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2010 Country Reports on Human Rights Practices - Guatemala

Bureau of Democracy, Human Rights, and Labor
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Guatemala is a democratic, multiparty republic with a population estimated at 14.4 million. Alvaro Colom of the National Unity of Hope (UNE) party won the 2007 presidential election, which international observers generally considered free and fair, and began his four-year term in January 2008. Although security forces reported to civilian authorities, there were instances in which members of the security forces acted independently of civilian control.

Human rights abuses included the following: the government's failure to investigate and punish unlawful killings committed by members of the security forces; widespread societal violence, including numerous killings; corruption and substantial inadequacies in the police and judicial sectors; police involvement in serious crimes, including unlawful killings, drug trafficking, and extortion; impunity for criminal activity; harsh and dangerous prison conditions; arbitrary arrest and detention; failure of the judicial system to ensure full and timely investigations and fair trials; failure to protect judicial sector officials, witnesses, and civil society representatives from intimidation; threats and intimidation against, and killings of, journalists and trade unionists; discrimination and violence against women; trafficking in persons; discrimination against indigenous communities; discrimination on the basis of sexual orientation and gender identity; and ineffective enforcement of labor laws and child labor provisions.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

Although there were no reports that the government or its agents committed politically motivated killings, members of the police force committed unlawful killings. Corruption, intimidation, and ineffectiveness within the police and other institutions prevented adequate investigation of many such killings as well as the arrest and successful prosecution of perpetrators.

The National Civilian Police (PNC) and its Office of Professional Responsibility (ORP) reported that they investigated 10 accusations of killings involving 10 PNC agents, all of whom remained under investigation at year's end.

On February 11, authorities arrested army Major Hugo Leonel Zielke Puac, PNC officials Ernesto Gutierrez Cos, Jairo Manuel Orozco, Osmandi Lopez Fuentes and Jorge Amilcar Ramirez Cerna, and Korean businessmen Woo Kun Yang and Young Gag Lee for the January 18 killing of Te Paek Soun Kim, whose body was found in Palin, Escuintla. The press reported that Te Paek died after the kidnappers tried to extort from him 12 million quetzales (\$1.5 million) that he won at an illegal casino operated by Woo Kun Yang and Young Gag Lee. At year's end the suspects remained in preventative prison and an investigation continued.

On June 23, authorities arrested PNC officials Juan Carlos Rojas Salguero and Martir Garcia Hernandez for the January 2009 unlawful killing of PNC officer Marco Aurelio Sandoval. Authorities were also investigating the two officials for participating in an organized crime band engaged in kidnappings and killings for hire.

At year's end PNC officers Mynor Joel Loarca Morales and Isaias Miguel Pineda remained in preventative detention awaiting trial for the January 2009 killing of Walter Garcia Suruy in Guatemala City.

PNC agents Mario Luiz Paz Mejia, Wilfredo Antonio Paz Mejia, and Carlos Humberto Aragon Cardona and 10 others remained under detention awaiting trial for the April 2009 killing of coffee grower and businessman Khalil Musa and his daughter, Marjorie, in Guatemala City.

On July 15, authorities convicted 11 members of an organized crime group, including police agents Mario Luis Paz Mejia, Wilfredo Antonio Paz Mejia, Carlos Humberto Aragon Cardona, three former police officers, and one retired member of the military for planning and carrying out the May 2009 murder of Rodrigo Rosenberg. At year's end the brothers Francisco and Estuardo Valdez Paiz, accused of homicide in the Rosenberg case, were awaiting trial; other suspects remained at large.

On February 26, soldiers Cacao Coy and Garcia Ramirez were convicted of manslaughter in the May 2009 killing of 15-year-old Pedro de Jesus Sacul Pop when the driver of the truck in which Sacul Pop was a passenger failed to stop in Alta Verapaz.

At year's end Jeiner Estanislao Vasquez Garcia, prosecutors Mario Adolfo Soberanis Pinelo, Oscar Efrain Vasquez Fuentes, and Rigoberto Arturo Castanon Mejia, and PNC officers Marlon Josue Garcia Lopez and David Ezequiel Vasquez continued to remain in custody in relation to the killing in 2009 of Castulo and Ana Leticia Vasquez Garcia.

At year's end, there were no further developments, and none were expected, in the case involving PNC agents Omar Evidan Godoy Arana and Gendy Misael Chinchilla Samayoa, who remained in custody awaiting trial for the 2008 killing of bus assistant Jose Angel Hernandez.

On June 7, authorities sentenced Juan Carlos Policarpio to 820 years in prison for murder in the 2008 killing of 16 passengers of a Nicaraguan bus in eastern Guatemala. Authorities sentenced Rony Eduardo Terraza Hernandez at the same time to three years' imprisonment for attempting to conceal the crime. At year's end nine other suspects, including Marvin Montel Marin, alleged leader of the assailants, remained at large.

On July 28, authorities arrested Cesar Augusto Paiz Cordova, Aurelio Ruiz, Nelson Oswaldo Milian Giron, and Santiago Enrique Sis Garcia for the killing in 2008 of former PNC official and government advisor Victor Rivera. At year's end, Paiz, Milian, and Garcia remained in prison awaiting trial. Seven other suspects, including Rivera's former secretary Maria del Rosario Melgar Martinez, remained at large.

By year's end authorities had dropped obstruction of justice and conspiracy charges against assistant prosecutors Denys Billy Herrera Arita and Carlos Rodriguez Serrano, but former chief homicide prosecutor Alvaro Matus, assistant prosecutor Pedro Pablo Giron, and Public Ministry deputy chief Leyla Susana Lemus Arriaga were out on bail awaiting

trial in relation to the 2008 killing of Victor Rivera.

At year's end a trial had begun for nine PNC officers for the 2007 killing of Antonio de Leon Lopez in Huehuetenango during an antinarcotics operation. ; a tenth officer remained at large.

On December 2, Jutiapa mayor-elect and former member of Congress Manuel de Jesus Castillo was convicted of masterminding the 2007 killings of three Salvadoran members of the Central American Parliament (PARLACEN) and their driver. Seven other suspects were also convicted, and another was absolved, for participating in the killings, including former PNC agent Marvin Contreras Natareno. Sentences ranged between 17 and 210 years in jail.

There were no further developments in the case against the former director of El Boqueron prison, Manuel Antonio Recinos Aguirre; his deputy, Baldimiro Rodene Lopez y Lopez; and several police officers with alleged ties to narcotics trafficking who continued to remain in custody awaiting trial in connection with the killing of four PNC suspects in the 2007 PARLACEN case.

On August 17, authorities arrested former prison director Alejandro Giammattei and former PNC criminal investigation department chief Victor Soto for alleged extrajudicial killings of inmates during the retaking of Pavon Prison in 2006. At year's end a Spanish court was considering a request filed by the government of Guatemala to extradite former minister of government Carlos Vielmann for involvement in the killings. The government also filed arrest warrants for former PNC director Erwin Sperinsen and former deputy director Javier Figueroa, who continued to remain at large at year's end.

At year's end there were no further developments in the court's reopening and reinvestigation in December 2009 of the 1993 assassination of former presidential candidate and journalist Jorge Carpio Nicolle and the killing of three of his political associates.

At year's end there were no further developments in the Supreme Court's order of December 2009 to reopen and reinvestigate the 1990 "street children case" and the "white van case," of 1987 and 1988, involving kidnappings, torture, and killings by state security agents.

