity remained a problem. When ORP investigations failed to elicit successful administrative or judicial punishment, the PNC often transferred suspected officers to different parts of the country. Attempts to curb impunity included placing 1,200 officers in employment dismissal proceedings.

While no active members of the military served in the police command structure, the government continued to employ the military to support the police in response to the rising rates of violent crime. Joint police and military operations under operational control of the PNC continued in areas of the capital with the highest crime rates.

Police threatened persons engaged in prostitution and other commercial sexual activities with false drug charges to extort money or sexual favors and harassed homosexuals or transvestites with similar threats of false charges (see section 5). Critics accused the police of indiscriminate and illegal detentions when conducting antigang operations in specific high-crime neighborhoods. Suspected gang members allegedly were arrested and imprisoned without charges or on the basis of false drug charges, and in some instances were arrested without a warrant and not in the commission of a crime.

The ORP performed internal investigations of misconduct by police officers. Although the ORP has increased its professionalism in recent years, its independence and effectiveness were hampered by a lack of material resources and the absence of cooperation from other PNC units. The ORP reported that by year's end, it had received 1,653 complaints, which included: 31 homicides, 411 thefts, 29 rapes, 269 cases of corruption or bribery, 91 threats, and 30 illegal detentions.

Although cases with sufficient evidence of criminal activity were forwarded to the Public Ministry for further investigation and prosecution, few cases went to trial. Throughout the year ORP investigations resulted in the removal from duty of 532 police officers and exoneration of 81 officers.

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

During the year the PNC trained 1,243 cadets in courses that included human rights and professional ethics. The military continued to incorporate human rights training into its curriculum and developed relevant courses with the Office of the Human Rights Ombudsman. Civil affairs officers at each command were required to plan and document human rights training provided to soldiers, and the officers met this requirement during the year.

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

Arrest and Detention

The law requires that a court-issued arrest warrant be presented to a suspect prior to arrest unless the suspect was 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.

There was 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 operation.

There were no reports of political detainees.

Although the law sets a limit of three months for pretrial detention, prisoners often were detained past their legal trial or release dates, sometimes for years. During the year 60 percent of those incarcerated were in pretrial detention. Some prisoners were not released in a timely fashion after completing their full sentences due to the failure of judges to issue the necessary court order or to other bureaucratic problems. A judge has the discretion to determine whether bail is necessary or permissible for pretrial detainees depending on the circumstances of the charges. Detainees who are offered bail but are unable to pay, or choose not to pay, must remain in jail.

e. Denial of Fair Public Trial

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

During the year there were numerous reports of corruption and manipulation of the judiciary. Judges, prosecutors, plaintiffs, and witnesses also continued to report threats, intimidation, and surveillance. The special prosecutor for crimes against justice sector workers received 79 cases of threats or aggression against judges, compared with 61 in 2004. During the year eight judicial sector workers were killed by unknown assailants. For example, on March 21, Justice of the Peace Jose Antonio Cruz Hernandez was killed in San Pedro Ayampuc. On April 25, High Impact Court Judge Jose Victor Bautista Orozco was killed in San Marcos in front of his house. At year's end each of these

cases was under investigation. There were credible reports of killings of witnesses. Less than 3 percent of reported crimes were prosecuted, and significantly fewer received convictions.

There were no significant developments regarding the July 2004 killing of Jesus Mendoza, cousin of Bamaca case witness Otoniel de la Roca Mendoza.

The Supreme Court of Justice continued to seek the suspension of judges and to conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. During the year the Judicial Discipline Unit investigated and held hearings for 147 of 597 complaints of wrongdoing, with the result that 60 claims were found to be baseless, 45 magistrates received written or verbal warnings including suspensions, 7 judges were fired, and the remaining cases were still under investigation at year's end.

Prosecutors remained susceptible to intimidation and corruption. The law's failure to delineate between the PNC and the Public Ministry in taking responsibility for investigating crimes led to organizational rivalries and the duplication of investigative efforts. An estimated 3 percent of approximately 250 thousand complaints filed with the Public Ministry during the year were prosecuted.

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

Between January and August, the Public Ministry had approximately 50 persons in its witness protection program.

