

# **GUATEMALA 2012 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Guatemala is a multiparty constitutional republic. In November 2011 Otto Perez Molina of the Patriot Party won the presidential election for a four-year term that began in January. International observers considered the election generally free and fair. In some instances members of the security forces acted independently of civilian control.

Principal human rights abuses included widespread institutional corruption, particularly in the police and judicial sectors; police and military involvement in serious crimes, including unlawful killings, kidnapping, drug trafficking, and extortion; and societal violence, including violence against women and numerous killings. Considerable violence was attributed to gangs and narcotics-trafficking organizations; however, corruption and inadequate investigation and prosecution of such crimes made factual attribution for crimes difficult.

Human rights abuses also included abuse and mistreatment by National Civil Police (PNC) members; harsh and life-threatening prison conditions; arbitrary arrest and detention; prolonged pretrial 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, intimidation, and killings of journalists and trade unionists; discrimination and abuse of persons with disabilities; sexual harassment and discrimination against women; child abuse, including commercial sexual exploitation of children; and trafficking in persons. Other problems included marginalization of indigenous communities and ineffective demarcation of their lands; discrimination on the basis of sexual orientation and gender identity; and ineffective enforcement of labor and child labor laws.

The government cooperated with the UN-backed International Commission Against Impunity in Guatemala (CICIG) and took steps to prosecute officials who committed abuses. However, impunity continued to be widespread.

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

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

Members of the police and military committed unlawful killings. Corruption, intimidation, and ineffectiveness within the police force, judiciary, and Public Ministry continued to prevent adequate investigation, arrest, and prosecution of perpetrators. There were no reports that the government committed politically motivated killings.

The PNC and its Office of Professional Responsibility (ORP), which is the mechanism for investigating security force abuse, did not provide the total annual number of accusations of killings involving PNC agents at year's end.

On August 2, director of Quetzaltenango Preventive Prison Werner Eleazar Martinez and prison guards Josue Cifuentes and Julio Vasquez were arrested for the murder of Efrain Gaspar Perez while in detention on June 30.

On October 4, soldiers fired upon indigenous protesters in Totonicapan, killing six and injuring more than 30 (See Section 2. b.).

On April 20, the chief of PNC Special Forces, Pedro Gonzalez Rodriguez, was arrested in connection with the killings of three indigenous persons during the eviction of families from a sugar plantation in Alta Verapaz by police, military, and private security forces between March and June 2011. There were no convictions at year's end.

There were no known developments in several cases pending against PNC officers accused of unlawful killings in 2010 and 2011.

Key developments in historical cases from the country's armed internal conflict (1960-96) included:

On March 13, a court sentenced former sergeant Pedro Pimentel Rios to more than 6,000 years for crimes against humanity related to the 1982 massacre in Dos Erres. Pimentel Rios was the fifth soldier convicted for crimes against humanity related to the massacre.

On March 20, Lucas Tecu, Julian Acoj Morales, Mario Acoj Morales, Santos Rosales Garcia, and Eusebio Grave Garcia were convicted and each sentenced to 7,710 years in jail for their involvement in the massacre of 256 victims at Plan de Sanchez, Rabinal, in 1982.

Impunity continued in the 1993 killing of Jorge Carpio Nicolle, the 1990 “street children case” and the “white van case” of 1987 and 1988, and the killings in 1982 of 177 civilians in Rio Negro, Baja Verapaz.

According to government statistics, the murder rate fell for the third consecutive year, down from 38.5 per 100,000 residents in 2011 to 34.5 per 100,000 in 2012.

### **b. Disappearance**

There were no reports of politically motivated disappearances.

On March 13, authorities charged PNC officer Israel Miranda Ramirez with the disappearance on March 1 of four PNC investigators, Breyner Beder Orozco Fuentes, Juan Pablo Suhul, Byron Gonzalez Lopez, and Benjamin Jimenez, who were sent on an undercover assignment to Totonicapan and vanished.

On June 6, several PNC agents were arrested in the kidnapping of Byron Eduardo Lopez Moreno and the attempted kidnapping of Mexican national Francisco Bravo Navarro on May 22. The arrested PNC agents were all assigned to Comisaria 13, at Sub-Station La Villa Zone 10.

Hector Bol de la Cruz and Jorge Humberto Gomez Lopez were still awaiting trial at year’s end for their roles in connection with the 1984 forced disappearance of student leader and trade union activist Fernando Garcia.

On August 21, judges convicted former police commander Pedro Garcia Arredondo for the 1981 forced disappearance of student Edgar Saenz Calito and sentenced him to 70 years in jail.

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

The constitution and the law prohibit torture and other cruel, inhuman, or degrading treatment or punishment. However, there were credible reports of abuse and other mistreatment by PNC members. For example, the PNC in Quetzaltenango engaged in abusive and discriminating behavior against transgender individuals (see section 6).

### **Prison and Detention Center Conditions**

Prison conditions were harsh and life threatening, with multiple instances of killings of inmates by other inmates. No cases were investigated or trials held in these incidents. Sexual assault, inadequate sanitation and medical care, and gross overcrowding continued to place prisoners at significant risk.

Physical Conditions: Prison overcrowding continued to be a problem. According to the prison system registry, as of December 31, there were 14,990 inmates, including 1,294 women, held in facilities designed to hold 6,492 persons. There were 750 juveniles under the custody of the Secretary of Social Welfare.

Physical conditions included wholly inadequate sanitation and bathing facilities, dental and medical care, ventilation, temperature control, and lighting. Prisoners had difficulty accessing potable water, complained of inadequate food, and often had to pay for additional sustenance. Illegal drug sales and use continued to be widespread. Prison officials continued to report a loss of safety and control, including escape attempts, gang fights, the inability to control the flow of goods into prisons, and the fabrication of weapons. Prisoners continued to direct criminal activity both inside and outside of prisons. The prison guard force was inadequate to control prisoners effectively. At year's end members of the guard force at the Fraijanes II maximum-security prison were under investigation for their role in facilitating a riot in the prison on November 19.