On February 12, authorities arrested retired army special forces members Manuel Pop Sun and Reyes Collin Gualip for participating in the 1982 Dos Erres massacre in which military officials killed an estimated 252 men, women, and children. On March 1, authorities arrested retired colonel Carlos Antonio Carias Lopez, also in connection with the Dos Erres massacre. At year's end the three suspects remained in preventive detention awaiting trial, and 13 other suspects remained at large.

At year's end there were no new developments in the case of former army captain Jose Antonio Solares Gonzalez and former Civil Defense Patrol members Ambrosio Perez Laju and Domingo Chen – three suspects sought for the 1982 killings of 177 civilians in Rio Negro, Baja Verapaz.

According to PNC statistics, vigilante mobs (most often in rural indigenous communities) killed 33 persons and injured 36 in lynchings and attempted lynchings during the year. Many observers attributed the lynchings to public frustration with the failure of police and judicial authorities to provide security and to the emergence of local citizen-security groups. There were continued reports of community lynchings of individuals suspected of rape, kidnapping, or attempted kidnapping of children to sell for adoption. In many instances PNC agents refused to intervene out of fear for their own safety.

At year's end there was no information, and none was expected, regarding:

- The January 22 lynching of three robbery suspects, including an 11-year-old boy,

by students from University Rafael Landivar in Guatemala City;

- Any investigation regarding a February 14 mob lynching and dismemberment of three men suspected of assaulting passengers in a bus and of killing a bus assistant in the town of Patzutzun, Solola;
- Any investigation regarding the April 9, beating and killing by villagers from Chichicastenango of three brothers suspected of extortion.

b. Disappearance

Although there were no reports of politically motivated disappearances, there were reports of police involvement in kidnappings for ransom. The PNC's ORP reported that during the year there were five complaints of kidnapping by PNC personnel.

On September 22, the Constitutional Court overturned the Supreme Court's December 2009 decision to reopen the case of the forced disappearance of Efraín Bamaca Velasquez in 1992 in accordance with an order issued in 2002 by the Inter-American Court of Human Rights. In explaining its decision, the Constitutional Court noted that the Inter-American Court of Human Rights decision ordered the government to conduct a new investigation rather than to reopen the case. In response to the Constitutional Court's decision, on December 10, the Inter-American Court of Human Rights ordered the government to fully investigate the case.

On October 29, former PNC officer Hector Roderico Rodriguez Rios and retired PNC officer Abraham Lancero Gomez were sentenced to 40 years each in jail for the 1984 forced disappearance of labor leader Edgar Fernando Garcia; two additional suspects, Hugo Rolando Gomez Osorio and Alfonso Guillermo de Leon Marroquin, remained at large, and their whereabouts were unknown.

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

Although the constitution and the law prohibit such practices, government agents did not always respect these provisions. There were credible reports of torture, abuse, and other mistreatment by PNC members. Complaints typically related to the use of excessive force during police operations.

On October 14, police officers Carlos Alberto Fuentes Gomes and Lisandro Florentino Jochin Lopez were arrested for allegedly beating to death Byron Canadro Gomez when he resisted arrest on September 28. At year's end there were no further developments regarding this case.

During the year there were a number of reported incidents throughout the country, particularly in rural areas, of vigilante mobs publicly beating, humiliating, and sometimes killing, persons suspected of criminal acts. There were no reports regarding investigations of these incidents.

Prison and Detention Center Conditions

Prison conditions remained harsh and dangerous, and there were multiple instances of killings by inmates. The prison system continued to suffer from a severe lack of resources, particularly in the areas of prison security and medical services and facilities. Prisoners complained of inadequate food and medical care. Prisons had inadequate provisions for sanitation, ventilation, temperature, lighting, basic emergency and medical care, and access to potable water. Illegal drug sales and use were widespread. Prison officials reported frequent escape attempts, gang fights, and other manifestations of prisoner unrest. Prisoners reportedly used cell phones frequently to demand extortion payments, coordinate kidnappings for ransom and killings of bus drivers and assistants, and direct other criminal activity both inside and outside the prison. Several prisons installed equipment to block such calls, but this equipment

frequently did not operate.

Inadequate security measures undermined the penitentiary system's ability to control prisoners effectively; there were only 2,250 prison guards nationwide. In the prisons, 16 percent of inmates reportedly belonged to gangs, which were active in these prisons and occasionally attacked prison guards. Prison work and educational programs were inadequate to rehabilitate prisoners and decrease the 90 percent recidivism rate.

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

Prison overcrowding continued to be a problem. According to the prison system registry, as of mid-July, 19 prisons and jails designed to hold 6,974 persons held 11,140 inmates. Of the national penitentiary system population, approximately 50 percent was in pretrial detention; 743 were adult women.

At year's end Jorge Torres, director of the Pavoncito Preventive Prison and seven prison guards were in preventive detention awaiting trial for alleged involvement in the February 2009 escape of inmate Leonel Giovanni Herrera Reyes.

At year's end inmates Byron Alberto Morales Villatoro, Carlos Esteban Galindo Pardo, Jose Armando Sapon Ola, and Leopoldo Zaid Castillo Belloso, who escaped in September 2009 from Quetzaltenango Preventive Prison, remained at large. During the year, Wilmer Armando Argueta and Bartolome Teni Cuc were recaptured and returned to preventative prison. On September 3, PNC officials Gonzalo David Morales, Hilario Antonio Lopez, Juan Carlos Mendez, Jose Pedro Rojas, and Francisco Javier Agustin were sentenced to 10 years in prison for their role in allowing the escape.

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; on rare occasions, juveniles and adults were held together. Prisoners and detainees had reasonable access to visitors and were permitted religious observance. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions. Authorities did not regularly investigate credible allegations of inhumane conditions and document the results of such investigations in a publicly accessible manner. The government investigated and monitored prison and detention center conditions.

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; such visits took place throughout the year.

The human rights ombudsmen does not have authority to serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders in order to alleviate inhumane overcrowding, to address the status and circumstances of confinement of juvenile offenders, or to improve pretrial detention, bail and recordkeeping procedures to ensure prisoners do not serve beyond the maximum sentence for the charged offense.

d. Arbitrary Arrest or Detention

The constitution and the law prohibit arbitrary arrest and detention, but there were credible reports of arrests without judicial warrants, illegal detentions, and failure to adhere to prescribed time limits in legal proceedings. In practice, arresting officers sometimes failed to bring suspects before magistrates within the legally mandated six-hour deadline, and magistrates sometimes failed to hold a hearing within the legally mandated 24-hour period.

Role of the Police and Security Apparatus

The 24,260-member PNC, headed by a director general appointed by the minister of government, has responsibility in law and practice for law enforcement and maintenance of order in the country. The PNC remained understaffed, inadequately trained, and insufficiently funded, which substantially impeded its effectiveness.

While no active members of the military served in the police command structure, the government continued to employ the military to support police units in response to rising crime. Joint police and military operations under PNC operational control continued in Guatemala City high-crime areas as well as other areas.

Police impunity for criminal activities remained a serious problem. There were credible reports that individual PNC officers and some police units or persons disguised as police officers stopped cars and buses to demand bribes or steal private property, and in some cases kidnapped, assaulted, and raped victims. Police and immigration officials reportedly extorted and mistreated persons attempting to enter the country illegally. The PNC routinely transferred officers suspected of wrongdoing rather than investigating and punishing them.