Trial Procedures

The law provides for the right to a fair, public trial, the presumption of innocence, the right to be present at trial, the right to counsel, plea-bargaining, the possibility of release on bail and the right to an appeal. Three-judge panels render verdicts. The law provides for oral trials, and requires language interpretation for those needing it, in particular the large number of indigenous persons who were not fluent in the Spanish language (see section 5). Inadequate government funding allocations limited the effective application of this legal requirement. The Public Ministry concentrated 16 interpreters in former conflict areas of the country, and the Office of the Public Defender employed 9 bilingual public defenders who were assigned to areas where they could serve as translators in addition to defending clients.

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

Political Prisoners

There were no reports of political prisoners. Several former government officials imprisoned on corruption charges, including former vice president Reyes Lopez, claimed that the charges against them were politically motivated.

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

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

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

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press, and the government generally respected these rights in practice and did not restrict academic freedom or the Internet.

On April 5, Tenth Sentencing Tribunal judges sentenced Juan Carlos Rios Ramirez, Enma Concepcion Samayoa de Rosales, Ana Cristina Lopez Kestler, Vilma Orellana Ruano, and Elvia Morales de Lopez each to three years in prison under the country's antidiscrimination law. The five were convicted for making racist insults against indigenous activist Rigoberta Menchu at a 2003 Constitutional Court hearing.

Although the independent media, including international media, operated freely and were active and expressed a wide variety of views without government restriction, there were reports that members of the media were targets of threats and intimidation from unidentified persons. The Office of the Human Rights Ombudsman reported 26 incidents of intimidation against journalists through October, compared with 40 during 2004.

Reporters Without Borders reported that on July 11, former members of the civil defense patrols assaulted *Prensa Libre* correspondent Edwin Paxtor with machetes while he filmed a demonstration in Chiquimula Department. Paxtor also claimed to have received anonymous death threats on September 23. The threats were reported to the ombudsman.

There were no further developments and none were expected concerning an investigation into the May 2004 beating of David Hernandez Rubio by two men. At the time of the beating, Hernandez Rubio and his brother Hector Ramirez were petitioning the Inter-American Commission on Human Rights for personal protection in relation to threats received by their family allegedly in connection with their father's work as a journalist.

The Public Ministry prosecuted two suspects connected with the 2003 home invasion of daily *El Periodico* publisher Jose Ruben Zamora. On February 25, one of the two defendants was convicted of illegal entry, threats, extortion, illegal detention, and theft, and was sentenced to 16 years in prison. At year's end this defendant had appealed the conviction, but remained in custody. The other defendant was acquitted, even though the evidence against both defendants appeared identical.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

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

On January 11, police dispersed protesters with tear gas and riot control units during an anti-mining protest in the Solola Department in which protesters burned vehicles, destroyed property, and attacked passers-by, including journalists covering the event. Approximately 20 persons were injured, including several police officers, and 1 person was killed by gunfire. The police investigation and media reports concluded that the police lost control of the situation and reacted inappropriately but that a stray bullet from other protesters who had been firing guns into the air killed the protester.

From March 1 to 15, a series of violent protests occurred in the capital, during which demonstrators threw rocks at bystanders, set fires, blocked roads and destroyed property. The press reported that the police used force in response to violent actions by protesters. The police overreacted in at least one instance in which officers beat a protestor who was committing an act of vandalism. Photos and video showed protestors setting fires to barriers and throwing rocks and bottles at police.

On March 15, during a protest in Huehuetenango Department, a protester was shot and killed during a confrontation between armed protesters and police on a bridge. The final report of the investigation was not released by year's end.

Freedom of Association

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

c. Freedom of Religion

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

Societal Abuses and Discrimination

There were no reports of societal abuses or discrimination against persons for their religious beliefs or practices, including anti-Semitic acts. The Jewish population was approximately two thousand persons.

For a more detailed discussion, see [the 2005 International Religious Freedom Report](#)

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

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

The law prohibits forced internal and external exile, and the government did not use exile in practice. Self-imposed exile, however, was an occasional response by citizens who felt threatened or intimidated.

Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. In practice the government provided protection against *refoulement*, the return of persons to a country where they feared persecution. The government cooperated with the office of the UN High Commissioner for Refugees and other humanitarian organizations.

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

The law provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of nearly universal suffrage for those 18 years of age and older. Members of the armed forces and police are not permitted to vote.

In the 2003 national elections, Oscar Berger of the GANA coalition won a 4-year term as president with approximately 54 percent of the vote. In the period leading up to those elections, at least 29 candidates for lower offices were killed. Despite some irregularities in the electoral registry, the Organization of American States' (OAS) international observation mission categorized the elections as generally free and fair.