According to the Centers for Preventive Detention (the country's prison system), six prisoners died while in prison. Five died of natural causes, and one prisoner died from injuries from a firearm during a prison riot at the Canada Rehabilitation Center in Escuintla. Observers, however, considered this number inaccurate.

Conditions for male and female prisoners were usually comparable throughout the country. However, according to media and nongovernmental organizations (NGOs), female and juvenile inmates faced continuing physical and sexual abuse. Female inmates reported unnecessary body searches and verbal abuse by prison guards. Children under three years of age could live in prison with their mothers, although the penitentiary system provided inadequate food for young children, and many suffered from illness. Lesbian, gay, bisexual, and transgender (LGBT) rights groups noted that other prisoners often sexually assaulted gay and transgender individuals.

Male and female detainees in immigration facilities continued to be held together on occasion. Pretrial detainees were held with convicted prisoners, and juveniles were held with adults at times.

Administration: The government's independent human rights ombudsman, whose responsibilities also include prisoner rights, does not have authority to act on behalf of prisoners and detainees regarding alternatives to incarceration for nonviolent offenders, circumstances of confinement of juvenile offenders, or procedural improvements to ensure prisoners do not serve beyond the maximum sentence for the charged offense. Recordkeeping remained inadequate. Alternative sentencing was utilized in 31,115 cases for nonviolent offenders.

Prisoners and detainees had reasonable access to visitors and could observe their religious practices. While the law requires authorities to permit prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions, authorities failed to investigate most allegations of inhumane conditions and treatment or to document the results of such investigations in a publicly accessible manner.

Monitoring: The government permitted prison-monitoring visits by local and international human rights groups, the Organization of American States (OAS), public defenders, and religious groups.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention, but there were credible reports of extrajudicial arrests, illegal detentions, and denial of timely access to a magistrate and hearing as required by law.

On April 27, PNC agents Luis Bernardo Mateo Pinto, Baldomero Felipe Nimajuan, Manuel Lopez Julian, and Mario Enriquez Contreras illegally detained a woman and two minors for five hours, planted evidence, and negotiated their release for a bribe. Family members of the detainees filed charges with the Public Ministry and reported the incident to the police ORP.

#### **Role of the Police and Security Apparatus**

The PNC, overseen by the Ministry of Government and headed by a director general appointed by the ministry, has responsibility in law and practice for law enforcement and maintenance of order in the country. The military focuses primarily on operations in defense of the country; however, the army was increasingly utilized in internal security and policing. The Ministry of National Defense oversees the military. There were instances where civilian authorities

failed to maintain effective control over the PNC and the army, and the government lacked effective mechanisms to investigate and punish abuse and corruption. There were reports of impunity involving security forces during the year. The PNC remained understaffed, inadequately trained, and insufficiently funded, all of 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 along with police units in response to rising crime. The level of impunity for security forces accused of committing crimes was high. In cases in which police forces were implicated, the ORP is charged with internal investigations; the Public Ministry is responsible for external investigations. To reform the police forces, a Police Reform Commission, established under the previous administration, has a legal mandate to make necessary changes.

Police impunity for criminal activities continued to be 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 continued to threaten persons engaged in commercial sexual activities with false drug charges to extort money or sexual favors and harassed LGBT 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 on false drug charges. There were press reports of police involvement in kidnappings for ransom. The ORP and the Public Ministry reported that during the year numerous complaints were filed against PNC personnel for kidnapping.

The ORP conducted internal investigations of misconduct by police officers. During the year the ORP received 2,413 complaints regarding situations involving police personnel: 646 complaints resulted in formal sanctions, 1,269 were dismissed, and 498 cases were not assigned to investigators or were under investigation.

The PNC reported it trained 1,506 cadets in human rights and professional ethics. By year's end the Ministry of National Defense had not released the number of military officers and soldiers receiving human rights training.

### **Arrest Procedures and Treatment While in Detention**

The law requires presentation of a court-issued warrant 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, authorities did not regularly respect this right, and some detainees were not promptly informed of the charges filed against them. After suspects were arraigned, the prosecutor generally had 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 six at night and six in the morning unless a state of siege has been declared. The law provides for access to lawyers and bail for most crimes. The government provides legal representation for indigent detainees, and detainees have access to family members. A judge has the discretion to determine whether bail is necessary or permissible for pretrial detainees.

Arbitrary Arrest: There were no reliable data on the number of arbitrary detentions, although most accounts indicated that police forces continued to ignore writs of habeas corpus in cases of illegal detention, particularly during neighborhood antigang operations. No detailed reporting from ORP or NGOs was available by year's end.

Pretrial Detention: The law establishes a three-month limit for pretrial detention, but authorities regularly held detainees 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 other bureaucratic problems. The government did not keep records on the percentage of prisoners in pretrial detention or the average length of time detainees were held, including whether this equaled or exceeded sentences for alleged crimes.

### **e. Denial of Fair Public Trial**

The constitution and the law provide for an independent judiciary. The judicial system failed to provide fair or timely trials due to inefficiency, corruption, insufficient personnel, and intimidation of judges, prosecutors, and witnesses.

Judges, prosecutors, plaintiffs, and witnesses continued to report threats, intimidation, and surveillance, most often from drug-trafficking organizations. During the year the special prosecutor for crimes against judicial workers received 145 complaints of threats or aggression against workers in the judicial branch, compared with 243 in 2011.

The Ministry of Government assigned police officers to the CICIG to enhance judicial security. The CICIG-vetted prosecutor unit, created by the Public Ministry, continued to be directly supervised by a senior prosecutor with the CICIG. According to the CICIG the commission participated in the investigation of 48 high-profile cases, including extrajudicial executions, extortion, trafficking in persons, improper adoptions, corruption, and drug trafficking. Significant cases the CICIG prosecuted during the year included the GASOFA case, which involved a gasoline-smuggling network including PNC and customs officials.

