

COSTA RICA 2012 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Costa Rica is a constitutional, multiparty republic governed by a president and a unicameral legislative assembly directly elected in multiparty elections every four years. In 2010 voters chose Laura Chinchilla Miranda of the National Liberation Party (PLN), the country's first female president, in elections generally considered free and fair. Security forces reported to civilian authorities.

Principal human rights abuses reported during the year included harsh prison conditions and treatment, delays in the judicial process, and domestic violence against women and children.

Other human rights problems included trafficking in persons, commercial sexual exploitation of minors, and discrimination based on sexual orientation.

The government investigated and prosecuted officials who committed abuses; however, impunity still existed.

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

a. Arbitrary or Unlawful Deprivation of Life

There were no new reports that the government or its agents committed arbitrary or unlawful killings during the year. In May the Office of the Attorney General of Alajuela pressed charges against 10 prison guards involved in the 2011 killing of inmate Joehl Araya-Ramirez. According to the Prosecutor's Office, it indicted six defendants in the case and scheduled the preliminary hearing for February 2013.

b. Disappearance

There were no reports of politically motivated disappearances.

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

Although the constitution prohibits such practices and the government generally respected this prohibition, there were reports that some government officials employed them. The government investigated, prosecuted, and punished agents responsible for confirmed cases of abuse.

In May the Ombudsman's Office, through the National Mechanism for Prevention of Torture, concluded that prisoners involved in a 2011 escape attempt were subject to torture and mistreatment.

The Ombudsman's Office recorded 187 complaints of police abuse, arbitrary detention, torture, and other inhumane or degrading treatment. In April the owner of a club filed a complaint for aggression and homophobic behavior after uniformed and municipal police conducted a raid. The Constitutional Court subsequently issued a reprimand citing excessive intervention. In December the Ombudsman's Office issued recommendations to both police forces on how to conduct future operations while respecting the rights and dignity of all citizens, including lesbian, gay, bisexual, and transgender (LGBT) persons.

Prison and Detention Center Conditions

Prison conditions were harsh. Overcrowding, poor sanitation, difficulties obtaining medical care, and violence among prisoners remained serious problems in some prison facilities. Security and administrative staffing was insufficient to care for the needs of prisoners, including personal safety.

Physical Conditions: The prison population increased and exceeded designed capacity by 30 to 100 percent depending on the section and facility. Prison overcrowding made security and control difficult and contributed to health problems. Poor conditions included inadequate space for resting, deteriorated mattresses on the floor, and inadequate access to health services. Illegal narcotics were readily available in the prisons, and drug abuse was common.

On July 31, the Justice Ministry's Social Adaptation Division reported a total population of 28,046 under its supervision, compared with 23,046 in 2011. The population included 12,984 prisoners in closed-regime centers, 1,680 persons

required to spend nights and weekends in jail, and 12,651 in supervised work programs requiring no jail time. There were 731 juveniles and 830 women prisoners. Prisoners generally were separated by age, gender, and level of security (minimum, medium, and maximum). Authorities held pretrial detainees with convicted prisoners on occasion. The Ombudsman's Office confirmed that prison conditions were the same for women and men.

The San Sebastian, San Carlos, Cartago, Liberia, Pococi, Perez Zeledon, Puntarenas, Limon, La Reforma, Gerardo Rodriguez, and Buen Pastor prisons remained overcrowded as of July 31, with the population in pretrial detention experiencing the most overcrowding. In San Sebastian, where most prisoners in pretrial detention were held, 1,103 prisoners lived in unsanitary conditions in a facility with a planned capacity of 664.

Potable water was available in prison facilities.

The Ministry of Justice's Social Adaptation Division reported 22 deaths in closed regime centers during the year.

Administration: Recordkeeping was adequate. Prisoners had reasonable access to visitors and could practice their religions. Authorities permitted prisoners and detainees to submit complaints to authorities without censorship and request investigation of credible allegations of inhumane conditions. If complaints were not processed, prisoners could submit them to the Ombudsman's Office, which investigated all complaints at an administrative level. During the year no case of abuse was referred to the public prosecutor. The Ombudsman's Office, through the National Prevention Mechanism against Torture, periodically inspected all detention centers.

