

GUATEMALA 2020 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Guatemala is a multiparty constitutional republic. On January 14, Alejandro Eduardo Giammattei Falla of the We're Going for a Different Guatemala Party was sworn into office for a four-year term as president. International observers considered the presidential election held in 2019 as generally free and fair.

The National Civil Police, which is overseen by the Ministry of Government and headed by a director general appointed by the minister, is responsible for law enforcement in the country. The Ministry of National Defense oversees the military, which focuses primarily on operations in defense of the country, but the government also used the army to support the National Civil Police in internal security operations, as permitted by the constitution. Civilian authorities, at times, did not maintain effective control over the security forces. Members of security forces committed some abuses.

Significant human rights issues included: unlawful or arbitrary killings, including extrajudicial killings arranged by government officials; harsh and life-threatening prison conditions; arbitrary arrest and detention; serious problems with the independence of the judiciary; serious restrictions on the press, including violence, threats of violence, or unjustified arrests or prosecutions against journalists; widespread corruption; lack of investigation of and accountability for violence against women; crimes involving violence or threats of violence targeting persons with disabilities, members of indigenous groups, and lesbian, gay, bisexual, transgender, and intersex persons; and use of forced labor, including child labor.

Impunity continued to be widespread. Corruption, concerted efforts by organized criminal actors, and lack of political will made meaningful investigation and prosecution of crimes difficult.

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

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were reports that the government or its agents committed arbitrary or unlawful killings. As of August 31, the Public Ministry, which is responsible for the prosecution of all criminal cases, as well as the Office of Professional

Responsibility of the National Civil Police (PNC), reported two complaints of homicide by police, the same number of complaints as in 2019. The Public Ministry continued to investigate a case of alleged excessive use of force, in which video security surveillance captured PNC officers shooting and killing Edgar Ic Perez after COVID-19 curfew hours on June 17.

The nongovernmental organization (NGO) Unit for the Protection of Human Rights Defenders alleged that at least 14 members of rural and indigenous activist groups were killed or died in disputed circumstances between January and August. Some of the killings appeared to be politically motivated, and all the cases remained under investigation at year's end (see section 6, Indigenous People). In 2019, 15 activists or human rights defenders were killed.

The national government's prosecution of former intelligence chief Jose Mauricio Rodriguez Sanchez continued. Rodriguez Sanchez was accused of genocide against the Maya Ixil community during the country's 36-year internal armed conflict (1960-96). On February 4, a military expert proposed by the Public Ministry testified in the case against Luis Enrique Garcia Mendoza, operations commander under former president Rios Montt. The testimony focused on the chain of command of the Ministry of Defense during that period, both as a means to provide expert witness against the defendants and to identify other officers that might have given the orders. Judge Jimmi Bremer of High-Risk Court C indicted Garcia Mendoza in November 2019 on charges of genocide and crimes against humanity.

The Public Ministry continued investigation of another case for genocide against the Maya Ixil community from the last months of former president Romeo Lucas Garcia's government (1978-82). Three high-ranking military officers, Cesar Octavio Noguera Argueta, Manuel Callejas y Callejas, and Benedicto Lucas Garcia, were charged in this case. According to the ministry, the case involved a minimum of 32 massacres, 97 selected killings, 117 deaths due to forced displacement, 37 cases of sexual assault, and 80 cases of forced disappearance. Many victims were children. In November 2019 the courts found sufficient evidence in the Public Ministry's preliminary investigation to order a deeper investigation. Judge Miguel Angel Galvez scheduled a hearing for September 1 to rule on whether there was sufficient evidence to bring the case to public trial against the three defendants, but the hearing was suspended. The defense filed a request for house arrest for Callejas y Callejas and Lucas Garcia due to the heightened risk of COVID-19 in prison facilities. Judge Galvez denied the request because the defendants' charges made them ineligible for house arrest under the

law. Callejas and Lucas were both previously convicted of serious crimes in the Molina Theissen case and were serving 58-year sentences.

b. Disappearance

There were no reports of new disappearances by or on behalf of government authorities. The Public Ministry continued to investigate and prosecute cases of forced disappearances from the internal armed conflict period. The government did not comply, however, with an order from the high-risk courts, which handle sensitive cases often risky for judges to take on, to create a national commission on the search for disappeared persons and a national registry of victims.