There was no reporting available regarding witnesses killed during the year.

On June 28, a court sentenced Salvador Arguelles Briones, Lauro Zabaleta Duran, and Jose Antonio Guzman Gomez to 97 years in jail each for the May 2011 murder of Allan Stowlinsky Vidaurre, who had prosecuted a case against members of the Zeta narcotics trafficking organization. The case against PNC agent Victor Omar Guillermo, on charges relating to Stowlinsky's kidnapping and killing, was dismissed for lack of evidence in October 2011.

The Supreme Court continued to seek the suspension of judges and conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. The Judicial Disciplinary Unit investigated 947 complaints of wrongdoing, held hearings for 890 complaints during the year, and applied sanctions to several cases, ranging from written notice to 30-day suspension.

The Judicial Disciplinary Unit has the authority to sanction or send to trial judges alleged to have abused their authority. On March 16, Judge Rossana Maribel Mena Guzman was charged with several crimes, including trafficking in persons. On May 9, Judge Mario Fernando Peralta Castaneda was charged with several crimes, including human trafficking.

## **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. The law requires attorneys be provided at government expense for defendants facing criminal charges, including indigent persons. 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, and there are no trials by jury. The law provides for oral trials and mandates language interpretation for those needing it; however, language interpretation was not always provided in practice. The Public Ministry utilized 17 interpreters nationwide, and the judiciary employed 52 indigenous language 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 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**

Individuals and organizations 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.

### **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.

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

### **a. Freedom of Speech and Press**

The law provides for freedom of speech and press, and the government generally respected these rights in practice; however, criminal intimidation of journalists resulted in significant self-censorship.

Freedom of Press: Despite federal laws supporting freedom of the press, many journalists were the victims of threats, harassment, and violence. Reporters covering organized crime, including its links to corrupt public officials, acknowledged practicing self-censorship, recognizing the danger investigative journalism posed to them and to their families. The independent media were active and expressed a wide variety of views. However, difficulty obtaining permission for community radio stations and accessing some information limited press freedom in practice.

Violence and Harassment: Members of the press continued to report that violence and impunity impaired the practice of free and open journalism. The press reported that numerous threats by public officials and criminal organizations increased journalists' sense of vulnerability.

On August 28, a court sentenced Juan Manuel Ralon Solorzano, the former chief of a local volunteer Panajachel "Security Group," to three years and eight months for threats against journalist Lucia Escobar, who reported on abuses by the security group.

The Public Ministry reported that it received 61 complaints of attacks and other acts of intimidation against journalists during the year.

There were no arrests made for the May 2011 killing of reporter Yensi Roberto Ordonez Galdez in Nueva Concepcion, Escuintla.

Censorship or Content Restrictions: Members of the press reported receiving pressure, threats, and retribution by various public officials regarding the selection and content of their reporting. Some owners and members of the media also accused the government of following a discriminatory advertising policy, penalizing or rewarding print and broadcast media based upon whether news or commentary was perceived as supportive or critical of the administration.

On May 2, Luis Emilio de Leon, from Mazatenango, Suchitepequez, claimed that the owner of local cable business Cable DX took six local cable channels off the air to censor reporting against local mayor Roberto Lemus. According to de Leon, Lemus requested Cable DX to cancel the channel's programming to prevent criticism against his administration.

Libel Laws/National Security: Criminal libel laws provide penalties of up to five years' imprisonment. Article 41 of the Radio Communications Act remains in law and inhibited transmission of anything that is offensive to civic values or national symbols, is vulgar, or is contrary to good morals or etiquette. However, there were no reports that the government enforced the provision during the year.

Nongovernmental Impact: Organized crime exerted an increasing and violent influence over media outlets and reporters, frequently threatening individuals for reporting on criminal activities and warning journalists not to report on crimes.

### **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. According to the International Telecommunication Union, 3 percent of households had access and 12 percent of the population used 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. However, there were reports of security forces using excessive force against demonstrators, including extrajudicial killings.

### **Freedom of Assembly**

On October 4, soldiers fired upon indigenous protesters in Totonicapan, killing six and injuring more than 30. An army colonel and six soldiers were charged in the killings and violence after they allegedly failed to follow protocol and coordinate their actions with the PNC. Several NGOs expressed concern with former foreign minister Harold Caballeros' comment that the death of six persons, taken in the context of the country's 16 killings a day, was "not such a big deal." No trials in the case had begun by year's end.

### **Freedom of Association**

The law provides for freedom of association, and the government generally respected this right in practice. However, there were reports of significant barriers to organizing in the labor sector (see section 7).

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

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

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

#### **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.

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

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

#### **Elections and Political Participation**

Recent Elections: In November 2011 Otto Perez Molina of the Patriot Party won a four-year term as president. The OAS international observation mission characterized the elections as generally free and fair.

Participation of Women and Minorities: The vice presidency was held by Roxana Baldetti, the first woman to hold this position. There were 21 women in the 158-seat congress. A total of 339 women served as judges or magistrates out of 918 nationwide, including one on the Supreme Court and one on the Constitutional

Court. There were three women in the 14-member cabinet. Six of the country's 333 mayors were women.

While the indigenous population comprised 44 percent of the population, their representation in government was minimal. At year's end there was one indigenous cabinet member and no indigenous member on the Supreme or Constitutional Courts. There were 113 indigenous mayors and approximately 20 indigenous members of congress.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials. However, officials frequently engaged in corrupt practices with impunity. As in previous years, inadequate political will and widespread impunity facilitated government corruption.