Monitoring: The government permitted independent monitoring of prison conditions by international and local human rights observers, including representatives from the Ombudsman's Office. Human rights observers could speak to prisoners and prison employees in confidence and without the presence of prison staff or other third parties.

Improvements: The Ministry of Justice completed three new units in the women's prison. One included a nursery for inmates who were caring for their children three years old or under.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The country has no military. Civilian authorities maintained effective control over the 13 agencies that have law enforcement components, including the judicial branch's Judicial Investigative Organization. The Ministry of Public Security is responsible for the uniformed police force, drug control police, air wing, and coast guard. The Ministry of Public Works and Transportation supervised the traffic police, the Ministry of Environment supervised park police, and the Ministry of Justice managed the penitentiary police. Several municipalities managed municipal police forces. The government has mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces.

Arrest Procedures and Treatment While in Detention

The law requires issuance of judicial warrants before making arrests, except where probable cause is evident to the arresting officer. The law entitles a detainee to a judicial determination of the legality of detention during arraignment before a judge within 24 hours of arrest. The law provides for the right to post bail and prompt access to an attorney and family members. Authorities generally observed these rights in practice. Indigent persons have access to a public attorney at government expense. Those with sufficient personal funds are also able to use the services of a public defender. With judicial authorization, authorities may hold suspects incommunicado for 48 hours after arrest, or, under special circumstances, for up to 10 days. Special circumstances include cases in which pretrial detention previously was ordered and there is reason to believe that suspects may reach an agreement with accomplices or may obstruct the investigation in some way.

Suspects were allowed access to attorneys immediately before submitting declarations. Authorities promptly informed suspects of any offenses under investigation.

Pretrial Detention: A criminal court may hold suspects in pretrial detention for up to one year, and the Court of Appeals may extend this period to two years in especially complex cases. Every three months the law requires court review of cases of suspects in pretrial detention to determine the appropriateness of continued detention. By law, if a judge declares a case is related to organized crime, special procedural rules require that the period of pretrial detention not exceed 24 months (although the Court of Appeals may grant one extension not to exceed an additional 12 months); the statute of limitations is 10 years from the date of the last crime. The Ombudsman's Office reported that authorities frequently used pretrial detention. According to the Ministry of Justice, as of July 31, there were 3,357 persons in pretrial detention, constituting approximately 12 percent of the prison population. In some cases delays were due to pending criminal investigations; in other cases the delays were a result of court backlogs. According to the judicial branch's Statistics Office, as of March 31, there were 1,716 pretrial detainees, with 49 percent imprisoned for three months or less, 25 percent from three to six months, 12 percent from six to nine months, and 14 percent from nine months to two and a half years. In addition the Statistics Office reported 674 convicted prisoners in detention awaiting sentencing. In these cases delays were most frequently attributed to a pending appeal process or a verdict subject to and awaiting confirmation.

Amnesty: On August 8, the president pardoned seven female inmates out of 216 applications.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence in practice. The legal system faced many challenges, including significant delays in the adjudication of criminal cases and civil disputes and a growing workload. In 2011 approximately 237,000 criminal complaints were filed with the judicial branch, of which 4 percent (10,997 cases) went to trial with a conviction rate of 64 percent, according to the Statistics

Office of the judicial branch. Many cases filed did not have sufficient evidence to go to trial.

Trial Procedures

The constitution and law provide for the right to a fair trial, and an independent judiciary generally enforced this right.

All trials, except those that include juvenile defendants, are public. There are no jury trials. A single judge or a three-judge panel presides over trials depending on the potential penalties arising from the charges. Trials that involve victims or witnesses who are minors are closed during the portion of the trial when the minor is called to testify. Defendants have the right to be present during trial and consult with an attorney of choice in a timely manner. The law provides for access to counsel at state expense. Victims can request special arrangements in the courtroom to avoid unwanted contact with defendants. The law provides detainees and attorneys access to government-held evidence and during the trial defendants can question and present witnesses on their own behalf. Defendants enjoy a presumption of innocence and, if convicted, have the right to appeal. The law extends these rights to citizens and noncitizens alike. Fast track courts, which prosecute cases when suspects are arrested on the spot for alleged transgressions, provide the same protections and rights as other courts.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

An independent and impartial judiciary presides over lawsuits in civil matters, including human rights violations. Administrative and judicial remedies for alleged wrongs are available to the public.