The CREOMPAZ case, named after the Regional Center for UN Peacekeeping Training Institute where a mass burial site for disappeared persons was found, continued for former military officers indicted in 2017 on charges of forced disappearance and crimes against humanity during the 1960-96 armed conflict. The courts needed to resolve several appeals and recusal motions filed in 2016 before a full trial could begin. The defense filed a request for house arrest for two former military officers indicted in the case, Byron Barrientos and Carlos Garavito, due to the heightened risk of COVID-19 in prison facilities. High-Risk Court A denied the request because the defendants' charges made them ineligible for house arrest under the law. Former congressman Edgar Justino Ovalle Maldonado, also charged in the case, remained in hiding after the Supreme Court lifted his immunity from prosecution in 2017.

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

The law prohibits torture and other cruel, inhuman, or degrading treatment or punishment, but there were reports alleging government workers employed them at the Federico Mora National Hospital for Mental Health (see section 6). The Office of the UN High Commissioner for Human Rights (OHCHR) noted that documentation and reporting mechanisms for torture and other cruel, inhuman, or degrading treatment or punishment remained weak, thereby hindering a full understanding of the prevalence of the problem.

According to the Conduct in UN Field Missions online portal, in February an allegation was made that Guatemalan peacekeepers deployed to a UN peacekeeping mission, raped a child. As of October the government was investigating the allegation.

Impunity within the PNC was not a pervasive and systemic issue. Impunity from prosecution for serious crimes within the PNC has generally been in decline for more than a decade, with several high-profile convictions of PNC officers now serving prison sentences. Lesser crimes of negligence and bribery by officers continued, however, with few convictions. Negligence by officers was largely the result of a lack of sufficient training. The law requires officers to hold at least a high school degree, but they often had much less, and some individuals had as little as six months of police training before being sent out on the streets. Small monthly salaries of approximately 4,000 quetzals (\$535) created an incentive to extort bribes. A large number of PNC officers were removed from the force over the past three years based on allegations of bribery. There were also anecdotal reports that the military extorted bribes and arbitrarily and temporarily detained persons when acting in support of the PNC. These instances seemed scattered and not related to military orders.

Prison and Detention Center Conditions

Prison conditions were harsh and potentially life threatening, with multiple instances of inmates killing other inmates. Sexual assault, inadequate sanitation, poor medical care, and significant overcrowding placed prisoners at significant risk. Authorities occasionally held pretrial detainees together with convicted prisoners, juveniles with adults, and male with female detainees.

Physical Conditions: Prison overcrowding was a problem. As of October 8, according to prison authorities, there were 25,691 inmates, including 2,883 women, held in facilities designed to hold 6,997 persons. To ease prison overcrowding, the Rehabilitation Sub-Directorate of the penitentiary system processed 1,519 early release requests from April to October. Better coordination between sentencing judges and defense attorneys led to 750 inmates being granted early release by the courts during the same period.

As of September 22, there were 657 juvenile inmates in four traditional detention centers and the halfway house, which were designed for 549 inmates. Another 1,242 juvenile inmates were held in three new alternative measures facilities. Despite a reduction in overcrowding, there were 271 inmates in the Las Gaviotas juvenile detention facility, designed for 175 individuals. The courts had not sentenced approximately 28 percent of juvenile inmates held in detention.

Physical conditions including sanitation facilities, medical care, ventilation, temperature control, and lighting were inadequate. Prisoners had difficulty obtaining potable water, complained of inadequate food, and often had to pay for additional sustenance. Illegal drug sales and use were widespread.

Prison officials acknowledged safety and control problems, including escape attempts, gang fights, inability to control the flow of contraband goods into prisons, inmate possession of firearms and grenades, and the fabrication of weapons. Prisoners conducted criminal activity both inside and outside of prisons. Media reported that transnational criminal gangs and drug trafficking groups controlled major prisons. According to prison authorities, from January through August 31, at least eight inmates died of unnatural causes while in prison. During the COVID-19 pandemic, at least 39 Barrio 18 gang leaders negotiated their transfer to Fraijanes II, the only detention center with a full clinic for treatment of COVID-19. When prison officials began sending Barrio 18 leaders to other facilities to prevent them from operating the gang from Fraijanes II, gang members took 10 prison guards hostage in El Infiernito Prison and four prison guards hostage at the preventive detention center in zone 18, demanding the return of their leaders to Fraijanes II. In both cases the prison guards were released after 24 hours.