There were 14 women in the 158-seat Congress of the Republic, 2 women on the Supreme Court of Justice and 1 woman in the rotating alternative position on the Constitutional Court. In October the justices of the Supreme Court of Justice elected for the first time a woman as president of that tribunal. There were 197 women serving as judges. There were two female ministers in the cabinet and six female presidential secretaries. Of the country's 331 mayors, 9 were women. There was 1 indigenous member in the cabinet, and 1 of 12 presidential secretaries was indigenous. There were 15 indigenous members of the 158-seat Congress of the Republic. Of the 331 mayors, 120 were indigenous people.

Government Corruption and Transparency

Government corruption was widely perceived to be a serious problem, although according to the NGO Transparency International, public perception of corruption decreased slightly compared with 2004. At year's end the July 2004 charges of fraud against former Vice President Reyes Lopez remained pending. During the year the Public Ministry continued corruption investigations against former president Alfonso Portillo, former minister of government Byron Barrientos, and other senior members of the previous government. On December 22, authorities arrested Jorge Mario Nufio, congressional representative on the Social Security Institute's (IGSS) Board of Directors, after two years at large. Nufio had been in hiding since 2003, after inspections revealed that approximately \$46 million (350 million quetzales) was missing from IGSS funds.

On October 4, authorities convicted former comptroller general Oscar Dubon Palma of money laundering and embezzlement and sentenced him to 17 years in prison.

On August 8, a criminal court absolved former head of the IGSS Carlos Wohlers on corruption and abuse of authority charges. Government prosecutors appealed the decision, based on procedural issues. At year's end the appeal remained pending.

On March 30, former minister of finance Eduardo Weymann was found guilty of material falsification in the illegal transfer of \$5 million (38 million quetzales) from tax authorities. Weymann was sentenced to three years in prison, which was commuted to a fine of \$12 (90 quetzales) per day. At year's end the case was under appeal.

On February 24, the Public Ministry charged Arnaldo Heriberto Quezada Chapeton, director of the National Transit Authority, with corruption for receiving approximately \$20 thousand (156 thousand quetzales) from a driving education school. At year's end Quezada Chapeton remained at large after failing to appear at a September 1 pretrial hearing.

Former ministers of defense Eduardo Arevalo Lacs and Alvaro Lionel Mendez Estrada remained under investigation for corruption, and judicial authorities restricted their movements. Both were accused of embezzling \$121 million (906 million quetzales) from Ministry of Defense funds between 2001 and 2003.

A general freedom of information law remained stalled in Congress, and there were no other established mechanisms to enable citizens or non-citizens access to government information.

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

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views. Many NGOs and human rights workers and a number of trade unionists (see section 6.a.) reported threats or intimidation by unidentified persons and complained that the government did little to investigate these reports or to prevent further incidents. Only a small number of these cases were officially reported to authorities.

In July a resident Office of the UN High Commissioner for Human Rights (UNHCHR) opened at the government's invitation, with the mandate to provide the government with counsel and technical assistance to investigate and prosecute human rights abuses.

The government regularly provided security to homes and offices of human rights activists who received threats. The Myrna Mack Foundation and the Guatemalan Forensic Anthropology Foundation, for example, each received ongoing security protection through the end of the year.

During the year the Office of the Special Prosecutor for Human Rights opened 47 new cases, including matters involving anonymous telephoned or written threats, break-ins, physical assaults, as well as surveillance of workplaces, residences, and vehicular movements. The majority of such cases remained pending for lengthy periods without investigation or languished in the court system as defense attorneys filed successive motions and appeals to delay trials.

At year's end there were no further developments and none were expected regarding an investigation by the Public Ministry concerning several threatening phone calls received in July 2004 by the gay rights group Lesbirades.

Substantial threats were made against the lives and safety of persons involved in the exhumation of secret mass graves containing the bodies of victims of the 36-year internal armed conflict that concluded with the signing of peace accords in 1996. Forensics groups used the information obtained from the exhumations to verify eyewitness reports of massacres--of which the Commission for Historical Clarification recorded 669--and to charge alleged perpetrators of the massacres.

In August and September staff members of the Guatemala Forensic Anthropology Foundation (FAFG) received death threats including an incident on August 26, during which an unknown gunman confronted a family member of the foundation's director. There were also written threats against FAFG staff members for their forensics analysis work. The PNC provided protective details to the foundation and its staff through the end of the year.