Regional Human Rights Court Decisions

On December 20, the Inter-American Court of Human Rights issued a binding ruling against the country's ban on in vitro fertilization.

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

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

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, and the government generally respected these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and press.

Freedom of Speech: Individuals are generally free to criticize the government openly without reprisal. The law limits hate speech in publications with regard to ethnic origin, race, or color.

Freedom of Press: The government continued to support legislation that imposes criminal penalties, including lengthy jail sentences instead of fines, for common press infractions. Journalists believed such legislation promoted self-censorship.

Libel Laws/National Security: On July 10, the president enacted Article 288, which includes amendments to the criminal code to create new offenses. The new law establishes a sentence of between four to eight years' imprisonment for any individual trying to obtain inappropriately secret political information. Journalists and media organizations criticized the law, arguing it restricted access to information of public interest.

Internet Freedom

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms without judicial

oversight. The International Telecommunication Union reported that 44 percent of individuals used and 39 percent of household had access to the Internet in 2011.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

The constitution provides for freedom of assembly and association, and the government generally respected these rights in practice.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt.

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

The constitution and 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 in providing protection and assistance to refugees, asylum seekers, stateless persons, and other persons of concern.

Protection of Refugees

Access to Asylum: The country's laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

Employment: Refugee regulations, which entered into force in 2011, provide asylum seekers an opportunity to obtain work permits if they have to wait beyond the three months that the law allows for a decision on their asylum claim. In

practice, however, few asylum seekers were able to exercise this right effectively. The Refugee Unit failed to process claims in a timely manner or to educate employers about this right effectively.

Access to Basic Services: In theory, asylum seekers and refugees had access to public services, but in practice this access was often hampered by lack of knowledge about their status in the country and feelings of xenophobia among some service providers in certain cases. For example, Colombian asylum seekers and refugees frequently faced discrimination when attempting to enroll children in local schools or open a bank account.

Temporary Protection: There were no programs for temporary protection beyond refugee status. Due to low recognition rates, the UNHCR had to consider an increasing number of rejected asylum seekers as “persons of concern” in need of international protection. UNHCR officials estimated an annual 400 to 500 persons of concern, whose cases it reviewed to determine whether they needed international protection.

Stateless Persons

Citizenship was derived by birth within the country, from either parent, marriage, or through time-specific residency. There continued to be problems of statelessness in the border areas with Panama and Nicaragua. Members of the Ngobe-Bugle indigenous group from Panama often worked on Costa Rican plantations and occasionally gave birth there. In these cases Ngobe-Bugle children did not receive registration as Costa Rican citizens at birth because their families did not think it necessary. However, the children lacked registration in Panama as well. A similar problem occurred with Nicaraguan families who migrated to work on coffee plantations.

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

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

Elections and Political Participation

Recent Elections: In national elections held in February 2010, Laura Chinchilla Miranda of the PLN won the presidency and became the country's first female president; the elections generally were considered free and fair. The Organization of American States team that monitored the election praised the peaceful and democratic way in which the process unfolded.

Participation of Women and Minorities: Women were represented with a degree of visibility in government, but indigenous people and persons of African descent (representing approximately 2.4 percent and 7.7 percent of the population, respectively, according to the 2011 census) were not represented. The electoral code requires that a minimum of 50 percent of candidates for elective office be women, with their names placed alternately with men on the ballots by party slate. There were six women among the 22 cabinet ministers. There were 22 women in the 57-seat Legislative Assembly, including the secretary of the assembly, a chief of faction, and 13 women serving as chairpersons of legislative committees. Women served as deputy chief justice of the Supreme Court, president of the High Court of Civil Appeals, and president of the Constitutional Chamber. Indigenous persons did not play a significant role in politics or government and remained underrepresented. There were no indigenous or Afro-Caribbean members in the Legislative Assembly. An Afro-Caribbean woman, Maureen Clarke, headed the National Institute for Women (INAMU), which was elevated to a cabinet position during the year.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, and the government generally implemented these laws; however, the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity.

In May a recently inaugurated road built along the northern border was the center of a scandal when the Ministry of Public Works and Transportation alleged corruption among employees of the ministry's National Highway Traffic Safety

Council (CONAVI) and private companies that won the construction contracts. CONAVI inspectors reportedly received kickbacks in return for preferential treatment for contractors working on the road, and subsequent investigations raised questions about the quality of the work. Due to these reports, the president asked for the resignation of the minister of public works and transportation. Law enforcement authorities carried out several raids on suspected businesses, and the investigation remained open at year's end. The Comptroller's Office also opened an administrative investigation related to the construction of the northern border road.