Media and NGOs reported female inmates faced physical and sexual abuse. Female inmates reported unnecessary body searches and verbal abuse by prison guards. Children younger than age four could live in prison with their mothers, but the penitentiary system provided inadequate food for young children, and many suffered from illness. Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights groups stated that other prisoners often sexually assaulted LGBTI individuals, and there were insufficient facilities to protect LGBTI individuals in custody. NGOs claimed admittance procedures for LGBTI prisoners were not implemented, noting particular concern regarding procedures for transgender individuals.

Administration: While the law requires authorities to permit prisoners and detainees to submit complaints to judicial authorities without censorship and request investigation of credible allegations of inhuman conditions, authorities failed to investigate most allegations or to document the results of such investigations.

Independent Monitoring: The government permitted visits by local and international human rights groups, the Organization of American States, public

defenders, and religious groups. The Office of the Human Rights Ombudsman (PDH) and the National Office for the Prevention of Torture, both independent government bodies responsible for ensuring that the rights and wellbeing of prisoners are respected, also periodically visited prison facilities.

Improvements: The Secretariat of Social Welfare improved the juvenile system by opening a training academy and adding a K-9 unit to search for narcotics and cell phones. The adult penitentiary system moved toward a new correctional model that includes polygraphs and training for prison staff. On October 9, the government announced the creation of a unit for electronic monitoring to ease prison overcrowding through greater use of house arrest.

d. Arbitrary Arrest or Detention

The law prohibits 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. Suspects are entitled to challenge in court the legal basis or arbitrary nature of their detention. There was no compensation for those ruled unlawfully detained.

Arrest Procedures and Treatment of Detainees

The law requires presentation of a court-issued warrant to a suspect prior to arrest unless police apprehend a suspect while 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. Authorities did not regularly respect this right. After arraigning suspects, the prosecutor generally has three months to complete the investigation if the defendant is in pretrial detention and six months to complete the investigation if the defendant is granted house arrest. The law prohibits the execution of warrants between 6 p.m. and 6 a.m. unless the government has declared a state of siege. Judges may order house arrest for some suspects. 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 permissible for pretrial detainees.

Arbitrary Arrest: As of August 31, the PNC Office of Professional Responsibility had received two complaints of illegal detention by police, compared with 26 in 2019. Reports indicated police ignored writs of habeas corpus in cases of illegal detention, particularly during neighborhood antigang operations.

Pretrial Detention: As of October prison system records indicated 49 percent of prisoners were in pretrial detention, approximately the same percentage as in 2019 despite court closures due to COVID-19. The law establishes a one-year maximum for pretrial detention, regardless of the stage of the criminal proceeding, but the court has the legal authority to extend pretrial detention without limits as necessary. Authorities regularly held detainees past their legal trial-or-release date. Lengthy investigations and frequent procedural motions by both defense and prosecution often led to lengthy pretrial detention, delaying trials for months or years. Observers noted the slow pace of investigations and lack of judicial resources hampered efforts to reduce pretrial detention and illegal incarceration. Authorities did not release some prisoners after they completed their full sentences due to the failure of judges to issue the necessary court order or other bureaucratic delays.

e. Denial of Fair Public Trial

The law provides for an independent judiciary. The judicial system generally failed to provide fair or timely trials due to inefficiency, corruption, 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. From January through December 11, the Special Prosecutor's Office for Crimes against Judicial Workers and Unionists received 194 complaints of threats or aggression against workers in the judicial branch, compared with 70 from January to August 2019.

The existing selection process for the election by the congress of 13 Supreme Court and 135 appellate court magistrates suffered widespread manipulation of selection committees by politicians, judicial operators, and other influential citizens, resulting in a judiciary that lacked full independence. In September 2019 the Constitutional Court halted the selection process for Supreme Court and appellate court magistrates, ruling that formal evaluation procedures were not followed within the selection committees. The selection committees provided a list to congress of 270 candidates for the appellate courts on February 14 and a list of 26 candidates for the Supreme Court on February 19. Public Ministry investigations found Gustavo Alejos, former chief of staff under President Alvaro Colom in prison on corruption charges, accepted at least 20 visits from officials associated with the selection process in his hospital ward on February 12-16. The Constitutional Court issued a final ruling on May 6 requiring removal of

candidates associated with Gustavo Alejos and a voice vote for each position in congress. The new magistrates should have taken office in October 2019. As of November 30, congress had not started the election of judges, and the sitting Supreme Court and appellate court judges remained in their positions.