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

At year's end the Public Ministry continued its investigation of former PNC officials Porfirio Perez Paniagua, Victor de Jesus Lopez, and Hector David Castellanos Soto in relation to an alleged attempted theft of a large quantity of cocaine during a counternarcotics operation in 2009. At year's end former police officials Porfirio Perez Paniagua, Benigno Lopez Fuentes and Mario Roberto Castillo remained in custody awaiting trial for allegedly stealing \$350,000 in cash in 2009.

At year's end there were no developments, and none were expected, regarding the arrest in 2008 of two deputy PNC commissioners and 12 other PNC officers for alleged involvement in a Guatemala City criminal group.

The PNC's Office of Professional Responsibility (ORP), which is the mechanism for investigating security force abuse, conducted internal investigations of misconduct by police officers. During the year the ORP reported receiving 1,009 complaints, which included three complaints of killings, three forced disappearances, five kidnappings, 34 illegal detentions, 46 thefts, five rapes, 60 threats, and 224 cases of abuse of authority.

During the year the ORP investigated 787 police officers; 439 of these were exonerated. While no officers were fired as a result of these investigations, the ORP referred 348 cases with sufficient evidence of criminal activity to the Public Ministry for further investigation and possible prosecution. Few such cases went to trial. The PNC trained 3,001 cadets in human rights and professional ethics. The army required civil affairs officers at each command to plan and document human rights training provided to soldiers. As of year's end, 6,490 military officers and soldiers had received human rights training, according to the Ministry of Defense.

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

Arrest Procedures and Treatment While in Detention

The constitution and the law require that a court-issued arrest warrant be presented to a suspect prior to arrest unless the suspect is caught in the act of committing a crime. Police may not detain a suspect for more than six hours without bringing the case before a judge. However, this right was not respected effectively in practice. 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 prohibits the execution of search warrants between 6 p.m. and 6 a.m. unless a state of siege has been declared. 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. A judge has the discretion to determine whether bail is necessary or permissible for pretrial detainees, depending on the circumstances of the charges.

During the year the ORP received 34 accusations of illegal detention. There were no reliable data on the number of arbitrary detentions, although most accounts indicated that police forces routinely ignored writs of habeas corpus in cases of illegal detention, particularly during neighborhood antigang operations.

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

Although the law establishes a three-month limit for pretrial detention, prisoners often were detained past their legal trial or release dates. Authorities did not release some prisoners in a timely fashion after completing full sentences due to the failure of judges to issue the necessary court order or due to other bureaucratic problems.

e. Denial of Fair Public Trial

While the constitution and the law provide for an independent judiciary, the judicial system often failed to provide fair or timely trials due to inefficiency; corruption; insufficient personnel and funds; and intimidation of judges, prosecutors, and witnesses. The judiciary was generally independent in practice. Very few reported crimes were investigated or prosecuted; fewer resulted in conviction. Many high-profile criminal cases remained pending in the courts for long periods, as defense attorneys employed successive appeals and motions.

There were numerous reports of ineffectiveness and manipulation of the judiciary. Judges, prosecutors, plaintiffs, and witnesses also continued to report threats, intimidation, and surveillance. During the year the special prosecutor for crimes against judicial workers received 154 cases of threats or aggression against workers in the judicial branch, compared with 68 in 2009.

The Ministry of Government assigned police officers to the International Commission to Combat Impunity in Guatemala (CICIG) to augment security. The CICIG-vetted prosecutor unit, created by the Public Ministry, continued to be directly supervised by a senior CICIG prosecutor. At year's end CICIG continued its investigation of 27 high-profile cases, 11 prosecutions, and various cases involving killings of women, bus drivers, and assistants; trafficking in persons; and attacks against and killings of unionists and human rights defenders.

There were credible reports of killings of witnesses. On April 18, unknown assailants shot to death Lidia Estela Estrada Navas in El Chaguite, Jalapa. Estrada was the sole survivor and witness to a massacre committed in April 2009, which resulted in the death of five of her family members. Estrada had reported to authorities that she received death threats, but the Public Ministry did not provide her with requested protection. By year's end 178 persons were in the Public Ministry's witness protection program.

At year's end there were no developments, and none were expected, in the 2008 killings by unknown gunmen of Judge Jose Vidal Barillas Monzon, president of the Appeals Court of Retalhuleu and Assistant Homicide Prosecutor Juan Carlos Martinez.

The Supreme Court continued to seek the suspension of judges and to conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. The Judicial Disciplinary Unit investigated 906 complaints of wrongdoing and held hearings for 888 complaints during the year and applied sanctions to several cases, ranging from written notice to 30-day suspension. Between January and July, the Judicial Disciplinary Unit sanctioned 10 judges.

Trial Procedures

The constitution provides for the right to a fair public trial, the presumption of innocence, the right to be present at trial, and the right to counsel in a timely manner. Juries are not used at trials. The government provides at public expense attorneys for defendants facing serious criminal charges. Defendants and their attorneys have access to government-held evidence relevant to their case. The law provides for plea bargaining, and the right of appeal. Three-judge panels render verdicts. The law provides for oral trials and mandates language interpretation for those needing it, in particular the large number of indigenous persons who are not fluent in Spanish, although inadequate government funding limited effective application of this requirement. The Public Ministry utilized 20 interpreters nationwide, including in former conflict areas of the country, and the Office of the Public Defender employed 44 bilingual public defenders in locations where they could also serve as translators.

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

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Citizens had access to administrative and judicial remedies to bring lawsuits seeking damages for, or cessation of, a human rights violation or other alleged wrongs. While the judiciary was generally impartial and independent in civil matters, it suffered from inefficiency and institutional weaknesses. There were problems in enforcing civil court orders. Some killings resulted from PNC failure to enforce restraining orders promptly.

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

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

On October 13, authorities absolved Chief of Presidential Security Carlos Quintanilla of charges he had placed listening devices in the offices of the president and first lady. At year's end Gustavo Solano, former head of the Secretariat of Strategic Analysis, was awaiting trial on the same charges.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution and the law provide for freedom of speech and press, and the

government generally respected these rights in practice.

The independent media, including international news organizations, operated freely and actively and expressed a wide variety of views without overt government restriction. Some members of the press reported receiving pressure by various public officials regarding the selection and content of reporting. Some owners and members of the media also accused the government of following a discriminatory advertising policy, particularly with respect to leading print and broadcast media that expressed news or commentary perceived as critical of the president, his administration, the first lady, or public officials and programs.

Members of the press claimed that increasing levels of impunity and violence in the country, particularly associated with narcotics trafficking, threatened the practice of free and open journalism. The press also complained of threats made against them by organized crime and drug-trafficking organizations, noting that these threats increased their sense of vulnerability.

The Special Prosecutor's Unit for Crimes against Journalists and Unionists received 25 complaints of attacks and other acts of intimidation against journalists. The MP reported 13 incidents of intimidation of journalists, compared with 24 during 2009.

On February 26, the Public Ministry reportedly sent two prosecutors to harass *La Hora* newspaper for reporting about Mi Familia Progresista government cash transfer program for the impoverished.

On April 8, an unknown assailant shot and injured journalist, Luis Felipe Valenzuela. At year's end no one had been arrested in relation to the shooting, and the case remained open.

On June 24 and again on September 29, unknown persons broke into the home and stole computer files of *El Periodico* reporter Marvin del Cid Acevedo, who had been undertaking investigative reporting on corruption. There were no arrests by year's end.