In April the finance minister and his wife, a presidential advisor, resigned after they failed to report income tax for their properties.

The Prosecutor's Office investigated credible reports of corruption in at least seven municipal governments. The Ministry of Public Security suspended more than 1,000 uniformed police officers in 15 months (the force has approximately 12,000 officers). Most of the suspensions occurred during investigations related to misuse of resources, abuse of authority, and domestic violence. During the first six months of the year, 132 uniformed police officers were arrested and given pretrial detention for involvement in drug trafficking or other organized criminal activity in several high-profile cases. Despite the measures taken to investigate and address corruption, there was a widespread public perception that corruption remained a problem in the uniformed police force. In June the Criminal Court of Puntarenas prosecuted and sentenced eight uniformed police officers for drug-trafficking.

Public officials are subject to financial disclosure laws that require senior officials to submit sworn declarations of income, assets, and liabilities. The law requires income and asset disclosure by appointed and elected officials. The Comptroller General's Office monitors and verifies disclosures. The content of the declarations is not made available to the public. The law stipulates administrative sanctions for noncompliance and identifies which assets, liabilities, and interests public officials must declare. Officials are required to file a declaration annually and when they enter and leave office. The public ethics prosecutor, comptroller general, attorney general, and ombudsman are responsible for combating government corruption.

The law provides for public access to government information, and the government generally respected this right to access for citizens and noncitizens, including foreign media. Authorities have a 10-day timeline to disclose or respond. There are no processing fees or sanctions for noncompliance, although a petition can be filed in case of disclosure denial. Government institutions published reports that detailed the year's activities. The Ombudsman's Office operated a Web page dedicated to enhancing transparency by improving citizens' access to public information.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were often cooperative and responsive to their views.

Government Human Rights Bodies: The Ombudsman's Office reviews government action or inaction that affects citizens' rights and interests. The ombudsman is accountable to the Legislative Assembly, which appoints him or her to a four-year term and funds office operations. The ombudsman participates in the drafting and approval of legislation, promotes good administration and transparency, and reports annually to the Legislative Assembly with nonbinding recommendations. A special committee of the Legislative Assembly studies and reports on problems relating to the violation of human rights, and it also reviews bills relating to human rights and international humanitarian law.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The constitution prohibits discrimination based on race, gender, disability, language, or social status, and the government generally enforced these prohibitions effectively. With regard to gender identity, under the General Law on HIV/AIDS, Article 48 prohibits discrimination against sexual options (sexual orientation), and establishes misdemeanor sanctions for non-compliance.

Women

Rape and Domestic Violence: The law criminalizes rape and provides penalties from 10 to 18 years in prison for rape. The length of the sentence depends on the victim's age and other factors, such as the assailant's use of violence or position of influence over the victim. Rape was underreported due to fear of retribution, further violence, and social stigma. According to the National Institute of Women (INAMU), the rape law applies to spousal rape, although in practice spousal rape cases were much more difficult to prove. The challenge of collecting physical evidence in cases of rape further limited investigation and prosecution. Only one location in the country, the Judicial Forensic Clinic, had rape kits to collect and analyze physical evidence for use in prosecutions. According to the judicial branch's Statistics Office, there were 1,755 reported rape cases in 2011; ultimately, courts tried 307 cases of rape, 17 cases of attempted rape, and 65 cases of aggravated rape in 2011, and convicted and sentenced 157, 10, and 37 defendants, respectively.

The government continued to identify domestic violence against women and children as a serious and growing societal problem. From January to March 31, the uniformed police received 19,975 reports of domestic violence, reflecting an increase of 35 percent over the same period in 2011. INAMU reported that 18 women died from domestic violence during the year; in 2011 40 women and girls died from domestic violence. The Paniamor Foundation, an NGO working on gender-based violence issues, linked the problem to general social marginalization and access to firearms, powered by illicit drug trafficking, which disproportionately affects women and children. The law prohibits domestic violence and provides measures for the protection of domestic violence victims. Criminal penalties range from 10 to 100 days in prison for aggravated threats and up to 35 years in prison for aggravated homicide, including a sentence of 20 to 35 years for persons who kill their partners. If a domestic violence offender has no violent criminal record and the sentence received is less than three years' imprisonment, the law also provides for alternative sanctions, such as weekend detentions and assistance, including referrals for social services and rehabilitation. In 2011, according to the Statistics Office, authorities opened 17,607 cases of domestic violence throughout the country. Although there were only 484 cases tried with 226 persons sentenced for crimes of violence against women, this represented an increase of 91 cases from those tried in 2010.