The Comptroller General's Office and the Public Ministry are responsible for combating corruption. The comptroller general's mandate is to monitor public spending according to the law, and the attorney general's mandate is to prosecute crimes. Both agencies actively collaborated with civil society and were relatively independent; however, they lacked effectiveness and were underresourced. Under the leadership of Attorney General Claudia Paz y Paz, the Public Ministry worked with CICIG to improve the ministry's effectiveness and reported a significant drop in the impunity rate for homicide in Guatemala City from more than 95 percent in 2010 to 70 percent during the year. There was no similar improvement in prosecution of corruption cases.

There were numerous instances of corruption within the police and judiciary. For example, eight PNC officers (Jose Alfonso Cruz Valdez, Amilcar Rene Franco Cabrera, Lile Castaneda Sandoval, Jose Angel Veliz Valdez, Luis Francisco Gonzalez Estrada, Erick Noe Palacios Lopez, Fredy Fernando Lopez Trabanino, and Cruz Felipe Lorenzo) and two employees of the Tax Administration Superintendency (William Estuardo Lemus Ramirez and Hilma Nohemi Pineda Alvarez) were arrested during the year for smuggling gasoline into the country. According to CICIG, which was investigating the case along with the Public Ministry, the group (known as GASOFA), had been smuggling gasoline for more than 10 years.

A court ruling on an embezzlement case against former president Alfonso Portillo remained pending at year's end.

The Public Ministry continued to prosecute for corruption former vice president Juan Francisco Reyes Lopez and other senior members of previous governments. No progress occurred in the Reyes Lopez case during the year.

There was no progress in the cases of former minister of government Raul Velasquez and former secretary of presidential administrative affairs Juan Carlos Leal Medina, who were arrested in January 2011 for alleged involvement in embezzlement related to gasoline coupons for PNC patrol units.

Public officials who earn more than 8,000 quetzales (\$1,012) per month or who manage public funds are subject to financial disclosure laws overseen and enforced by the Controller General's Office. The financial disclosures were made available to the public upon request. Administrative and criminal sanctions apply for inadequate or falsified disclosures of assets.

The law provides for the right of citizens to access public information and establishes fines for government agencies that obstruct such access. The disclosure law contains exceptions for national security, sets reasonably short timelines for disclosure, and allows for a reasonable processing fee. There are no sanctions for noncompliance. The government granted access to public information for citizens and noncitizens, including foreign media, although at times in a slow and incomplete manner. There is no formal mechanism to appeal denials of requests. However, petitioners often successfully appealed to the Office of the Human Rights Ombudsman for assistance relating to a government denial of public information.

### **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 cooperative in some cases.

A number of NGOs, human rights workers, and trade unionists reported threats, violence, and intimidation by unidentified persons. NGOs asserted that the government did little to investigate these reports or prevent further incidents.

The majority of cases brought to the Office of the Special Prosecutor for Human Rights went without timely investigation or languished in the court system.

The NGO Guatemalan Human Rights Defenders Protection Unit (UDEFEFUGA) reported 13 killings of human rights defenders during the year, compared with 16 killings in 2011. UDEFEFUGA also reported 291 attacks against human rights defenders during the year, compared with 393 attacks in 2011. According to UDEFEFUGA, many of the attacks related to conflicts over land and the exploitation of natural resources.

Government Human Rights Bodies: The Office of the Human Rights Ombudsman reports to congress and monitors the human rights set forth in the constitution. The ombudsman operated without government or party interference, had the government's cooperation, and issued public reports and recommendations, including an annual report to congress on the fulfillment of its mandate. The office was not adequately resourced, and the public generally questioned the ombudsman's effectiveness.

The President's Commission on Human Rights (COPREDEH) has responsibility to formulate and promote the government's human rights policy. COPREDEH also led coordination of police protection for various human rights and labor activists during the year. COPREDEH benefited from the administration's cooperation and operated without political or party interference. Resources for the commission were not adequate; however, it 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.

## **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. However, the government frequently did not enforce these provisions, and there was no protection related to sexual orientation and gender identity discrimination.

### **Women**

Rape and Domestic Violence: The law criminalizes rape, including spousal rape, and sets penalties between five and 50 years in prison. However, police had minimal training or capacity to investigate sexual crimes or assist victims of such crimes, and the government did not enforce the law effectively; full investigation and prosecution of domestic violence and rape cases took an average of one year. Impunity for perpetrators remained at approximately 98 percent. Rape victims frequently did not report crimes due to lack of confidence in the justice system, social stigma, and fear of reprisal.

Rape and other sexual offenses remained serious problems. According to the Public Ministry, there were 2,193 cases of sexual or physical assault reported during the year. Over the same period, there were 418 convictions for sexual or physical assault on women. Information on average length of sentences for those convicted was unavailable.

The government took steps to combat femicide and violence against women. It maintained the PNC's Special Unit for Sex Crimes, Office of Attention to Victims, 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. The Supreme Court and Public Minister inaugurated a 24-hour court to offer services related to violence directed toward women, including sexual assault, exploitation, and trafficking of women and children.

The law establishes penalties of five to eight years for physical, economic, and psychological violence committed against women because of their gender. Violence against women, including domestic violence, remained a serious problem. The law prohibits domestic abuse, allows 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, and women's rights advocates reported that few officers received training to deal with domestic violence or assist victims.

Femicide affected both women and girls and remained a major problem. In most killings, sexual assault, torture, and mutilation were evident. The Public Ministry reported 731 killings of women during the year. The conviction rate was only 1 to 2 percent for femicide. NGOs noted that the severity of sentences was not always appropriate to the crime.

The Institute of Public Criminal Defense provided free legal, medical, and psychological assistance to victims of domestic violence.

The government's Program for Prevention and Eradication of Intrafamily Violence, under the Secretariat of Social Work, reported receiving five calls daily from battered women and children via its three emergency hotlines. The Public Ministry reported that there were 18,194 complaints of intrafamily violence against women and children. The government reported 376 convictions in cases of intrafamily violence against women and children at year's end.