There were no developments, and none were expected, in the following cases from 2008: the killing of *Prensa Libre* correspondent Jorge Merida Perez in Coatepeque, Quetzaltenango; the death threat against *Prensa Libre* news correspondent Danilo Lopez in Suichitepequez, and the shooting attack on the home of Radio Punto news correspondent Edin Rodelmiro Maaz Bol in Coban.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Leading independent print, broadcast media, and a growing number of small and medium-size news organizations featured Internet editions and operated freely. Individuals and groups engaged in the peaceful expression of views via the Internet, including by e-mail. The International Telecommunication Union reported that there were 16 Internet users per 100 inhabitants.

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 and the law provide for freedoms of assembly and association, and the government generally respected these rights in practice.

c. Freedom of Religion

For a complete description of religious freedom, please see the Department of State's *2010 International Religious Freedom Report*.

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

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

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

The law prohibits forced exile, and the government did not use forced exile (internal or external) in practice.

Protection of Refugees

The constitution and the law provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. In practice the government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

During the year the government received 10 requests for refugee status and accorded asylum, or refugee status to seven persons.

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

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

Elections and Political Participation

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

There were 20 women in the 158-seat Congress. A total of 319 women served as judges nationwide, including one each on the Supreme Court and the Constitutional Court. There were no women in the 13-member cabinet. Six of the country's 332 mayors were women.

There was one indigenous cabinet member, no indigenous Supreme Court justices, 113 indigenous mayors, and approximately 20 indigenous members of Congress.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials frequently engaged in corrupt practices with impunity. There was substantial corruption within the police force and the

judiciary.

Government corruption was widely perceived to be a serious problem and was so reflected in World Bank governance indicators. The Public Ministry continued to prosecute for corruption former president Alfonso Portillo, former vice president Reyes Lopez, and other senior members of previous governments.

On March 8, Congresswoman Nineth Montenegro announced that unknown persons had made death threats against her. The press reported that Montenegro had been conducting corruption audits on public spending by the National Peace Fund. At year's end the case remained open, and no arrests had been made.

On May 14, authorities fired Deputy Director of the Prison System Carlos Schwarz for allegedly extorting inmates.

By year's end several former government officials were under arrest, awaiting trial, or fugitives from justice on corruption-related charges involving refurbishing the Fraijanes II Detention Center. On May 28, authorities arrested Oscar Humberto Andrade Elizondo and Ricardo Gustavo Maldonado Ortega, and Ricardo Alfonso Lancerio Ignacio on suspicion of stealing 17 million quetzales (\$2.1 million). The three had served as officers for the Foundation for Development and Technology (Fundtech). In September authorities arrested Rodrigo Lainfiesta on fraud and money laundering charges, for receiving a check for 600,000 quetzales (\$75,000) from Fundtech, and former Office of the Comptroller General's auditors Fernando Rodriguez Trejo, Francisco Javier Alvarado, Carlos Enrique Lopez Gutierrez, Luis Alvarez Pereira and Francisco Villatoro for alleged corrupt activities related to Fundtech. Authorities were also investigating former minister of government Raul Velasquez and former minister of government Salvador Gandara in relation to this case.

On July 23, authorities placed under house arrest former minister of government Francisco Jimenez on suspicion of abuse of authority and conspiracy to commit fraud with respect to a 2006 contract between the National Register (RENAP) and the private company Easy Marketing to issue the new national identification documents. Other public officers under investigation in relation to the case included former RENAP director Enrique Cossich, former RENAP directorate member Mauricio Radford, Electoral Tribunal magistrate Patricia Cervantes, and former vice minister of government Angel Rodriguez Tello.

On August 25, authorities sentenced former PNC Director Baltazar Gomez and former PNC Deputy Logistics Director Hector Lepoyeu to five years each in prison for their role in embezzling 52 million quetzales (\$6.5 million) in gasoline coupons for PNC patrol units. Former Minister of Government Raul Velasquez and former secretary of presidential administrative affairs Juan Carlos Leal Medina remained at large for their alleged participation in the case.

At year's end there were no developments regarding the case of former minister of defense and former minister of government Eduardo Arevalo Lacs, who remained in custody awaiting trial since 2009 for embezzling 120 million quetzales (\$15 million). At year's end former president of Congress Eduardo Meyer and Ruben Dario Morales remained under house arrest, and Mercado de Futuro General Manager Raul Giron remained in preventive prison in connection with the illegal transfer in 2008 by private secretary Byron Sanchez of 83 million quetzales (\$10.3 million). Sanchez and former congressional chief financial officer Jose Conde, also wanted in the case, remained at large.

At year's end the Public Ministry continued its investigation that began in 2009 of former president of Congress Ruben Dario Morales, who remained under house arrest for embezzlement and fraud of 300,000 quetzales (\$37,500) of congressional funds in 2007.

At year's end the Constitutional Court had accepted a request, but had not taken further action, to extradite former President Portillo to the United States to face charges of

embezzlement allegedly committed during his presidency. Portillo and former minister of finance Manuel Maza, arrested on March 12 for his involvement in the case, remained in preventive prison.

As of November authorities continued investigating retired general Enrique Rios Sosa, Captain Pedro Adolfo Catalan Munoz, and retired lieutenant Miguel Angel Salguero Torres, as well as 29 other members of the military in relation to alleged document forgery and embezzlement between 2001 and 2003 during the Portillo administration. Rios Sosa, Catalan Munoz, and Salguero Torres remained under arrest in detention, and retired colonel Sergio Hugo Cardenas Sagastume, Captain Rodolfo Leonel Chacon Alvarez, and Colonel Luis Alberto Gomez Guillermo remained under house arrest.

Public officials who earn more than 8,000 quetzales (\$1,000) per month or who manage public funds are subject to financial disclosure laws overseen and enforced by the Controller General's Office. Lack of political will and rampant impunity facilitated government corruption.

The law provides for the right of citizens to access public information and establishes fines for government agencies that obstruct such access. In practice the government granted, but at times in a slow and incomplete manner, access for citizens and noncitizens, including foreign media, to public information. If the government denied requests for information, it at times provided unclear reasons for denying the request. There is no formal mechanism to appeal such denials. However, petitioners often appealed to the Office of the Human Rights for assistance relating to a government denial of public information. The press criticized the government for not having provided sufficient resources to allow government and publicly funded offices to comply fully with the access to public information law.

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

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative, open to their views, responded to their inquiries, and at times took action in response to their reports and recommendations.

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

The Office of the Special Prosecutor for Human Rights opened new cases involving anonymous telephone or written threats, physical assaults, and surveillance of workplaces, residences, and vehicular movements. The majority of such cases remained pending for lengthy periods without investigation or languished in the court system.

The NGO Guatemalan Human Rights Defenders Protection Unit reported that there had been eight killings of human rights defenders during the year. On January 14, unknown persons in Quetzaltenango shot to death Evelinda Ramirez Reyes, president of the NGO Resistance Front in the Defense of Natural Resources (FRENA), which had demonstrated against electric company Union Fenosa. On February 17, unknown assailants in Malacatan shot to death FRENA member Octavio Roblero.

On December 7, unknown persons in Huehuetenango kidnapped driver Victor Lopez and Emilia Margarita Quan Staackmann, an anthropologist working for Guatemala Western Border Center for Studies and Documentation (CEDFOG). Lopez was released by the kidnappers. Quan, who had been hit and tied up, was found dead a day later. Police arrested Evelio Aristides Rivas and Jorge Hernan Lopez, two of the four suspects. Local persons lynched the two suspects before they could be interrogated by authorities regarding the crime and their motive for committing it. At year's end there were no

further developments in the case.