INAMU assists women and their children who are victims of domestic violence in its regional office located in San Jose and in three other specialized centers and temporary shelters. INAMU maintained a domestic abuse hotline connected to the 911 emergency system and provided counseling to 7,298 women and provided protection to 321 women and 616 children during the year.

The public prosecutor, police, and ombudsman have offices dedicated to addressing domestic violence.

Sexual Harassment: The law prohibits sexual harassment in the workplace and educational institutions, and the Ministry of Labor and Social Security generally enforced this prohibition. The law imposes penalties ranging from a letter of reprimand to dismissal, with more serious incidents subject to criminal prosecution. The Ombudsman's Office received 136 complaints of sexual harassment in the workplace between January and August.

Reproductive Rights: Individuals have the right to decide freely and responsibly the number, spacing, and timing of children, have information and access to safe methods of contraception from public hospitals and medical attention centers, and receive medical care during pregnancy and childbirth. According to the UN Population Fund, skilled health personnel attended 95 percent of births in 2010. The maternal mortality rate was 40 per 100,000 live births as of 2010.

The public health-care system plays a major role in how women access contraception, including sterilization. In public as well as private health care, the right to obtain and use contraceptives extends to all members of the population. Patients who pay into the public health-care system receive contraceptives at no additional fee, and 80 percent of women ages 15 to 49 used a modern method of contraception, according to 2011 UN estimates.

Discrimination: Women enjoy the same legal status and rights as men under the law in most cases. The law prohibits discrimination against women and obligates the government to promote political, economic, social, and cultural equality. The government maintained offices for gender problems in most ministries and parastatal organizations. The Labor Ministry is responsible for investigating

allegations of gender discrimination. INAMU implemented programs that promoted gender equality and publicized the rights of women. In 2011 the National Institute of Statistics and Census (INEC) reported that women represented 45.7 percent of the labor force. The law requires that women and men receive equal pay for equal work. In 2011 INEC estimated that earnings for women were 94.5 percent of earned income for men. While there is no waiting period for men to remarry, the law requires women to wait 300 days following divorce, or the death of a husband, unless they present a medical certificate stating they are not pregnant.

Children

Birth Registration: Citizenship is obtained from birth within the country's territory or can be derived if either parent is Costa Rican. There were occasional problems encountered in the registration at birth of children born of migrant parents (see section 2.d.). Birth registration was not always automatic, and migrant children were especially at risk of statelessness since they did not have access to legal documents to establish their identity if the parents did not seek birth registration for them.

Child Abuse: Abuse of children was a growing problem. Of the 677 cases of sexual abuse of minors and five cases of attempted abuse reported by the judicial branch's Statistics Office in 2011, 381 and three perpetrators were convicted, respectively. In addition, there were 28 cases involving sex with minors and four cases of sexual corruption of minors. From January to June, the autonomous National Institute for Children (PANI) assisted in 1,848 cases of physical abuse, 380 cases of intrafamilial sexual abuse, and 250 cases of extrafamilial sexual abuse. Traditional attitudes and the inclination to treat sexual and psychological abuse as misdemeanors hampered legal proceedings against those who committed crimes against children.

Child Marriage: The minimum legal age of marriage is 18 or 15 with parental consent. The 2011 national census identified 4,019 married women between ages 15 to 19 years, 21,224 women living under common-law marriage between 15 to 19 years, and 981 girls and adolescents living under common-law marriage between 12 to 14 years.