Although the law affords protection, including shelter, to victims of domestic violence, 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 it lacked human resources and logistical capacity to perform its functions on a national level. The office maintained no statistics on its caseload.

The Ministry of Government operated eight shelters for victims of abuse in departments with the greatest incidence of domestic violence. Several other shelters operated in cities and the countryside funded by private donors or municipal governments. Many of the centers provided legal and psychological support and temporary accommodation.

Sexual Harassment: 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 across all sectors.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children, and they sometimes had the information and means to do so free from discrimination. The government provided access to family planning information and sex education through the public health system. However, provision in remote areas and in indigenous languages was limited. The UN Population Fund (UNFPA) reported that 34 percent of married women used a modern method of contraception in 2011.

Cultural, geographic, and linguistic barriers existed in access to reproductive health care, particularly for indigenous women in rural areas. Discriminatory attitudes among health-care providers and a lack of culturally sensitive reproductive and maternal health-care services also deterred many indigenous women from accessing these services. The UNFPA estimated that in 2010 the maternal mortality rate was 120 deaths per 100,000 live births. The principal causes of maternal mortality included limited access to skilled health-care attendants and, in some instances, poor prenatal and postnatal care. 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. The UNFPA estimated that skilled health personnel attended 51 percent of births in 2010.

Discrimination: The law establishes the principle of gender equality and criminalizes discrimination. However, women faced discrimination, particularly in family law and labor law, and were less likely to hold management positions. Women found employment primarily in low-wage jobs in agriculture, retail businesses, the service sector, the textile and apparel industries, and the government. Women also obtained employment more frequently in the informal sector, where pay and benefits generally were lower. The 2012 Global Gender Gap Report estimated that earned income of women was 44 percent that of men; women on average received 57 percent of men's salaries for comparable work. 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 advises the president on interagency coordination of policies affecting women and their development. Several NGO groups working on women's issues reported that the secretariat maintained a very low profile during the year and was not as engaged with members of civil society as during previous administrations.

## **Children**

Birth Registration: Citizenship is derived by birth within the country's territory or from one's parents. UNICEF described low birth registration as a "serious problem," and the Office of the UN High Commissioner for Refugees reported problems in registering births were especially acute in indigenous communities, due to inadequate government registration and documentation systems. Factors such as the need to travel to unfamiliar urban areas, interact with nonindigenous

male government officials, and speak Spanish inhibited some indigenous women from registering themselves and their children. Foreign citizens residing in the country without appropriate documentation were prevented from registering their locally born children prior to regularizing their own immigration status. Lack of registration restricted children's access to some public services.

Education: While compulsory through age 12, education through the secondary level is not obligatory, and girls were significantly less likely than boys to be educated to the secondary school level. Access to compulsory education in primary school was limited in many rural areas, and religious institutions often assisted in providing education.

Child Abuse: Child abuse remained a serious problem. The Unit of Adolescent and Child Victims of the Special Prosecutor's Office for Women investigated cases of child abuse but did not report on its cases.

The Secretariat of Social Welfare, which oversees 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. The government operated a girls' shelter in Antigua and a boys' 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 abused or trafficked minors to youth shelters operated by NGOs.

Child Marriage: The minimum legal age for marriage is 18. With parental consent, the age is 16 for boys and 14 for girls. However, the law provides exceptions in cases where girls have a child or are pregnant. There were credible reports of forced early marriages in some rural indigenous communities. UNICEF's *2012 State of the World's Children* reported that 35 percent of women 20 to 24 years of age were first married or in union by age 18 (8 percent of them by age 15). There were no reported government efforts to combat child marriage.

Sexual Exploitation of Children: The law provides sentences ranging from 13 to 24 years in prison, depending on the victim's age, for engaging in sex with a minor. The minimum age of consensual sex is 18. The Public Ministry reported 3,385 complaints of sexual assault or rape against minors during the year, with 295 convictions.

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 possessing it. The commercial sexual exploitation of children, including child sex tourism, remained a problem, with credible reports of child sex tourism in Antigua, Guatemala City, and Solola Department.

The Human Rights Ombudsman's Office did not release the number of child prostitution cases during the year. The Public Ministry reported no convictions in cases of child prostitution during the year.

**Displaced Children:** Criminals and gangs often recruited street children, many of whom were former victims of domestic abuse, for purposes of stealing, transporting contraband, prostitution, and illegal drug activities. According to the Public Ministry and PNC, approximately 3,000 youth were involved in street gangs. The NGO Mutual Support Group reported that 71 minors suffered violent deaths nationwide between January and October. NGOs dealing with gangs and other youth reported concerns that street youth detained by police were subject to abusive treatment, including physical assaults.

**International Child Abductions:** The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's report on compliance at [travel.state.gov/abduction/resources/congressreport/congressreport\\_4308.html](http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html), as well as country-specific information at [travel.state.gov/abduction/country/country\\_5878.html](http://travel.state.gov/abduction/country/country_5878.html).

### **Anti-Semitism**

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

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **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. 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. Accessible public transportation was minimal.

The National Council for Persons with Disabilities reported that few persons with disabilities attended educational institutions or held jobs. The council, composed of representatives of relevant government ministries and agencies, is the principal government entity responsible for protecting the rights of persons with disabilities. It met regularly to discuss initiatives and had a budget of 10.6 million quetzales (\$1.34 million). There were no reports on what, if any, effect the council had on meeting the needs of persons with disabilities.

There were minimal educational resources for persons with special needs, and the majority of universities did not have accessible 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. Disability Rights International and other NGOs raised concern regarding treatment and conditions at Federico Mora Hospital in Guatemala City. Reports presented to the OAS indicated that both children and adults faced abuse and neglect, lacked necessary medical care, and were subject to sex trafficking by guards from the national police and gang members from the adjacent prison.

### **Indigenous People**

According to the National Institute of Statistics, 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. Indigenous communities were not regularly consulted on or able to participate in decisions affecting the exploitation of resources in their communities, including energy, minerals, timber, or other natural resources.