There were no known developments, and none were expected, in the Public Ministry's investigations of cases reportedly involving violence and intimidation against human rights defenders: death threats in 2008 against Bishop Alvaro Ramazzini, indigenous leader Amilcar Pop, and a family member of Norma Cruz, director of the Survivors Foundation; and the killing of indigenous community leader Antonio Morales Lopez.

The resident Office of the UN High Commissioner for Human Rights advised and assisted the government and monitored the human rights situation. The government cooperated with the office and other international organizations, including the International Commission to combat Impunity in Guatemala. Between May 12 and 18, UN Special Rapporteur on the Right to Health Anand Grover visited the country to review health issues. Between June 14 and 15, UN Special Rapporteur on the Rights of Indigenous People James Anaya visited the country to hold consultations and collect information about licensing of natural resources extraction on indigenous lands.

The Office of the Human Rights Ombudsman (PDH), headed by Sergio Morales, reports to Congress and monitors the human rights set forth in the constitution. The PDH operated without government or party interference, had the government's cooperation, and issued reports and recommendations that were made public, including an annual report to Congress on fulfillment of its mandate. The PDH did not have adequate resources but was considered reasonably effective and trusted by the public.

The President's Commission on Human Rights (COPREDEH), led by Ruth del Valle, is charged with formulating and promoting the government's human rights policy, representing the government before the IACHR, and negotiating amicable settlements in cases before the Inter-American Court of Human Rights. COPREDEH also led coordination of police protection for various human rights and labor activists during the year. COPREDEH enjoyed the government's cooperation and operated without government or party interference. It did not have adequate resources but was considered reasonably effective and had the trust of the public.

The Congressional Committee on Human Rights drafts and provides advice on legislation regarding human rights matters. By law all political parties represented in Congress are required to have a representative on the committee. NGOs reported that they considered the committee to be an effective public forum for promoting and protecting human rights. The committee was not independent of party or government influence.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The constitution and the law prohibit discrimination based on race, gender, disability, language, or social status. In practice the government frequently did not enforce these provisions due to inadequate resources, corruption, and a dysfunctional judicial system.

Women

Rape and other sexual offenses remained serious problems. However, there were no reliable statistics to approximate the pervasiveness of these crimes. The law criminalizes rape, including spousal rape and aggravated rape, and sets penalties between five and 50 years in prison. The law also establishes penalties for physical, economic, and psychological violence committed against women because of their gender. However, the government did not enforce the law effectively. At year's end 786 cases of economic abuse, including withholding earnings of victims, and 43,803 cases of sexual abuse and other forms of physical violence had been reported.

On September 10, a court sentenced Abelino Mendez to 37 years in jail for 14 rapes he committed between 2007 and 2008. Victims complained that the court did not base the sentence on new legal provisions, which provide harsher penalties for perpetrators of violence against women.

Police had minimal training or capacity to investigate sexual crimes or assist victims of such crimes. The government maintained the PNC Special Unit for Sex Crimes, the Office of Attention to Victims, the Office of the Special Prosecutor for Crimes against Women, and a special unit for trafficking in persons and illegal adoptions within the Special Prosecutor's Office for Organized Crime. According to NGOs, rape victims frequently did not report crimes due to lack of confidence in the justice system and fear of reprisals.

Violence against women, including domestic violence, remained a common and serious problem. Economic difficulties resulting from flooding and other natural disasters during the year contributed to increases in violence against women, as measured by increased police reporting and victim use of NGO counseling and shelter services. The law prohibits domestic abuse, provides for the issuance of restraining orders against alleged aggressors and police protection for victims, and requires the PNC to intervene in violent situations in the home. In practice, the PNC often failed to respond to requests for assistance related to domestic violence. Women's groups commented that few officers were trained to deal with domestic violence or assist victims.

The Institute of Public Criminal Defense continued to provide free legal, medical, and psychological assistance to victims of domestic violence. By year's end the project had attended to 12,641 cases of domestic violence.

According to press reports, the government's Program for Prevention and Eradication of Intrafamily Violence, under the first lady's Secretariat of Social Work, received on average seven calls daily from battered women and children via its three emergency hotlines. At year's end the Public Ministry reported that it received more than 43,803 complaints of violence against women and children, including domestic violence, economic violence, and sexual crimes. Of the 4,365 complaints of sexual crimes, at year's end the government reported 45 convictions. The Public Ministry did not provide data on punishment.

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

The Office of the Ombudsman for Indigenous Women within COPREDEH provided social services for victims of domestic or social violence, as well as mediation, conflict resolution, and legal services for indigenous women. The office also coordinated and promoted action by government institutions and NGOs to prevent violence and discrimination against indigenous women but lacked human resources and logistical capacity to perform its functions on a national level. There were no firm statistics available on the number of cases the office handled.

Killings of all types continued, including those with reported evidence of sexual assault, torture, and mutilation of women. The PNC reported 5,960 killings during the year, including 695 killings of women, compared with 6,498 total killings, including 720 women, in 2009. There were 13 prosecutions for killings of women in Guatemala City during the year, but few prosecutions resulted in convictions.

The Ministry of Government continued to operate eight shelters for victims of abuse in departments with the greatest incidence of domestic violence. The centers provided legal and psychological support and temporary accommodation. The Institute of Public Criminal Defense hotline to assist female victims of physical violence received 59,319 calls during the year.

A Guatemala City women's shelter for victims of violence continued to operate with capacity to house 20 victims and their families for six months at a time. There were also two other shelters for women and their children, with a capacity to house 40 persons each, in Guatemala City and Quetzaltenango. The government, along with foreign donors, provided funding for these three shelters. There were also an unknown number

of smaller private shelters operating in the countryside.

The law does not prohibit sexual harassment, and there were no accurate estimates of its incidence. Human rights organizations reported, however, that sexual harassment was widespread, especially in industries in which the workforce was primarily female, such as the textile and apparel sectors; it was also a problem in the police force.

Couples and individuals had the right to decide freely and responsibly the number, spacing, and timing of children, free from discrimination, coercion, and violence. The government provided access to family planning information and sex education throughout the public health system. Planned Parenthood Federation of America (PPFA) noted, however, that among the population in general, there was a low level of knowledge regarding family planning methods and the female reproductive cycle. The Population Reference Bureau reported a contraceptive use of 43 percent among married women. The PPFA reported that access to reproductive health care was not equal throughout the country, with cultural, geographic, and linguistic barriers, particularly in indigenous areas, preventing women and men from accessing reproductive health services.

Discriminatory attitudes among health care providers and a lack of culturally sensitive maternal health services deterred many indigenous women from accessing these services. The UN Population Fund estimated that the maternal mortality rate was 110 deaths per 100,000 live births in 2008. The PPFA reported that hemorrhages and other obstetrical complications during pregnancy, birth, and the postpartum period were principal causes of maternal mortality. The National Survey on Infant and Maternal Health reported that between 2008 and 2009, among women who received prenatal care, 63 percent of rural women used services at home or from a traditional midwife, and 76 percent of urban women went to clinics or hospitals.

Women and men had equal access to diagnosis and treatment for HIV and other sexually transmitted infections.