The Committee of Guatemalan Widows, an organization of widows of the victims of the internal armed conflict, reported an August 15 death threat related to its exhumation activities. By year's end the government had not undertaken an investigation of this incident.

In January the Constitutional Court issued a final ruling that payments to former PAC members for services during the armed conflict were unconstitutional. As a result, PAC leaders publicly threatened human rights organizations during the year for launching legal challenges contesting these payments. In response to the threats, the government provided temporary police protection for several weeks to the organizations. At year's end there were no developments regarding an investigation by the authorities concerning these threats.

In July an OAS Inter-American Human Rights Commission rapporteur for Guatemala visited and noted with concern the increased level of violence, the persistence of serious shortcomings in the justice system, and the structural problems affecting full respect for human rights, all of which were aggravated by a lack of adequate protective measures and general impunity.

In January the Ministry of Government revealed an alleged plot to kill Bishop Alvaro Ramazzini, a prominent human rights activist. Police authorities conducted an investigation, but did not find any evidence to corroborate the threat.

Human Rights Ombudsman Sergio Morales, elected by the Congress of the Republic, reports to Congress and monitors the rights recognized under the constitution. The ombudsman's rulings do not have the force of law. The Office of the Human Rights Ombudsman operated without government or party interference and had adequate resources to undertake its duties. The office had the government's cooperation, and issued reports and recommendations that were made public, and the government responded to these reports.

At year's end there were no developments in the investigation to identify individuals who made threats in 2004 against ombudsman office field staff.

On September 17, a court absolved four former security guards and one other suspect in relation to a 2003 burglary of the ombudsman's office.

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

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

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

Women

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

The Program for Prevention and Eradication of Intrafamily Violence, a government program under the Presidential Spouse's Secretariat of Social Work, reported receiving approximately four calls a day via its emergency hot line from battered women and children. The Public Ministry reportedly received more than 13,703 complaints of family violence against women and children through September. During the year the Public Ministry achieved convictions in 105 of the 3906 cases it opened during the year.

Justices of the peace issued 1,364 orders of restraint against domestic violence aggressors and police protection for victims. Full investigation and prosecution of domestic violence and rape cases usually took an average of one year, and prosecutors noted that half of

the victims of domestic violence who filed complaints failed to pursue their cases after their initial visit to the Public Ministry. The Network for Non-violence against Women estimated that 90 percent of incidents went unreported. The Public Ministry handled 9,267 cases against perpetrators of domestic violence, but there was no information on the number of prosecutions or convictions. Abusers were prosecuted, convicted, or otherwise punished. Although the law affords victims of domestic violence with protection, such as shelter, during the period of investigation, in practice there were insufficient facilities for this purpose.

The ombudsman for indigenous women provided social services for victims of domestic or social violence, as well as mediation, conflict resolution, and legal services for indigenous women. This office also coordinated and promoted action by government institutions and NGOs to prevent violence and discrimination against indigenous women but lacked human resources and logistical capacity to perform its functions on a national level. The office handled 440 cases from January until August and 3,159 cases since 2002, including labor conflicts and domestic violence.

Sexual offenses remained a serious problem. The law prohibits rape, including spousal rape and aggravated rape, and establishes penalties between 6 and 50 years in prison. Prosecutors from the Special Unit for Crimes against Women noted that reports of rapes had increased by 30 percent over the past 4 years, although some observers suggested that the increases might reflect improved record-keeping of crime statistics. Until 2004 the law provided that a rapist could escape charges by marrying the victim. Although the law no longer allows for this, judicial processes that were entered into before the law changed are judged according to the old law. During the year there were cases in which this occurred.

Police had minimal training or capacity for investigating or assisting victims of sexual crimes. The government maintained a PNC Special Unit for Sex Crimes, an Office of Attention to Victims, and a Special Prosecutor for Crimes against Women, Children, and Trafficking in Persons, but none of these units were effective in addressing sexual violence. The PNC in Guatemala Department reported opening 420 cases against sexual offenders and making 76 arrests relating to sexual violence. The Public Ministry reported achieving a nationwide total of 80 convictions out of 1,001 cases of rape and sexual abuse of women and minors it received through September. The UN Children's Fund (UNICEF) observed that rape victims sometimes did not report the violations for lack of confidence in prosecutions and fear of reprisals.