Mayan indigenous communities continued to report a lack of public infrastructure investment in their communities, leading to poor roads and limited access to running water and electricity. Mayan and Garifuna indigenous persons reported the need for schools with bilingual education and cultural studies, educational scholarships, leadership training to increase indigenous persons' participation in politics, and the construction of universities (not just extension campuses), hospitals, and health clinics in their communities.

Indigenous representatives voiced concerns that a number of regional development projects failed to consult meaningfully with local communities and disproportionately benefited corporations, government officials, and their associates, while posing risks for indigenous land and cultures.

Indigenous persons were underrepresented in national politics and remained largely outside the country's political, economic, social, and cultural mainstream, largely due to limited educational opportunities contrary to law, limited communication regarding their rights, pervasive discrimination, and lack of funding for proindigenous political parties. These factors contributed to economic barriers leading to continued disproportionate poverty among most indigenous populations. While some of the indigenous population had increased political participation, civil society representatives questioned whether such participation influenced the national political party structure.

Indigenous lands lacked effective demarcation, making the formal recognition of titles to the land problematic. Indigenous rights advocates asserted that a pervasive lack of cultural awareness and understanding by security authorities of indigenous norms and practices engendered misunderstandings. Few indigenous police officers worked within their own ethnic or linguistic communities.

On May 1, unidentified gunmen in Santa Cruz Barillas, Huehuetenango, killed indigenous land owner Andres Pedro Miguel and injured Esteban Bernabe Mateo. Miguel opposed a proposed local hydroelectric project and had refused to sell his property to the private hydroelectric company, Hidro Santa Cruz. Outraged by the killing, community members that same day searched for the killers, attacking and damaging homes and businesses they associated with the hydroelectric project and then assaulted soldiers at a nearby military base, injuring several of them and temporarily taking control of the base. The government declared a state of siege lasting until May 18. In the week of May 23, the PNC and officials from the Public Ministry arrested Oscar Armando Ortiz Solares and Ricardo Arturo Garcia

Lopez, both allegedly private security contractors for Hidro Santa Cruz, for Miguel's killing.

In March 2011 a week-long government operation to evict an estimated 500 indigenous families from a former sugar plantation in the department of Alta Verapaz resulted in the death of Antonio Bev Ac, the injury of several others, and destruction of crops and makeshift houses. Subsequent confrontations related to the operation resulted in the deaths of Oscar Reyes and community leader Maria Margarita Chub Che. On April 20, the chief of PNC Special Forces, Pedro Gonzalez Rodriguez, was arrested in connection with Bev Ac's killing and was detained pending trial. Authorities made no further arrests in connection with the killings of Chub or Reyes.

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.

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; however, limited resources hindered the department's effectiveness.

Legally mandated court interpreters for criminal proceedings were rarely available. In many instances bilingual judges or court employees received assignments to areas where their second language was not spoken.

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

Antidiscrimination laws exist, but they do not apply to LGBT individuals. LGBT rights groups alleged that members of the police regularly engaged in extortion by waiting outside clubs and bars frequented by LGBT persons to demand that those engaged in sexual activities pay protection money or pay to avoid jail. Police often harassed male and transgender individuals they believed to be sex workers, many of whom were minors. According to LGBT rights groups, gay and transgender individuals often experienced police abuse.

LGBT rights groups reported that on January 27 activists traveled to Quetzaltenango, the country's second-largest city, to investigate police harassment of LGBT individuals. Local police arrested four of the transgender activists and stripped off their clothing, cut their hair, and left them in an outdoor courtyard

overnight exposed to cold temperatures. Activists stated that as a result of similar harassment by police in Quetzaltenango, all members of the transgender community abandoned the city.

A lack of trust in the judicial system and a fear of further harassment or social recrimination discouraged victims from filing complaints. There was general societal discrimination against LGBT persons in access to education, health care, employment, and housing. The government undertook minimal efforts to address this discrimination.

The Presidential Femicide Commission reported that three transgender individuals were killed during the year.

### **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.

According to PNC statistics, vigilante mobs, often in rural indigenous communities, killed 13 persons and injured 30 during the year. Targets were often individuals suspected of rape, kidnapping, theft, or extortion. Many observers attributed the acts to public frustration with the failure of police and judicial authorities to provide justice and security. This vacuum led to the emergence of local citizen-security groups. In many instances PNC agents refused to intervene due to fear for their own safety. On September 12, three individuals allegedly attacked and killed with a machete two children in a national school, Colonia San Juan, Tactic, Alta Vera Paz. The three individuals fled the scene; however, local citizens captured and burned to death one of the perpetrators, Julio Saquil. The first officer to arrive at the scene did not take any action because, according to the officer, the crowd was too numerous and unruly to prevent the violence.

In the October 2011 disappearance of Luis Gilberto Tian, on April 27, a court convicted Victor Manuel Anleu and sentenced him to 19 years in jail for bodily harm and coercion; the court also sentenced Juan Manuel Ralon to 17 years' imprisonment for bodily harm. A third suspect, Manuel Santiago Cululen Cumes, remained at large at year's end.

### **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law, including related regulations and statutes, protects the right of workers, with the exception of security force members, to form and join trade unions of their choice, conduct legal strikes, and bargain collectively. However, the law places some restrictions on these rights. For instance, legal recognition of a new industrywide union requires that the membership constitute a 50-percent-plus-one majority of the workers in an industry and restricts union leadership to citizens.

In addition the process for calling a strike is complex and lengthy, and by law a strike must have the support of 51 percent of a company's workforce. The president and cabinet may suspend any strike deemed "gravely prejudicial to the country's essential activities and public services." The government defined "essential services" more broadly than international standards, thus denying the right to strike to a large number of public workers, such as those working in education; postal services; transport; and the production, transportation, and distribution of energy. Public employees and workers in sectors deemed essential 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.