While the law establishes the principle of gender equality, in practice women faced job discrimination and were less likely to hold management positions. Women were employed primarily in low-wage jobs in agriculture, retail businesses, the service sector, the textile and apparel industries, and the government. They were more likely than men to be employed in the informal sector, where pay and benefits generally were lower. Women may legally own, manage, and inherit property on an equal basis with men, including in situations involving divorce.

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

Children

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

Child abuse remained a serious problem. The Special Prosecutor's Office for Women, Unit of Adolescent and Child Victims, investigated cases of child abuse. It achieved 55 convictions in the 67 child abuse cases.

The Secretariat of Social Welfare, with oversight for children's treatment, training,

special education, and welfare programs, provided shelter and assistance to children who were victims of abuse but sometimes placed children under its care in shelters with juveniles who had criminal records.

There were credible reports of forced early marriages in some rural indigenous communities. There were no reported government efforts to combat child marriage.

Child prostitution remained a problem. Child sex tourism was a growing problem, with credible reports of child sex tourism in Antigua, Guatemala City, and Solola. The minimum age of consensual sex is 18. The Law against Sexual Violence, Exploitation, and Trafficking in Persons provides sentences ranging from 13 to 24 years in prison, depending on the victim's age, for sex with a minor. The law also prohibits child pornography and establishes penalties of six to 10 years in prison for the production, promotion, and selling of child pornography and two to four years' imprisonment for possession of it.

Rescue operations conducted by the government during the course of the year resulted in the rescue of approximately 21 sexually exploited minors under age 18. The Secretariat of Social Welfare handled two child protection cases, including cases of sexually exploited minors, as part of a national plan to combat the commercial sexual exploitation of children. The Office of the Attorney General achieved convictions in two cases of child prostitution.

Credible estimates put the number of children who were members of street gangs at 3,000 nationwide. Many street children had left home after being abused. Criminals often recruited street children for purposes of stealing, transporting contraband, prostitution, and illegal drug activities. The NGO Mutual Support Group reported that through October, 55 minors suffered violent deaths nationwide. NGOs dealing with gangs and other youth reported concerns that street youth detained by police were subject to abusive treatment, including physical assaults.

The government operated a girl's shelter in Antigua and a boy's shelter in San Jose Pinula. Two other shelters in Quetzaltenango and Zacapa served both boys and girls. The government devoted insufficient funds to shelters, and authorities often preferred to send juveniles to youth shelters operated by NGOs. The government provided no funding assistance for shelter costs to these NGOs. Security authorities incarcerated juvenile offenders at separate youth detention facilities.

The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information on international parental child abduction, please see the Department of State's annual report on compliance at http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html as well as country specific information at http://travel.state.gov/abduction/country/country_3781.html.

Anti-Semitism

There were no reports of anti-Semitic acts. The Jewish population numbered approximately 2,000 persons.

Trafficking in Persons

For information on trafficking in persons, please see the Department of State's annual *Trafficking in Persons Report*.

Persons with Disabilities

The constitution contains no specific prohibitions against discrimination based on physical, sensory, intellectual, and mental disabilities in employment, education, access to health care, or the provision of other state services or other areas. The law, however,

mandates equal access to public facilities and provides some other legal protections. In many cases, persons with physical and mental disabilities did not enjoy these rights, and the government devoted few resources to addressing the problem. The law does not mandate that persons with disabilities have access to information or communications.

There were minimal educational resources for persons with special needs, and the majority of universities did not have accessibility facilities for persons with disabilities. The National Hospital for Mental Health, the principal health provider for persons with mental illness, lacked basic supplies, equipment, hygienic living conditions, and adequate professional staffing. The National Council for the Disabled, composed of representatives of relevant government ministries and agencies, is the principal government organ responsible for protecting the rights of persons with disabilities. It met regularly to discuss initiatives and had a budget of five million quetzales (\$625,000).

Indigenous People

Indigenous persons from 22 ethnic groups constituted an estimated 43 percent of the population. The law provides for equal rights for indigenous persons and obliges the government to recognize, respect, and promote their lifestyles, customs, traditions, social organizations, and manner of dress.

Although some indigenous persons attained high positions as judges and government officials, they generally were underrepresented in politics and remained largely outside the country's political, economic, social, and cultural mainstream due to limited educational opportunities, poverty, lack of awareness of their rights, and pervasive discrimination. While the indigenous population increased its political participation, some civil society representatives questioned whether such participation had resulted in greater influence in the national political party structure. Indigenous lands often were not effectively demarcated, making formal recognition of titles to land they occupied or claimed frequently problematic.

In March unknown actors made telephone death threats against Jorge Morales Toj, community organizer and lawyer for the Mayan Youth Movement, reportedly to force him to discontinue his efforts to raise public awareness about environmental degradation in indigenous communities. At year's end there was no information regarding any investigation of these incidents.

On August 25, unknown assailants in Solola killed Mayan cultural activist and community leader Leonardo Lisandro Guarcax Gonzalez. In May 2009 Jesus Ernesto and Carlos Emilio Guarcax Gonzales, Mayan activists and cousins of Lisandro Guarcax, were also killed attributably in connection with extortion, retribution from corrupt local government officials, or community territorial power struggles. At year's end there was no information available regarding any investigations of these killings.

Many indigenous persons were illiterate, and approximately 29 percent did not speak Spanish, according to the 2006 National Statistics Institute National Survey of Life Conditions report, the latest data available. While the average nonindigenous child from seven to 17 years of age had received 4.4 years of schooling, indigenous children of the same age range had received an average of 3.7 years, according to the same report. More than 50 percent of indigenous women over the age of 15 were illiterate, and a disproportionate number of indigenous girls did not attend school. According to the Ministry of Education 93,987 preschool- and kindergarten-age indigenous children were enrolled in Spanish-indigenous language bilingual education programs.

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

Legally mandated court interpreters for criminal proceedings were rarely available, placing indigenous persons arrested for crimes at a disadvantage due to their sometimes

limited comprehension of Spanish. There were 118 judges who spoke Mayan languages among the 536 tribunals in the country. There were 110 court interpreters, including 101 bilingual Mayan speakers, and the Supreme Court reported that the judicial system had 1,027 employees who spoke indigenous languages. However, in many instances bilingual judicial personnel continued to be assigned to areas where their second language was not spoken.

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

Lesbian, gay, bisexual, and transgender (LGBT) rights support groups alleged that members of the police sometimes waited outside clubs and bars frequented by sexual minorities and demanded that persons engaged in commercial sexual activities provide protection money. A lack of trust in the judicial system and a fear of further persecution or social recrimination discouraged victims from filing complaints. There was general societal discrimination against LGBT persons in access to education and health care, employment, statelessness, and housing. The government undertook minimal efforts to address this discrimination.

Other Societal Violence or Discrimination

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

Section 7 Worker Rights

a. The Right of Association

While the law provides all workers, with the exception of security force members, the right to form and join trade unions of their choice, violence against unionists and worker activists combined with weak and ineffective enforcement of labor and employment laws restricted this right in practice.

The 2009 official report reviewing a 2008 public submission under the Dominican Republic-Central American-U.S. Free Trade Agreement (CAFTA-DR) noted serious, systemic problems regarding labor law enforcement in the areas of freedom of association, collective bargaining and acceptable conditions of work. The government took part in formal cooperative labor consultations under CAFTA-DR during the year but failed to take concrete enforcement action to measurably improve compliance with the country's labor laws.