Between January and October the prosecutor's office reported receiving 749 cases of rape and sexual assault in Guatemala City. Of these, 84 cases went to trial resulting in 68 convictions with an average sentence of 6 to 20 years' imprisonment; 11 persons were absolved; and 5 cases were settled out of court.

During the year there was a significant increase in reports of disappearances and killings of women. At year's end the PNC reported 545 killings of women (among the 665 open police cases of suspicious deaths of women), compared with 531 during the year 2004. A number of the victim's bodies bore evidence of torture, sexual assault, and mutilation. Although the PNC attributed gang violence, narcotics trafficking, and domestic abuse as the probable causes for many of the killings, authorities were unable to identify the perpetrator or motives for approximately half of the killings. The killings of women as a percentage of total killings rose from 12 percent in 2004 to 12.5 percent during the year. Due to weaknesses throughout the judicial and law enforcement systems, including inadequate governmental allocation of resources to the PNC task force, police investigations of killings of women and of homicides generally were ineffective, resulting in the erosion of public confidence in these governmental institutions.

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

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

The Secretariat for Women's Affairs advised the president on the coordination of policies affecting women and their development, but did not undertake any concrete actions during the year to combat discrimination against women.

Children

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

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

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

malnutrition.

Child abuse remained a serious problem. The Public Ministry reported 798 cases of child abuse during the year. The Social Secretariat for the Welfare of Children, with oversight for children's treatment, training, special education and welfare programs provided shelter and assistance to children who were victims of abuse but sometimes placed children under its care in shelters with other youths who had criminal records. Due to overload in the public welfare system, family courts during the year referred 165 girls to Casa Alianza, an NGO that focused on issues regarding street children; an additional 123 entered voluntarily as a result of street sweeps. The Special Prosecutor's Office for Women included a unit that investigated only child abuse cases.

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

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

Credible estimates put the number of street children at five thousand nationwide, approximately three thousand of them in Guatemala City. Most street children ran away from home after being abused. Casa Alianza reported that increased gang recruitment decreased the number of street children in the capital, because after joining a gang, street children often lived with fellow gang members and no longer slept on the streets. Casa Alianza reported that from January until mid-November, 334 children were killed in Guatemala City, compared with 173 killed during 2004. Criminals often recruited street children for purposes of stealing, transporting contraband, prostitution, and illegal drug activities. Approximately 10 thousand children were members of street gangs. NGOs dealing with gangs and other youth reported concerns about abusive treatment, including physical assaults, by police of street youth upon apprehension or in custody (see section 1.d.).

The government maintained one shelter each for girls and boys in Guatemala City, providing housing for the homeless. The government devoted insufficient funds to these two youth centers, and governmental authorities often preferred to send juveniles to youth shelters operated by Casa Alianza and other NGOs. The government provided no funding assistance for shelter costs to these NGOs. Juvenile offenders were incarcerated at separate youth detention facilities.

Trafficking in Persons

While the law prohibits trafficking in persons, there were reports that persons were trafficked to, from, and within the country. In February the Congress of the Republic passed legislation which criminalizes all forms of trafficking, expands the definition of persons responsible for trafficking offenses, and mandates jail time for traffickers. The government acknowledged that trafficking was a significant and growing problem in the country.

In March the Public Ministry created an Office of Special Prosecutor for Crimes against Women, Children, and Victims of Trafficking. During the year a task force, which included the Office of the Special Prosecutor, immigration authorities, PNC, and Casa Alianza, conducted 12 bar raids. Although the office opened 45 new cases against traffickers, by year's end it had achieved no convictions specifically for trafficking, but had achieved 6 convictions for the lesser offense of procurement. None of the persons convicted for procurement received jail sentences.

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

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

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

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

There were credible reports that police and immigration service agents were complicit in trafficking of persons. In a 2002 study by the NGO End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes, the most recent available, some minor victims of trafficking reported that immigration officials took bribes from traffickers, gave the victims falsified identification papers, and allowed them to cross borders. There were credible reports that brothel owners allowed police and migration officials to have sex with minor victims without charge. There were no further developments regarding the investigation of former PNC official Rudy Giron Lima's ownership of three bars where underage persons were engaged in prostitution. In May 2004 a court sentenced Giron Lima to 63 years in prison on unrelated kidnapping charges (see section 1.b.).

The Secretariat for Social Welfare, a government institution, operated two shelters, one in Guatemala City and the other in the city of

Quetzaltenango that housed victims of trafficking and offered social casework, job training, and counseling.