Sexual Exploitation of Children: The minimum age of consensual sex is 18 years. The law criminalizes the commercial sexual exploitation of children and provides sentences of up to 18 years in prison. The law provides for sentences of two to 10 years in prison for statutory rape and three to eight years in prison for child pornography. Sentences are lengthier in aggravated circumstances; for example, rape involving physical violence or a victim under age 13 is punishable by 10 to 16 years' imprisonment. The government, security officials, and child advocacy organizations acknowledged that commercial sexual exploitation of children remained a serious problem. From January to June, PANI reported 50 cases of commercial sexual exploitation of minors. In 2011 the judicial branch's Statistics Office reported only six convictions of sex with minors with payment involved. The government identified child sex tourism as a serious problem.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State's report on compliance at www.travel.state.gov/abduction/resources/congressreport/congressreport_4308.html.

Anti-Semitism

The Jewish Zionist Center estimated there were 3,000 Jews in the country. There were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

The constitution prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, health-care access, or other state services. There were reports of discriminatory practices in accessibility to education, work, information, public buildings, and transportation.

The National Rehabilitation and Special Education Council (CNREE) is the government body responsible for protecting the rights of persons with disabilities and for coordinating interagency efforts.

From January to August, the Ombudsman's Office reported receiving 77 complaints of discrimination against persons with disabilities, and the CNREE received 24 complaints for violations of the law regarding protection of equal opportunities for persons with disabilities. All 24 cases were opened, and 11 were under investigation at year's end. For example, CNREE received a report from a person with disabilities whose service dog was excluded from entering a health care facility.

Although the law mandates access to buildings for persons with disabilities, the government did not enforce this provision in practice, and many buildings remained inaccessible to persons with disabilities.

The CNREE also reported that the education system required a comprehensive reform, especially in rural areas, to improve statistics, physical access to facilities, technical assistance and training, interagency coordination, and support services in secondary schools.

Both the government policy on education and the national plan for higher education establish the right to education of students with special needs. The Ministry of Education operated a program for persons with disabilities that provided support services to students with special needs in both regular and special education systems. In 2010 there were 22 special education centers serving 5,165 students with disabilities. Adults with disabilities were also supported through 28 attention centers.

A political party, Accessibility without Exclusion, worked to represent the interests of persons with disabilities and held four seats in the Legislative Assembly.

National/Racial/Ethnic Minorities

The greatest concentration of citizens of African descent (74 percent per the 2000 census) was in the Atlantic province of Limon. Lack of government investment in

infrastructure resulted in Limon being one of the least developed areas of the country. In 2011 INEC reported that 29 percent of inhabitants in the Atlantic region lived in poverty. The Atlantic region had one of the highest rates of unemployment (10 percent in 2011) and crime (23 percent of the country's homicides in 2011).

There were sporadic reports of discrimination, including labor discrimination, usually directed against Nicaraguans.

Indigenous People

According to the Ombudsman's Office, indigenous groups repeatedly denounced the government for forcing them to organize in associations and not taking into account their traditions. The Ombudsman's Office reported that the government excluded indigenous persons from decision-making processes regarding education, infrastructure, housing, and public services.

The indigenous communities of Terraba, Curre, and Boruca were concerned about the social, cultural, and environmental impact of the development of the Diquis hydroelectric dam project. Promoted by the National Electricity Institute, the project included the seizure of indigenous territories and forced displacement of indigenous communities. The Constitutional Court dismissed a petition of unconstitutionality against a 2008 executive order that declared the Diquis project of public interest, but also ruled that the government should conduct a six-month consultative process. During the year the Ombudsman's Office continued monitoring the project and its impact on indigenous communities, and it maintained communication with indigenous groups and with the Office of the First Vice-President, which coordinated the interagency commission for this project. In March the UN special rapporteur on the rights of indigenous peoples discussed with members of indigenous communities ideas for the consultation process required prior to any decision to advance with the Diquis project.

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

There were cases of discrimination against persons based on sexual orientation, ranging from employment to access to health care.

Members of the Legislative Assembly's Human Rights Committee appointed Evangelical legislator Justo Orozco, an outspoken opponent of LGBT recognition, as chairperson. On June 6, this committee fast-tracked and rejected a civil partnership bill providing economic rights to gay couples. On August 7, the executive branch committed to re-introducing this bill before the Assembly, which has been pending on the plenary floor since December.

In response to the Ministry of Education's proposed sexual education curriculum, the Constitutional Court ruled in favor of the individual members of the Evangelical Alliance, giving parents the right to decide whether their children received sexual education or not.