On June 25, the Supreme Court granted an immunity review/impeachment against four Constitutional Court magistrates and sent the case to congress for further action and a plenary session vote. The Constitutional Court then granted an injunction against the Supreme Court that ordered congress to halt its proceedings. On June 28, Congress responded by filing a criminal complaint against the four Constitutional Court magistrates. Civil society organizations largely interpreted impeachment to be a retaliatory measure against Constitutional Court magistrates that stood in the way of influence peddling in the selection of magistrates.

Trial Procedures

The constitution provides for the right to a fair and public trial, the presumption of innocence, the defendant's right to be present at trial, and the right to legal counsel in a timely manner. The law requires the government to provide attorneys for defendants facing criminal charges if the defendant cannot find or afford an attorney. Defendants and their attorneys may confront adverse witnesses and present their own witnesses and evidence. The law provides for "abbreviated processing," similar to plea bargaining, for minor offenses with short-term prison sentences and the right of appeal. Three-judge panels render verdicts. The law provides for oral trials and mandates free language interpretation for those needing it; however, interpreters were not always available, including for indigenous victims in the high-risk courts. Officials conduct trials in Spanish, the official language, although many citizens speak only one of the 23 officially recognized indigenous languages.

The Public Ministry, acting independently of the executive branch but dependent on funding that goes through congress, 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.

Most courts closed at the outbreak of COVID-19 in mid-March while the judicial system created sanitation protocols and amended regulations to allow virtual hearings. Courts began reopening in June, with individual judges allowed to decide whether to return to work and whether to hold court virtually. The judicial system reported 40,000 hearings were cancelled by June. The system was working

through the backlog, but as a result of the closure, conviction rates for most crimes were lower than in 2019.

International and domestic observers considered the number of judges insufficient. Lack of sufficient personnel, training, and evidence hampered Public Ministry prosecutors' ability to bring cases to trial.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Individuals and organizations have access to administrative and judicial remedies to submit 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 inefficiencies and a legal system that often permits spurious complaints.

Property Restitution

Negotiations between the government and families affected by the construction of the Chixoy hydroelectric dam continued. As of October the government had paid approximately 99 percent of the 200 million quetzals (\$26 million) in individual reparations to families affected by the dam. During the dam's construction from 1975 to 1985, more than 400 individuals died and thousands were displaced.

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

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

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The law provides for freedom of expression, including for the press, and the government generally respected this right. The intimidation of, and violence against, journalists resulted in significant self-censorship, however.

Freedom of Speech: Independent journalist Sonny Figueroa claimed harassment after he published a report claiming the director of the presidential commission Centro de Gobierno, Miguel Martinez, engaged in nepotism. Figueroa said the government denied him access to press events, and PNC officers harassed him on multiple occasions after he published the report.

Freedom of Press and Media, Including Online Media: Independent media were active and expressed a wide variety of views. Nonetheless, reporters covering organized crime, including its links to corrupt public officials, acknowledged practicing self-censorship due to the danger investigative journalism created for them and their families.

Lower advertising revenue, whether due to the COVID-19 pandemic or as pressure from companies against reports of corruption, resulted in media outlets becoming less independent.

Violence and Harassment: Members of the press reported receiving pressure, threats, and retribution from public officials and criminal organizations regarding the content of their reporting. Online attacks against independent journalists and media outlets continued throughout the year. These included hacking journalists' private social media accounts, publishing stolen or falsified personal information, and conducting apparent coordinated attempts to undermine specific journalists and the press.

On February 27, unidentified gunmen entered journalist Bryan Guerra's home and killed him. Before the incident, Guerra had reported threats on social media. On November 10, unidentified assailants on motorcycles attacked television director Mario Ortega in Post San Jose. Ortega died from his injuries on November 15. Media reported he had received telephone calls demanding extortion money.

The PNC arrested Anastasia Mejia, director of a local television and radio service, following her live radio and video reporting on an August 24 protest at the Joyabaj mayor's office that resulted in damage to municipal property. Mejia was a vocal critic of the mayor and reported on allegations of corrupt practices by the mayor in awarding public contracts. As of November, Mejia's case was under investigation in the Public Ministry's Municipal Prosecution Office of Joyabaj. On October 28, Judge Susy Perez formally charged Mejia with sedition, attempted acts of violence, aggravated arson, and aggravated robbery. Judge Perez granted Mejia bail while her trial continued.

Public hearings began on November 16 in the “Journalists Case,” in which former congressman Julio Antonio Juarez Ramirez was accused of ordering the murders of two journalists in Suchitepequez in 2015.