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.

A factory or business owner is not obligated to negotiate a collective bargaining agreement unless at least 25 percent of workers in that factory or business are union members and request negotiations. The law prohibits antiunion discrimination and employer interference in union activities and requires employers to reinstate workers dismissed illegally for union-organizing activities.

The government did not effectively enforce legislation on freedom of association, collective bargaining, or antiunion discrimination. Due to a combination of inadequate allocation of budget resources and inefficient legal and administrative processes, the relevant government institutions did not effectively investigate, prosecute, and punish employers who violated freedom of association and collective bargaining laws, or reinstate workers illegally dismissed for engaging in union activities. Inspectors continued to fail to take effective action to gain access to worksites in response to employers' refusal to permit labor inspectors entry to

facilities to investigate worker complaints, including failing to regularly seek police assistance as required. Penalties for labor law violations were inadequate and rarely enforced.

For instance, during one inspection trip to rural areas during the year, labor inspectors attempted to visit at least four agriculture plantations to investigate complaints by workers regarding alleged failures to pay the minimum wage, use of subcontracted labor to avoid labor obligations, poor working conditions, and discrimination. Of the four plantations, only one allowed inspectors full access. Although a second allowed the inspectors access, it did not permit them to interview the workers or have access to the company's records. The remaining two plantations refused them access. The labor inspectors returned later, and one of the uninspected plantations allowed them access.

The Labor Ministry cannot impose a fine or otherwise sanction employers for labor law violations discovered during inspections but must refer these cases to the courts. Only labor courts have the authority to impose sanctions for violations of the labor law. Employers frequently refused to respect decisions favorable to workers, and courts rarely sanctioned employers for ignoring court orders. Appeals and employers' widespread use of maneuvers such as reincorporation as a different entity often prolonged reinstatement proceedings. The length of time to process cases regarding the reinstatement of workers and other labor law violations was excessive, often taking two to four years and some lasting more than 10 years. Courts also faced difficulties in providing notification of their orders when employers were listed under incorrect addresses or simply refused access to the court official delivering notification.

The government's apparent sustained failure to take concrete enforcement action measurably to improve compliance with labor laws led in 2011 to the establishment of an arbitral panel under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). The panel was constituted on November 30.

The Special Prosecutor's Unit for Crimes against Unionists within the Office of the Special Prosecutor for Human Rights in the Public Ministry was responsible for investigating attacks against union members. The unit's small size limited its effectiveness. According to Public Ministry statistics, the unit achieved no convictions. The International Labor Organization (ILO) reiterated its deep concern about the grave situation of antiunion violence and weakness of the

judiciary and noted an impunity rate of 98 percent for which there were no prosecutions or effective convictions.

Procedural hurdles, union formation restrictions, and impunity for employers refusing to receive or ignoring court orders limited freedom of association and collective bargaining in practice. Worker organizations were independent of the government and political parties. The International Trade Union Confederation's annual report noted numerous and arbitrary obstacles for union registration in practice. The Ministry of Labor stated that during the year it improved internal procedures for the registration of unions in an attempt to shorten the union registration time, noting that it had completed some union registrations within 20 days. However, some labor leaders maintained that the delays approving the formation of some unions continued.

Violence and threats against trade unionists and worker activists remained serious problems. Several labor leaders were killed or reported death threats and other acts of intimidation. For instance, on March 24, Luis Ovidio Ortiz, member of the executive committee of the National Health Workers Union, was killed, and on June 1, Manuel de Jesus Ramirez, Conflict Secretary of the Workers' Union of the Public Defenders' Institute, was killed. On December 21, the Public Ministry announced that the National Police had arrested five gang members as suspects in the attack that killed Ovidio and noted that the attackers did not appear to have targeted Ovidio. The cases continued under investigation at year's end.

There continued to be reports that management or persons hired by management harassed and threatened workers who did not accept employer dismissals or refused to forfeit their right to reinstatement. Most acts of violence and threats were not thoroughly investigated and went unprosecuted, often making it difficult to identify motives for killings. At year's end no arrests were made in connection with the 2011 killings of Banana Workers Union of Izabal (SITRABI) members Oscar Humberto Gonzalez Vasquez, Idar Joel Hernandez Godoy, Henry Anibal Marroquin Orellana, and Pablino Yaque Cervantes. Local unions continued to urge authorities to investigate the killings of unionists and called for increased security for union leaders and members.

Employers routinely resisted union formation attempts, delayed or only partially complied with labor agreements, and ignored judicial rulings requiring the employer to negotiate with recognized unions. There were credible reports of retaliation by employers against workers who tried to exercise their rights, including numerous complaints filed with the Ministry of Labor and Public

Ministry alleging employer retaliation for union activity. 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 not to renew contracts or not to offer subcontracted workers permanent employment if the worker joined a union or refused to disaffiliate.

In October a local bank, the Banco de los Trabajadores, fired an estimated one-third of its union members who worked as security guards, as well as the six members of the union's board. The bank indicated that it fired the security workers to comply with a new law requiring security services be provided by a registered security company. Union members claimed that the bank fired them in an attempt to break the union and that the bank continued to harass remaining union workers. According to the union, the bank subsequently hired security personnel from a private security company and filed criminal charges with the Public Ministry against five of the fired union board members, accusing them of trying to cause financial panic due to the protest they led in front of the bank for its firing of the union members.

There were reports during the year that some companies in the growing call center industry heavily relied on subcontractor or other work arrangements to divide larger call centers into several smaller companies, making it difficult for a company to reach the 20-worker threshold needed to register a union.

During the year workers who suffered illegal dismissal won court injunctions ordering reinstatement, but in practice employers often failed to comply with reinstatement orders. This was often due to the inability of labor courts to enforce their court orders and legal ambiguity that allowed employers to appeal reinstatement orders without complying with them. Employers, often with impunity, failed to pay the full amount of legally required severance payments to workers or to pay court-ordered fines.