Other Societal Violence or Discrimination

Although the law prohibits discrimination based on HIV/AIDS in health care, employment, and education, discrimination occurred. From January to August, the Ombudsman's Office reported receiving 10 complaints of discrimination against patients with HIV/AIDS. Some HIV-positive individuals reported that they were denied private health insurance coverage based on their HIV status. According to a local NGO, other problems included shortages in antiretroviral supplies at two public hospitals, unfriendliness of health care professionals toward HIV-positive patients, and mandatory testing in both the public and private sector prior to employment.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The constitution, labor code, and related regulations protect the right of freedom of association, the right to strike, and the right of workers to organize and bargain collectively. Restrictions on the minimum number of employees (12) needed to form a union may have hampered freedom of association in small enterprises. The

law permits foreign workers to join unions but prohibits them from holding positions of authority within the unions.

In 2011 the Constitutional Court overturned an article of the labor code stipulating that at least 60 percent of the workers in an enterprise had to support a strike. The court did not set a minimum number of employees necessary for a strike to be legal, and it noted that the Legislative Assembly should establish a percentage not to exceed 50 percent. The law restricts the right to strike of workers in services designated as essential by the government, and it includes sectors such as oil refineries and ports. The law prohibits antiunion discrimination and provides for reinstatement of workers fired for union activity.

The law requires employers to initiate the bargaining process with a trade union if more than one-third of the total workforce, including union and nonunion members, requests collective bargaining, but the law also permits direct bargaining agreements with nonunionized workers. The law also permits the formation of “solidarity associations,” which were often organized by employers and have legal status under the constitution. The law prohibits such associations from representing workers in collective bargaining negotiations or any other way that assumes the functions or inhibits the formation of trade unions.

Although public sector employees are permitted to bargain collectively, the Supreme Court has held that some fringe benefits received by certain public employees were disproportionate and unreasonable, and repealed sections of collective bargaining agreements between public sector unions and government agencies, thus restricting this right in practice.

The government generally enforced applicable laws in practice, although procedures were subject to lengthy delays and appeals. Concerns about slow proceedings in cases of antiunion discrimination continued during the year. Cases of antiunion discrimination often took an extremely long time to reach a final court ruling due to numerous appeals. The International Trade Union Confederation noted that the reinstatement process for workers who were unfairly dismissed averaged three years.

Workers exercised the right to form and join unions and to strike without government interference. Labor unions asserted that in practice, solidarity associations conducted negotiations, and employers sometimes required membership in a solidarity association as a condition for employment. Such associations, to the extent that they displaced trade unions, affected the independence of workers' organizations from employers' influence, and infringed on the right to organize and bargain collectively. The International Labor Organization (ILO) reported an expansion of direct bargaining agreements between employers and nonunionized workers and an imbalance between the number of collective agreements and direct agreements.

There continued to be a pattern of employers firing employees who were attempting to unionize. A labor union identified cases of antiunion discrimination in private security companies. There were reports that some employers also preferred to use "flexible," or short-term, contracts, making it difficult for workers to organize and collectively bargain. Migrant workers in agriculture frequently were hired on short-term contracts through intermediaries, faced antiunion discrimination and challenges in organizing, and were often more vulnerable to labor exploitation.

The ILO noted that there were no trade unions operating in the country's export processing zones and identified the zones as a hostile environment for organizing. Labor unions asserted that efforts of workers in export processing zones to organize were met with illegal employment termination, threats, and intimidation, and that some employers maintained blacklists of workers identified as activists.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. In October the legislature passed a law against trafficking in persons (Law No. 9095), which expands the definitions of labor exploitation and forced labor. Article 80 of the new law provides for criminal sentences of between four and eight years in prison for forcing a person to perform work that the law considers a "detriment to his/her fundamental human rights," including labor exploitation. The penalty is increased to between six and 12 years if the victim is a minor or a vulnerable person, including any individual who has no alternative but to be subjected to exploitation.

On December 3, the president signed the law, but it had not entered into force by year's end.

The government failed to enforce the existing antitrafficking law effectively, and there were reports that such practices occurred. The Prosecutor's Office identified a case of trafficking for purposes of labor exploitation involving a minor girl, but no charges had been filed by year's end.