The government failed to establish a journalist protection program, a commitment the country accepted in 2012 during the Universal Periodic Review of the UN Human Rights Council. In December 2019 the Public Ministry inaugurated the Prosecutor’s Office for Crimes against Journalists. The office reported 73 complaints of attacks or threats against journalists from January to August, compared with 51 during the same period of 2019, and one homicide compared with none reported in the same period of 2019.

Nongovernmental Impact: Organized crime exerted influence over media outlets and reporters, frequently threatening individuals for reporting on criminal activities.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.

Human rights defenders, journalists, as well as judges and lawyers on high-profile cases, reported social media attacks, including the hacking of their private social media accounts, publishing of stolen or falsified personal information, publishing of photographic surveillance of them and family members, and online defamation and hate speech. The government took little action to protect these individuals.

Academic Freedom and Cultural Events

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

b. Freedoms of Peaceful Assembly and Association

The constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights. The Giammattei administration made ample use of states of exception, declaring 11 states of siege or prevention in various departments. The stated reasons for states of exception were combatting armed groups, preventing violence, resolving land conflict, and

controlling a migrant caravan from Honduras. States of exception limit certain constitutional rights, including freedoms of association, assembly, and movement.

On February 11, congress passed the NGO Reform Law, which allows the government to cancel the registration of NGOs that it judged to be disturbing social order or breaking regulations. Under the law NGOs must register with up to half a dozen ministries, report international donations and income to the tax authority, and reregister any changes in function. President Giammattei signed the bill on February 27, but on March 2, the Constitutional Court granted a provisional injunction against the law for potential unconstitutionality.

Starting on November 21, thousands of demonstrators gathered in the capital and other cities across the country, protesting corruption and an opaque and irregular process used by the congress for the proposed 2021 national budget law. The government generally respected protesters' right to freedom of peaceful assembly and association. When a small group of individuals committed acts of vandalism and arson on November 21, including breaking into and setting fires inside the congressional building, the PNC used tear gas and nonlethal force to disperse the crowd. Protests continued over more than a two-week period. Media reports indicated the PNC displayed excessive use of force, which the PNC Internal Affairs Unit was investigating. On November 27, a justice of the peace ruled that PNC arrests on November 21 lacked merit and ordered a Public Ministry investigation of the PNC officers who participated in the arrests. PNC commanders ordered removal of all officers' batons to avoid any perception of abuse.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights. States of siege or prevention place limits on freedom of movement. Therefore, at certain points for up to 30 days, citizens in the affected areas did not have this right. As part of the COVID-19 pandemic response, the government also temporarily limited interdepartmental travel.

In support of public health, the government enacted a curfew as part of the state of calamity declared in response to COVID-19, with start times varying from late afternoon to early evening and end times in the early morning hours. During this time only emergency workers and food delivery service were allowed to circulate. The PNC reported 42,842 persons were arrested from March to September for breaking curfew, including two members of congress.

e. Status and Treatment of Internally Displaced Persons

The Office of the UN High Commissioner for Refugees (UNHCR) expressed concern regarding violence against internally displaced persons (IDPs). The country does not officially recognize the existence of IDPs within its borders, with the exception of those displaced by climate change and natural disasters. The OHCHR reported more than 100 families were displaced from the Maya Biosphere Reserve in 2017. The report added the families had not received adequate government assistance and continued to struggle with poverty and landlessness. The Internal Displacement Monitoring Center reported 21,000 new displacements as of November 15, the majority the result of rainy and cold seasons as well as the impact of hurricanes.

f. Protection of Refugees

The government cooperated with UNHCR and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

Abuse of Migrants and Refugees, and Stateless Persons: In August, UNHCR reported the violent death of a Salvadoran transgender asylum seeker in Guatemala and highlighted the increased risks and protection needs of the LGBTI community.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. UNHCR reported that identification and referral mechanisms for potential asylum seekers were inadequate, and despite regulations published in 2019, there continued to be gaps and lack of clarity in the procedures for implementing the legal framework. According to UNHCR, due to the centralized nature of the asylum procedures and documentation issuance, asylum seekers outside the capital faced significant obstacles, especially after the outbreak of the pandemic, which made travel to and from the capital often impossible. In response to the pandemic, the government closed the borders. With the intervention of central authorities and

the PDH, those in need of protection were able to access the asylum process, although as of December none of the 440 cases filed during the year were adjudicated. The government and UNHCR signed a memorandum of understanding, published in September 2019, to significantly strengthen the asylum and protection system and increase capacity to process asylum seekers.