Immigration officials generally deported adult trafficking victims but did not treat them as criminals. From February to December, immigration officials deported 96 women found during bar raids back to Honduras, Nicaragua, and El Salvador. Victims were not prosecuted and were not required to testify in cases against traffickers.

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

Persons with Disabilities

The law 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, such as equal hiring opportunities. In many cases persons with physical and mental disabilities did not enjoy these rights, and the government devoted few resources to combat this problem. A 2004 report by the International Disability Rights Monitor, the most recent available, noted that the government discriminated against persons with disabilities by not providing adequate protection.

There were scant 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. Although the National Council for the Disabled, composed of representatives of relevant government ministries and agencies, met regularly to discuss initiatives, the government devoted no resources to the implementation of the council's recommendations.

Indigenous People

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

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

Rural indigenous persons had limited educational opportunities and fewer employment opportunities. Many of the indigenous were illiterate, and approximately 33 percent did not speak Spanish. More than 50 percent of indigenous women were illiterate; and a disproportionate number of indigenous girls did not attend school (see section 5, Women and Children). According to the most recently available Ministry of Education report, 273,628 preschool and kindergarten aged indigenous children were enrolled in bilingual education programs during 2004. The government devoted less than 10 percent of the total budget to bilingual education. During the year the Population Council reported that indigenous people completed 1.3 years of school on average, compared with 4.2 years for non-indigenous persons.

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

Legally mandated court interpreters for criminal proceedings often were not available, placing indigenous people arrested for crimes at a disadvantage due to their limited comprehension of Spanish (see section 1.e.). There were 63 judges who spoke Mayan languages among the 561 tribunals in the country. There were 62 court interpreters, and the Supreme Court of Justice reported that the judicial system had 689 employees who spoke indigenous languages. In many instances bilingual judicial personnel continued to be assigned to areas where their second language was not spoken. The public defender's Office of Indigenous Defense, which coordinated interpretation and legal assistance in indigenous languages, ran out of funds on July 1. A skeleton staff continued working while the office sought governmental budgetary support, but the government undertook no further interpretation or legal assistance efforts and the future existence of the office was in question at year's end.

Other Societal Abuses and Discrimination

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

On December 17, transvestite Juan Pablo Mendez Cartagena was shot and killed, and transvestite Kelvin Josue Alegria Robles was seriously injured in Guatemala City by persons that members of the homosexual rights group OASIS alleged were wearing police uniforms. At year's end the matter was under investigation by police authorities.

Section 6 Worker Rights

a. The Right of Association

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

Legal recognition of a new industry-wide union requires that the membership constitute 50 percent plus one of the workers in an industry. In its annual report, the ILO Committee of Experts identified this requirement as among "restrictions on the formation of organizations in full freedom," and labor rights activists considered this number to be a nearly insurmountable barrier to the formation of new industry-wide unions.

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

There were credible reports of retaliation by employers against workers who tried to exercise internationally recognized labor rights. By year's end there were no new developments regarding the status of a 2004 case involving 20 workers dismissed by the Secretariat for Social Welfare while trying to form a public sector union, despite a court order calling for their reinstatement.

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

The annual ILO Committee of Experts report noted "problems relating to the shortcomings in the functioning of justice, and particularly the slowness of procedures and the failure to comply with court orders relating to acts of antiunion discrimination."

Labor leaders reported receiving death threats and other acts of intimidation. A 3-prosecutor Office of the Special Prosecutor for Crimes Against Unionists and Journalists accepted 42 new union-related cases during the year, thereby raising its total case load to more than 370 (see section 4). During the year prosecutors secured no convictions for crimes against trade unionists and often claimed that they had minimal evidence to prosecute such cases.

During the year the Ministry of Labor granted legal status to 42 new labor unions. Although there were 1,698 legally registered labor unions, fewer than 400 appeared to be active based on administrative register records.

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

b. The Right to Organize and Bargain Collectively

The law allows unions to conduct their activities without interference, and the government generally strove to protect this right in practice. The law requires that union members approve a collective bargaining agreement by simple majority. Although workers had the right to organize and bargain collectively, the small number of unionized workers limited the practice of organizing and bargaining. In its annual report, the ILO Committee of Experts requested that the government "take measures to promote collective bargaining in the country and to ensure that effect is given in practice to concluded collective agreements."