According to figures compiled by the Guatemalan Labor, Indigenous, and Peasant Movement, only 2.2 percent of the country's economically active workforce of 5.4 million workers was unionized. Of the 118,017 workers that belonged to unions, only 12.5 percent, or 13,103, were workers in the private sector. The remaining 91,890 unionized workers belonged to unions in the public sector.

Legal recognition of a new industry wide union requires that the membership constitute 50 percent-plus-one majority of the workers in an industry. The International Labor Organization reiterated its concern that the requirement restricted the free formation of unions. The law also restricts union leadership to Guatemalan citizens.

The Ministry of Labor granted legal status to 29 labor unions, compared with 72 during 2009. Most of these new organizations were small unions in the countryside, primarily in the agricultural and municipal sectors. Although there were 2,035 legally registered labor unions, administrative registration records indicated that about two thirds appeared to be active. The law allows unions to conduct their activities without government interference.

Violence and threats against trade unionists remained serious problems. Several labor

leaders were killed and others reported receiving death threats and being targets of other acts of intimidation. The Unit for the Protection of Guatemalan Human Rights Defenders indicated in its annual report that 36 trade unionists had been attacked and at least three of these killed by unknown assailants. The International Labor Organization (ILO) Committee of Experts stressed its deep concern regarding violence against trade union leaders and members and also concluded that the government had not demonstrated sufficient political will to combat violence against trade union leaders and members or combat impunity.

On January 29, Pedro Antonio Garcia, a leader in the Malacatan Municipal Workers Union in the department of San Marcos was murdered. Prior to his death, the union was involved in a labor dispute with the municipality regarding its alleged failure to comply with a collective agreement and the payment of wages.

On March 6, Luis Felipe Cho, a member of the Consultative Council of the Santa Cruz Municipal Workers' Union in the department of Alta Verapaz was killed following threats related to his trade union activities.

The deaths of four union members belonging to the Guatemalan National Health Care Workers' Union and the serious wounding of a fifth in a series of separate shooting incidents during the second half of the year may have been related to union activity although no evidence emerged to indicate that the shootings were directly related. At year's end, no one had been arrested in the shootings, which were under investigation as common crimes by local prosecutors rather than by the Special Prosecutor's Unit for Crimes against Journalists and Unionists.

On January 6, unknown actors kidnapped and tortured Maria Vasquez, deputy secretary general of the union of the company Winners, S.A. The Guatemalan Labor, Indigenous and Campesino Movement reported that the incident occurred shortly after Vasquez was named the union's deputy secretary general and raised concerns that the company was not complying with several labor laws.

On July 31, unknown assailants shot and wounded Rodrigo Garcia Cunen, secretary general of the Soledad Farm Workers' Union. Cunen had previously reported receiving death threats and requested, but did not receive, protective measures from the government.

In May Jose Gabriel Zelada and Nilda Ileana Quex de Sincal of the NGO Center for Studies and Support for Local Development that promoted labor rights and supported a worker rights center in Chimaltenango, reported receiving phone calls containing death threats.

On October 18, Silvia Hernandez Ibarra, a member of a union-organizing committee at the Avandia apparel factory, received a letter threatening her with death if she did not quit her union position. The threat occurred a few days after a meeting between Hernandez and auditors from Worldwide Responsible Accredited Production.

It was generally difficult to identify motives for killings, since most were not well investigated and went unprosecuted. Local unions urged that the killings of unionists be investigated and called for increased security for union leaders and members. The Special Prosecutor's Unit for Crimes against Journalists and Unionists within the Office of the Special Prosecutor for Human Rights was charged with investigating attacks against union members. The unit's small size (two full-time prosecutors and six assistant prosecutors) limited its effectiveness. The unit accepted 47 new union-related cases during the year, but did not report data regarding convictions for crimes against trade unionists.

There were no known developments in the Public Ministry's investigations in the following cases highlighted as examples of violence and intimidation against labor leaders and activists:

- The April 2009 attack by gunmen on the house of Edgar Neftaly Aldana Valencia, secretary general of the National Health Professionals Union, San Benito branch, which reportedly has complained of corruption and discrimination at San Benito Hospital, Peten
- The October 2009 killing of Victor Galvez, a union leader who had demonstrated in front of the National Electricity Institute
- The 2008 killing of labor leader Miguel Angel Ramirez Enriquez, a founder of the Union of Banana Workers of the South
- The 2008 killing of Carlos Enrique Cruz Hernandez, a member of the Union of Banana Workers of Izabal
- The 2008 killing of Freddy Morales Villagran, a member of the Consultative Council of the Peten Distributor Employees Union
- The 2008 killing of Edvin Portillo, treasurer of the Pension Administration Board and member of the port workers union of the National Santo Tomas Port Company

Workers have the right to strike, but by law must have the support of 51 percent of a company's workforce. Such procedural hurdles, combined with the small number of unionized workers and ongoing impunity for employers ignoring court orders protecting freedom of association and collective bargaining, limited this right in practice. The judiciary's statistical department reported that there were two legal strikes during the year. However, teachers, health-care workers, farm workers, and other labor groups organized and participated in various protests, marches, and demonstrations.

The law prohibits employer retaliation against strikers engaged in legal strikes. However, 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 empowers the president and cabinet to suspend any strike deemed "gravely prejudicial to the country's essential activities and public services." The government defined "essential services" broadly, thus denying the right to strike to a large number of public workers, such as those working in education; postal services; transport; and energy production, transport, and distribution. Workers in such essential services and public services sectors may address grievances by means of mediation and arbitration through the Ministry of Labor's General Inspectorate of Labor and also directly through the labor courts.

Organized labor continued to object to the government's use of national security and emergency arguments to enjoin what organized labor considered "legal" strikes. Unions also continued to criticize arrests, incarcerations, and fines imposed against protesters as violations of ILO conventions on the right to strike.

b. The Right to Organize and Bargain Collectively

The law provides the right to organize and allows unions to bargain collectively. In practice, the government did little to investigate, prosecute, and punish employers who violated this law. The law requires that union members approve a collective bargaining agreement by simple majority; however, the small number of unionized workers and restrictions on union formation limited the practice of collective bargaining. In particular, formation restrictions effectively eliminated the possibility for workers to exercise their rights to negotiate and engage employers formally at an industry level (see section 7.a.).

According to the law, a factory or business owner is not obligated to negotiate a collective bargaining agreement unless at least 25 percent of the total number of

workers in that factory or business are union members and request negotiations. Many employers ignored judicial rulings requiring the employer to negotiate with recognized unions. 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. The Ministry of Labor reported that there were 27 new collective bargaining agreements, including agreements reached with teachers and health workers unions, during the year.

Although the law stipulates that trade unions have an exclusive right to negotiate work conditions on behalf of workers, unions asserted that management promoted solidarity associations to discourage the formation of trade unions or to compete with existing labor unions.

An active "Solidarismo" (a national solidarity association movement) claimed to have 90 affiliated associations with approximately 30,000 members. Another 95 independent, nonaffiliated associations claimed approximately 60,000 members. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to belong to either or both.

The law prohibits antiunion discrimination and employer interference in union activities, but enforcement of these provisions remained weak. Many employers routinely resisted union formation attempts and there were credible reports of retaliation by employers against workers who tried to exercise their labor rights. Common practices included termination and harassment of workers who attempted to form workplace unions, creation of illegal company-supported unions to counter legally established unions, blacklisting of union organizers, and threats of factory closures. Employers threatened to not renew contracts or offer subcontracted workers permanent employment if the worker joined a union or refused to disaffiliate. There continued to be reports that management or persons hired by management harassed and made death threats against workers who did not accept employer dismissals or refused to forfeit their right to reinstatement.