Access to Basic Services: UNHCR reported documentation needed to access government services, including health care, could cost in excess of 1,500 quetzals (\$200), a prohibitive sum for some refugees. The government did not offer exceptions or reduced cost documents. Furthermore, UNHCR reported access to education for refugees was difficult due to the country's onerous requirements for access to formal education, including documentation from the country of origin. A 2019 ministerial education agreement helped to ease that burden by creating mechanisms that allow asylum seekers who might not have full documentation of prior education to be integrated into the education system. Adult asylum seekers often could not obtain accreditation of their foreign university degrees to practice their profession.

Section 3. Freedom to Participate in the Political Process

The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on nearly universal and equal suffrage for those aged 18 and older. Members of the armed forces, police, and incarcerated individuals are not eligible to vote.

Elections and Political Participation

Recent Elections: The Organization of American States and other international observers found some irregularities in the electoral process for the June and August 2019 elections, but none was significant enough to discredit the legitimacy and validity of the elections. President Alejandro Giammattei and the elected congressional deputies took office in January 2020 without disturbance. The Public Ministry continued to investigate allegations of illicit campaign financing in the 2015 elections, including a case against Sandra Torres and the National Unity of Hope Party. A substitute judge in High-Risk Court A granted Sandra Torres house arrest during her pretrial detention.

Participation of Women and Members of Minority Groups: No laws limit participation of women or members of minority groups in the political process and they did, to an extent, participate. Traditional and cultural practices, discrimination

and institutional bias, and difficulty traveling to polling places in rural areas, however, limited participation of women and members of indigenous groups. There were two women serving in the 13-member cabinet, 31 in the 160-member congress, and nine among the 340 municipal mayors. While the indigenous population constituted an estimated 43 percent of the population, according to the 2018 government census, indigenous representation in national government was minimal. There was one indigenous member on the Constitutional Court and one on the Supreme Court. There were approximately 16 indigenous members of congress, of whom four were women. Indigenous individuals composed approximately one-third (90 of 340) of the mayoral seats elected in 2019.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, but officials frequently engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year, including money laundering, illegal political party financing, and bribery, many of which the Public Ministry investigated and prosecuted.

To continue the fight against corruption after the expiration of the International Commission against Impunity in Guatemala's mandate on January 21, the Giammattei administration declared the creation of the Presidential Commission against Corruption, with entry into force on January 22. Civil society organizations expressed concern regarding the new commission's perceived lack of independence from the Giammattei administration.

As of October, Juan Francisco Sandoval, lead prosecutor for the Public Ministry's Special Prosecutor's Office Against Impunity, had received more than 40 administrative and judicial complaints launched by the former military group Foundation Against Terrorism, Gustavo Alejos, and former Guatemalan ambassador to the United States Julio Ligorria, among others. Three judges in the high-risk courts also incurred a litany of complaints. Civil society organizations noted the lengthy and costly judicial process for the defendants to resolve the complaints, even when the complaints themselves had little or no basis of proof.

Corruption: Former communications minister Alejandro Sinibaldi voluntarily returned to Guatemala and surrendered to authorities on August 24. Sinibaldi was implicated in the Odebrecht case, involving bribes allegedly paid to himself and former presidential candidate Manuel Baldizon; the Construction and Corruption case, in which Sinibaldi was accused of money laundering and paying bribes while

communications minister from 2012 to 2014; the Transurbano security case, involving alleged siphoning of approximately one million quetzals (\$140,000) from security contracts for public transit; and a case of alleged illegal campaign financing in 2011.

The Transurbano case, involving former president Alvaro Colom, 10 of his ministers, and former chief of staff Gustavo Alejos, was delayed by several complaints filed by Gustavo Alejos against Judge Eduardo Cojulum. In 2008 the ministers signed an agreement that allowed the Urban Bus Company to form anonymous corporations and begin syphoning funds from a prepaid fare program.

The case known as Cooptation of the State continued against former president Otto Perez Molina, former vice president Roxana Baldetti and her chief of staff Juan Carlos Monzon, and dozens of coconspirators for illegal campaign financing, money laundering, and illegal payments for public contracts, among other charges. Several injunctions filed by the multiple defendants continued to stall the case.