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

According to the Ministry of Labor, there were 65 collective bargaining agreements (covering more than 15 thousand unionized workers and many thousands of non-unionized workers), primarily in the public sector.

Workers have the right to strike, but due to the very low level of unionization and procedural hurdles, there were no legal strikes during the year. The law requires approval by simple majority of a firm's workers to call a legal strike, and it requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike. The government did not recognize any legal strikes during the year, although teachers, farm workers, air traffic controllers, and other labor groups held illegal or unofficial work stoppages.

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

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

Labor laws and regulations apply throughout the country, including in the 12 active export processing zones (EPZs) and within the maquiladoras, which operated under an EPZ-like regime, although they were not located in distinctly established areas. By year's end the number of workers in the maquiladora sector decreased to approximately 80 thousand, due to competition from apparel producers in Asian countries.

There were no special laws or exemptions from regular labor laws in the EPZs. Due to worker mistrust of employers and union organizers, unions had minimal success in organizing workers in EPZs and in the maquiladora sector. While only three enterprises in the maquiladora sector had legally registered unions, one of those enterprises declared bankruptcy on June 10, and closed. The two remaining unionized maquilas had legally registered collective bargaining agreements. In December union organizers in another company reached an agreement with management to establish a union in the workplace. Recognition by the Ministry of Labor was pending at year's end. Labor leaders and activists asserted that employer intimidation and pressure undermined organizing activities.

c. Prohibition of Forced or Compulsory Labor

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

d. Prohibition of Child Labor and Minimum Age for Employment

Although the law bars employment of minors under the age of 14 without written permission from parents or the Ministry of Labor, child labor was a widespread problem. The law prohibits minors from work in establishments where alcoholic beverages are served, from work in unhealthy or dangerous conditions, and from night work and overtime work (the legal workday for persons younger than 14 is 6 hours, and for persons 14 to 17 years of age, 7 hours.). Despite these protections, child laborers worked on average in excess of 45 hours per week.

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

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

The ILO's International Program on the Elimination of Child Labor (IPEC) continued to operate programs in the country to deal with commercial sexual exploitation of children, child labor in commercial agriculture, children working in garbage dumps, and child labor in quarries. An IPEC project to address child labor in fireworks production closed in August. The labor ministry estimated that approximately three thousand children were employed in the illegal and very hazardous cottage-based fireworks production industry. In its annual report, the ILO Committee of Experts requested that the government adopt necessary measures to guarantee that no person under 18 years of age would be employed in the hazardous fireworks industry.

The ILO Committee of Experts noted also with regard to worst forms of child labor that, in relation to the commercial sexual exploitation of children in the country, legislation was inadequate, cases involving sexually exploited children often were not investigated and prosecuted, and there were no effective rehabilitation programs available (see section 5).

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

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

e. Acceptable Conditions of Work

The law sets national minimum wages for agricultural and non-agricultural work. In December President Berger ordered a 10 percent increase in the legal minimum wage after the National Salary Committee failed to achieve consensus. The new daily minimum wage was \$5.66 (42.46 quetzales) in agriculture and \$5.82 (43.64 quetzales) in non-agricultural work. In addition to the increase in base minimum wage, the president also increased the mandatory monthly incentive bonus for salaried employees from \$14.66 (110 quetzales) to \$33.33 (250 quetzales), effectively raising the minimum wage to \$7.17 (53.8 quetzales) per day for agricultural work and \$7.33 (55 quetzales) for non-agricultural work.

The minimum wage did not provide a decent standard of living for a worker and family. The Guatemalan National Statistics Institute calculated that the minimum food budget for a family of 4 was \$202 (1,515 quetzales) per month, significantly above the \$161 (1,210 quetzales) per month that could be earned at the non-agricultural minimum wage rate. The institute's estimate of a family's total needs, including housing, clothing,

utilities, and health care was \$369 (2,765 quetzales). Labor

representatives noted that even where both parents worked, the minimum wage did not allow the family to meet its basic needs.

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

A study by the Center of National Economic Research, conducted in 2004 and again in the current year, reported that 75 percent of the workforce operated in the informal sector, and therefore outside of the basic protections, including minimum wage, afforded by the law.

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

In March labor courts re-assumed responsibility for sanctioning employers found violating labor laws. This responsibility had been taken away from labor inspectors by a 2004 Constitutional Court decision. During the year the labor courts received 1,187 cases from the labor inspectorate, but resolved only 138.

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

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