There were isolated reports of men, women, and children subjected to labor exploitation in domestic service and in other sectors.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

c. Prohibition of Child Labor and Minimum Age for Employment

The child and adolescence code prohibits labor of all children under age 15 without exceptions; it supersedes the minimum working age of 12 established in the labor code, which had not been amended to reflect this change. Adolescents between the ages of 15 and 18 may work a maximum of six hours daily and 36 hours weekly. The law prohibits night work and overtime for minors. The law prohibits those under age 18 from engaging in hazardous or unhealthy activities, and specifies a list of hazardous occupations.

The government generally enforced laws against child labor effectively in the formal sector, but not in the informal sector. During 2011 the Labor Ministry's Inspections Office investigated 57 cases of child labor. During the year the Office for the Eradication of Child Labor assisted 237 working minors, of whom 161 were referred to government institutions for inclusion in social programs. During the year the government continued to implement programming to eliminate illegal child labor and the worst forms of child labor by conducting child labor awareness training for 1,277 government employees, teachers, and students.

Child labor occurred primarily in the informal economy, especially in agricultural, commercial, and industrial sectors. During the year the Ministry of Labor published the results of the 2011 survey on child and adolescent labor, identifying

47,400 working minors (representing 4.6 percent of the child population); of this number, 16,160 were children under 15. The worst forms of child labor occurred in agriculture on small third-party farms in the formal sector and on family farms in the informal sector. The worst forms of child labor also occurred in some service sectors, such as construction, fishing, street vending, and domestic service.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/programs/ocft/tda.htm.

d. Acceptable Conditions of Work

Monthly minimum wages for the private sector ranged from 139,000 colones (\$278) for domestic workers to 514,000 colones for university graduates. According to INEC, in July the poverty line was 96,349 colones (\$192) in urban areas and 74,276 colones in rural areas (\$148). The constitution sets workday hours, overtime remuneration, days of rest, and annual vacation rights. Workers generally may work a maximum of eight hours a day or 48 hours weekly. Overtime work is paid at a rate of 50 percent above the stipulated wages or salaries. All workers are entitled to one day of rest after six consecutive days of work and annual paid vacations. Although there is no statutory prohibition against compulsory overtime, the labor code stipulates that the workday may not exceed 12 hours.

The Labor Ministry's Inspection Directorate (DNI) was responsible for labor inspection, in collaboration with the Social Security Agency and the Insurance Institute. DNI employed 98 labor inspectors who investigated all types of labor violations. Although resource constraints continued to hinder DNI's ability to carry out its mandate, there were 18,933 inspections conducted during the year. According to the Ministry of Labor, inspections occurred in response to complaints, per advanced scheduling, and at random in specific regions or activities.

The labor and health ministries generally addressed complaints effectively by sending inspection teams to investigate and coordinate with each other on follow-up actions. Inspectors cannot establish fines or sanctions for employers who do not comply with labor laws; rather inspectors investigate and refer noncompliance

results to labor courts. The process to fine companies and receive back wages or overtime pay may take years.

The Labor Ministry generally enforced minimum wages effectively in the San Jose area but was not as effective in enforcing the minimum wage law in rural areas, particularly where large numbers of migrants were employed. The national minimum wage also applied for migrant workers. The Labor Ministry publicly recognized that many workers, including in the formal sector, received less than the minimum wage.

The government continued to implement the campaign for minimum wage compliance launched in 2010. From August 2010 to February 2012, the Labor Ministry conducted 13,684 visits to businesses to ensure compliance with minimum wage laws. The government reported that 79 percent of businesses that failed to comply with paying the minimum wage corrected the problem after the inspection. The Labor Ministry continued pursuing administrative steps against the employers that failed to make corrections. According to the Ministry of Labor, 21.5 percent of the economically active population was in the informal economy.

While the labor and health ministries shared responsibility for drafting and enforcing occupational health and safety standards, they did not enforce these standards effectively in the formal or informal sectors.

Unions also reported systematic violations of labor rights and provisions concerning working conditions, overtime, and wages in the export processing zones. Labor unions reported that overtime pay violations, such as nonpayment, and mandatory overtime were common in the private sector and particularly in export processing zones. There were reports that agricultural workers, particularly migrant laborers in the pineapple industry, worked in unsafe conditions, including exposure to chemicals without proper training. The national insurance company reported 62,800 cases of workplace-related illnesses and injuries and 21 workplace fatalities during the first six months of the year.