For instance, in early 2011 the National Registry of Persons (RENAP) dismissed (or according to RENAP, did not renew the temporary contract) of up to 446 workers. Some of these workers were members of a RENAP union approved by the Ministry of Labor in 2010. Some of these workers subsequently obtained a court order for their reinstatement. According to the dismissed union members, the government institution refused to obey that labor court order by, among other things, denying entry to the labor court representative to deliver the court orders. The labor court's judges claimed the government institution must physically

receive the court order to be legally bound to obey it; the union workers contested this claim and believed the judges were misinterpreting the law. Also according to the union members, an appellate court upheld the initial court order, but RENAP obtained from the Supreme Court a preliminary injunction against the workers' reinstatement, so they were not yet reaccepted at RENAP at year's end. Similarly, the national Tax Superintendency refused to accept a court order to reinstate workers it had fired in the summer, and it appealed the order to an appeals court. The government institution claimed it acted within the law and would comply with the final decision from the appeals court on whether it should reinstate the workers or not.

Local unions reported that businesses also continued to use fraudulent bankruptcies, ownership substitution, and reincorporation of companies to circumvent legal obligations to recognize newly formed or established unions, despite legal restrictions on such efforts.

An active *solidarismo* (solidarity association) movement continued. Although the law stipulates that trade unions have an exclusive right to negotiate work conditions on behalf of workers, unions continued to assert that management promoted solidarity associations to discourage the formation of trade unions or to compete with existing labor unions.

#### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor. The government failed to enforce these laws effectively in some cases.

The Ministry of Labor; National Police; and Secretariat Against Sexual Violence, Exploitation, and Trafficking in Persons collaborated with the local ILO office to carry out a two-day training session for 100 police agents and 100 labor inspectors from throughout the country to strengthen their capacity to detect cases of forced labor and to properly assist victims.

Reports continued that men and women were subjected to forced labor in agriculture and domestic service. There were also reports of forced child labor (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law bars employment of minors under the age of 14, although it allows the Ministry of Labor to authorize children under age 14 to work in exceptional cases. The ministry committed not to provide such authorizations, and the Labor Inspectorate reported that it did not make any authorizations during the year. 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, it is seven hours.

The Ministry of Labor's Child Worker Protection Unit is responsible for enforcing restrictions on child labor and educating minors, their parents, and employers on the rights of minors in the labor market. While penalties in theory are adequate to deter child labor, the government did not effectively enforce these laws, a situation exacerbated by the weakness of the labor-inspection and labor-court systems. The government devoted insufficient resources to prevention programs.

Child labor was a widespread problem. The NGO Conrad Project Association of the Cross estimated that the workforce included approximately one million children between the ages of five and 17. 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, including in the production of broccoli, coffee, corn, fireworks, gravel, and sugar. Indigenous children also worked in street sales, and rubber and timber production or as shoe shiners and bricklayer assistants. Some child laborers worked an average of 45 hours per week.

An estimated 39,000 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 street begging.

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

### **d. Acceptable Conditions of Work**

The law sets national minimum wages for agricultural and nonagricultural work and work in garment factories. The minimum wage was 68 quetzales (\$8.61) per

day for agricultural and nonagricultural work and 62.50 quetzales (\$7.91) per day for work in export-sector regime factories. Minimum wage earners also are due a mandatory monthly bonus of 250 quetzales (\$31.64), and salaried workers receive two mandatory yearly bonuses (the bono 14 and the Christmas bonus), each equivalent to one month's salary. In December 2011 the National Statistics Institute estimated that the minimum food budget for a family of five was 2,617 Quetzales (\$331) per month. The basic basket for vital needs, including food and housing, was 4,777 Quetzales (\$605).

The legal workweek is 48 hours with at least one paid 24-hour rest period. The law also provides for 12 paid annual holidays and paid vacation of 15 days after one year's work. Daily and weekly maximum hour limits do not apply to domestic workers. Workers in the formal sector receive the standard pay for a day's work for official annual holidays. Time-and-a-half pay is required for overtime work, and the law prohibits excessive compulsory overtime.

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, especially in the agricultural sector and very large informal sector. The ministry conducted inspections and information campaigns to encourage payment of the Bono 14 and Christmas bonuses; it claimed those efforts ensured a significant increase in the payment of such bonuses. The ministry employed approximately 330 labor inspectors, although many of them performed conciliation or administrative duties rather than clearly defined inspection duties.

The Ministry of Labor continued to operate a call center that received calls requesting information or advice or registering complaints about labor law violations. The center referred complaints to labor inspectors and labor courts for further action. The ministry received 6,226 complaints of violations during the year and investigated 539 cases.

Labor inspectors reported uncovering numerous instances of overtime abuses, but effective enforcement was undermined due to inadequate fines by labor courts, labor court inefficiencies, employer refusals to permit labor inspectors to enter facilities or provide access to payroll records and other documentation, and inspectors' lack of effective follow-up in the face of such refusals. Fines were insufficient to deter violations. Moreover, labor inspectors were not authorized by law to sanction employers but had to send alleged violations to the labor courts, where decisions favorable to workers were rarely enforced.

The government sets occupational health and safety standards, which were inadequate and poorly enforced. Authorities often failed to investigate fully or assign responsibility for negligence, and 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.

Trade union leaders and human rights groups reported that employers required with impunity workers to work overtime without legally mandated premium pay. Management often manipulated employer-provided transportation to worksites to force employees to work overtime, especially in export processing zones located in isolated areas with limited transportation alternatives. Noncompliance with minimum wage provisions in the agriculture and informal sector was widespread. Advocacy groups estimated that more than half of the workers in rural areas who engaged in daylong employment did not receive the wages, benefits, and social security allocations required by law. According to credible estimates, between 65 and 86 percent of the workforce continued to work within the informal sector and outside the basic protections afforded by law.

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.