Financial Disclosure: Public officials who earn more than 8,000 quetzals (\$1,030) per month or who manage public funds are subject to financial disclosure laws overseen and enforced by the Comptroller General's Office. The financial disclosures were available to the public upon request. Administrative and criminal sanctions apply for inadequate or falsified disclosures of assets.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses 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. Many of these groups, however, were the subject of harassment and threats, and they faced pressure and attacks from government actors.

A number of NGOs, human rights workers, and trade unionists reported threats, violence, and intimidation. The NGO Unit for the Protection of Human Rights Defenders (UDEFEGUA) reported 10 killings of human rights defenders from January through June and 677 attacks against human rights defenders in the same period, compared with 494 attacks in all of 2019. According to UDEFEGUA, attacks related to land disputes and exploitation of natural resources, involving mainly indigenous communities, increased drastically after COVID-19 restrictions were implemented, affecting 70 communities between January and June. NGOs

asserted the government did little to investigate the reports or prevent further incidents.

NGOs also reported the government, fringe groups, and private entities used threats of legal action as a form of intimidation. According to UDEFEGUA, from January to June, there were at least 13 new unfounded judicial cases filed against human rights defenders. As of October the Foundation Against Terrorism, led by Ricardo Mendez Ruiz, had on file more than 100 cases, both civil and criminal, against human rights and transitional justice NGOs, human rights defenders, and judicial workers.

The United Nations or Other International Bodies: The mandate of the UN International Commission against Impunity in Guatemala (CICIG) expired in September 2019 and was not renewed as it had been in previous years. CICIG cases were transferred to the Special Prosecutor's Office against Impunity in the Public Ministry. Subsequently, local CICIG employees reported harassment and spurious lawsuits for performing their duties for CICIG.

Government Human Rights Bodies: The PDH monitors the human rights set forth in the constitution and reports to congress. The PDH opposed several congressional bills during the year, including the NGO law (see section 2.b.). On July 8, the Congressional Committee on Human Rights voted to bring the ombudsman to a congressional plenary session to answer questions regarding the display of the LGBTI pride flag at the PDH offices and the circulation of a reproductive rights pamphlet after the Supreme Court banned the promotion of abortion. Civil society NGOs speculated the PDH was brought to congress as an intimidation tactic, perhaps even to call a dismissal vote. While the PDH attempted to operate independently and issued public reports and recommendations as in past years, congress applied significant political pressure, including threats to withhold the PDH's funding. NGOs generally considered the Office of the PDH to be an effective institution with limitations in rural areas due to lack of resources.

The Congressional Committee on Human Rights drafts and provides guidance on legislation regarding human rights. The law requires all political parties represented in congress to have a representative on the committee. Some NGOs did not consider the committee to be an effective forum for human rights promotion and protection.

The President's Commission on Human Rights formulates and promotes human rights policy, represents the country in international human rights forums, enacts

international recommendations on human rights, and leads coordination of police protection for human rights and labor activists.

On July 30, President Giammattei announced a new 11-member, ministerial-level Presidential Commission for Peace and Human Rights to replace the President's Commission; the Secretariat for Peace (created to enact government commitments in the 1996 Peace Accords); and the Secretariat of Agricultural Affairs, which mediates land conflict. Starting on August 1, the three had 90 days to transfer their files to existing institutions such as the PDH and the Secretariat for Planning and Programming. Civil society expressed concern that dissolving the President's Commission could lead to a lack of mechanisms for enacting the recommendations of international forums, such as the Inter-American Commission on Human Rights, and could result in restarting the process for creating a national plan for the protection of human rights defenders. It also was not clear which government entity would continue negotiations for Chixoy reparations. Civil society representatives said that dissolving the Secretariat for Peace could lead to a lack of mechanisms for payment of reparations to victims of the armed conflict and the loss of important files that could be used as evidence in transitional justice cases.

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

Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, and sets penalties between five and 50 years in prison. Police had minimal training or capacity to investigate sexual crimes or assist survivors of such crimes, and the government did not enforce the law effectively. Rape and other sexual offenses remained serious problems.

The government took steps to combat femicide and violence against women. The judiciary continued to operate a 24-hour court in Guatemala City to offer services related to violence directed toward women, including sexual assault, exploitation, and trafficking of women and children. The judiciary also operated specialized courts for violence against women throughout the country, but not in every department. The Public Ministry maintained a 24-hour victim service center to provide medical, psychosocial, and legal support to victims, including restraining orders for their immediate protection. The ministry also maintained a national alert system for finding disappeared women. Sexual violence remained widespread despite these advances. The ministry reported that 3,684 women were victims of rape from January to August, compared with 6,231 women in the previous year.