Local unions reported that businesses continued to use fraudulent bankruptcies, ownership substitution, and re-registration of companies to circumvent legal obligations to recognize newly formed or established unions. Unions and workers also reported that employers subdivided into smaller companies in order to make it more difficult for nascent unions to find the 20 supporters required. Government institutions continued to tolerate these practices.

The law requires employers to reinstate workers dismissed illegally for union-organizing activities. In practice employers often failed to comply with reinstatement orders. During the year workers who suffered illegal dismissal won 221 court injunctions ordering reinstatement. Appeals by employers, along with legal recourse such as reincorporation as a different entity, often prolonged reinstatement proceedings. The labor courts rarely dismissed frivolous cases or appeals, did not operate in a timely manner, and did not ensure enforcement of their decisions. According to Labor Ministry officials, authorities rarely sanctioned employers for ignoring legally binding court orders. Employers often failed to pay the full amount of legally required severances to workers with impunity.

Some employers refused to permit labor inspectors to enter facilities to investigate worker complaints. In some instances, inspectors failed to take action to ensure access to worksites. Penalties for labor law violations were inadequate and rarely enforced. This was further compounded by the fact that only labor courts, and not labor inspectors, have the authority to impose sanctions for labor law violations. Procedures to impose and enforce penalties were not utilized, utilized late, or never enforced, thus making them typically slow and ineffective. The labor courts had a backlog of cases regarding the reinstatement of workers. The length of time to process such cases was excessive, with cases often taking two to four years and some lasting more than 10 years. The delay in processing legal complaints, from submission to final resolution, facilitated impunity for employers.

During the year the labor courts received 1,099 cases from the Labor Inspectorate and issued 401 decisions. Court decisions favorable to workers were rarely enforced due to frequent refusals by employers to honor the decisions.

There are no special laws or exemptions from regular labor laws in the 16 active export processing zones (EPZs) and within the garment factories that operated under an EPZ-like regime. Due to inadequate enforcement of labor laws and illegal measures taken by employers to prevent the formation of new unions or undermine existing unions, there were few successes in organizing workers in EPZs and in the garment sector. Some factories closed and then reopened with a new name and new tax exemption status. Of the 247 companies operating in the EPZs, only 11 had recognized trade unions; none had collective bargaining agreements. There were systemic violations of wage and hour laws, mandatory overtime at nonpremium pay, terminations of workers who tried to form unions, withholding of social security payments, and illegal pregnancy testing as a condition to obtain and retain employment.

c. Prohibition of Forced or Compulsory Labor

The constitution and the law prohibit forced or compulsory labor; however, there were reports that Guatemalan men and women were subjected to forced labor in agriculture and domestic service. There were also reports of forced child labor (see section 7d.).

Also see the Department of State's annual *Trafficking in Persons Report*.

c. Prohibition of Child Labor and Minimum Age for Employment

Although the law bars employment of minors under the age of 14 without written permission from parents or the Ministry of Labor, child labor was a widespread problem. The law prohibits persons under the age of 18 from work where alcoholic beverages are served, in unhealthy or dangerous conditions, and at night or overtime. The legal workday for persons younger than 14 is six hours; for persons 14 to 17 years of age, seven hours. Despite these protections, some child laborers of all ages worked on average in excess of 45 hours per week.

The NGO Asociacion Proyecto Conrado de la Cruz estimated that the workforce includes approximately one million children between the ages of 5 and 17. In 2009 the ILO expressed deep concern about the situation of children under 14 years working in the country, noted that it appeared very difficult to apply in practice the national child labor legislation, and encouraged the government to increase efforts to improve the situation of child laborers under age 14.

Most child labor occurred in rural indigenous areas. The informal and agricultural sectors regularly employed children below 14 years of age, usually in small family enterprises, and there were reports during the year that child labor existed in the production of broccoli, coffee, corn, fireworks, gravel, and sugar. Indigenous children also worked frequently in street sales, rubber and timber production, and as shoe shiners and bricklayer assistants.

Children, primarily indigenous girls, worked as domestic servants and were often vulnerable to physical and sexual abuse. In the Mexican border area, there were reports of forced child labor in municipal dumps and in street begging. Also see the Department of State's annual *Trafficking in Persons Report*.

The Ministry of Labor's Child Worker Protection Unit 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 did not effectively enforce laws governing the employment of minors, a situation exacerbated by the weakness of the labor-inspection and labor-court systems. While in exceptional cases the Labor Inspectorate may authorize children under the age of 14 to work, the Ministry of Labor has committed, in accordance with the applicable ILO convention, not to provide such

authorizations. In keeping with this commitment, the Labor Inspectorate reported that it had not made such authorizations during the year. The government devoted insufficient resources to prevention programs.

d. Acceptable Conditions of Work

The law set national minimum wages for agricultural and nonagricultural work and work in garment factories. The minimum wage was 63.70 quetzales (\$7.96) per day for agricultural and nonagricultural work and 59.45 quetzales (\$7.43) per day for work in garment factories.

The minimum wage did not provide a decent standard of living for a worker and family. In December the National Statistics Institute estimated that the minimum food budget for a family of five was 2,149 quetzales (\$268) per month. The basic basket for vital needs, including food and housing, was 3,922 quetzales (\$490). Labor representatives noted that even where both parents worked, the minimum wage did not enable a family to meet the basic basket of vital needs.

The Ministry of Labor conducted inspections to monitor compliance with minimum-wage law provisions, but the government allocated inadequate resources to enable inspectors to enforce the law adequately, especially in the very large informal sector. Noncompliance with minimum wage provisions in the informal sector was widespread. Advocacy groups focused on rural sector matters estimated that more than half of the workers in rural areas who engaged in day-long employment did not receive the wages, benefits, and social security allocations required by law. According to credible estimates, between 65 and 75 percent of the workforce continued to work within the informal sector and outside the basic protections afforded by law.

The legal workweek is 48 hours with at least one paid 24-hour rest period. Daily and weekly maximum hour limits do not apply to domestic workers. Time-and-a-half pay is required for overtime work. Although the law prohibits excessive compulsory overtime, trade union leaders and human rights groups charged that employers forced workers to work overtime without legally mandated premium pay with impunity. Management often manipulated employer-provided transportation to force employees to work overtime, especially in EPZs located in isolated areas with limited transportation alternatives. Labor inspectors reported uncovering numerous instances of overtime abuses, but effective enforcement was undermined due to inadequate fines, labor court inefficiencies, employer refusals to permit labor inspectors into facilities or provide access to payroll records and other documentation, and inspectors' lack of effective follow-up in the face of such refusals. Moreover, labor inspectors were not empowered to adopt administrative measures or to impose fines, but had to send alleged violations to the labor courts, where decisions favorable to workers were rarely enforced.

The Ministry of Labor operated a call center that received 51,647 calls to request information or advice, or register complaints about labor law violations. Complaints were referred to labor inspectors and labor courts for further action. Local unions continued to highlight and protest violations by employers who failed to pay employer and employee contributions to the national social security system despite employee contribution deductions from workers' paychecks. These violations, particularly common in the private sector and export industries, resulted in limiting or denying employees access to the public health system and reducing or underpaying workers' pension benefits during their retirement years.

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