NGOs partially attributed the lower number of cases filed to barriers to accessing the Public Ministry during the COVID-19 pandemic, including modified working hours for Public Ministry offices.

The law establishes penalties for femicide of 25 to 50 years in prison without the possibility of reducing the sentence; however, femicide remained a significant problem. The NGO Mutual Support Group reported that from January to August, 302 women were killed, compared with 477 in the same period in 2019.

According to judicial system data, 34 persons were convicted of femicide from January to November.

Violence against women, including sexual and domestic violence, remained widespread and serious. The law establishes penalties of five to eight years for physical, economic, and psychological violence committed against women due to their gender. As the government closed down nonessential businesses and most forms of travel, imposing a strict curfew for COVID-19, several NGOs, international organizations, and the government noted an increase in domestic abuse and violence against women. Data was scarce and difficult to collect, as some analysts noted women were not able to leave their homes to report abuses confidentially to police. Mutual Support Group estimated that domestic violence cases increased by nearly 200 percent compared with the previous year, noting 2,657 cases of “intrafamily violence” in the first six months. The Public Ministry recorded 39,399 instances of violence against women from January to August, compared with 40,993 in the same period of 2019. The ministry noted that the judicial system convicted 424 perpetrators of violence against women from January to August, compared with 1,149 in the same period of 2019.

In January, PNC officers arrested Francisco Cuxum Alvaradeo, 64, immediately after his deportation from the United States. The Public Ministry indicted him on charges of crimes against humanity and aggravated sexual assault against 36 Maya Achi women in Rabinal between 1981 and 1985. The Public Ministry indicted seven other defendants, former members of the civil defense patrols, on the same charges in 2018. The case against Cuxum was in the presentation of evidence phase, awaiting a resolution regarding the opening of a public trial. Cuxum’s case reopened the overall Maya Achi sexual violence case, which had remained blocked after a previous judge dismissed the charges against the seven other defendants and ordered their release. The case remained mired in a series of unresolved appeals.

Sexual Harassment: Although several laws refer to sexual harassment, no single law, including laws against sexual violence, address it in a direct manner. Human rights organizations reported sexual harassment was widespread.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

Discrimination: Although the law establishes the principle of gender equality, women, and particularly indigenous women, faced discrimination and were less likely to hold management positions.

Children

Birth Registration: Children derive citizenship by birth within the country or from their parents. UNICEF described low birth registration as a “serious problem,” and UNHCR reported problems in registering births were especially acute in indigenous communities due to inadequate government registration and documentation systems. Lack of registration restricted children’s access to some public services and created conditions that could lead to statelessness.

Education: While primary education is free and compulsory through age 15, access was limited in many rural areas; education through the secondary level is not obligatory. International observers noted boys were prioritized for high school education in rural communities due to the need to travel long distances and girls’ perceived value in the home. UNICEF criticized the government’s education plan during the COVID-19 pandemic, citing its exclusively distance-learning education plan as unrealistic and discriminatory against most indigenous children, who lacked access to stable internet connections and computers.

Child Abuse: Child abuse remained a serious problem. A unit under the Office of the Special Prosecutor for Crimes against Children and Adolescents handled child abuse cases. The Public Ministry opened an integrated 24-hour care model providing medical, psychosocial, and legal support to children and adolescent victims of violence. The ministry reported 4,001 reports of abuse of minors of all types, approximately 3,000 fewer than in 2019. The ministry reported 14 convictions for child abuse from January through August, compared with 54 during the same period in 2019. Closure of the courts for COVID-19 affected convictions for these cases.

NGOs supporting at-risk youth reported adolescents detained by police were subject to abusive treatment, including physical assaults.

Child, Early, and Forced Marriage: The legal age for marriage is 18. There continued to be reports of early and forced marriages in some rural indigenous communities and in the Lev Tahor religious community, but the National Registry of Persons reported no attempted registration of underage 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 law prohibits child pornography and establishes penalties of six to 10 years in prison for producing, promoting, and selling child pornography and two to four years' imprisonment for possessing it. The Public Ministry and the PNC conducted several raids against alleged online child pornography networks. The Regional Unit against Trafficking in Persons, responsible for eight departments in the Western Highlands and launched in 2018, expanded the government's investigative capacity against child pornography offenders. The commercial sexual exploitation of children, including child sex tourism, remained a problem, including in privately run orphanages.

Displaced Children: Criminals and gangs often recruited street children, many of them victims of domestic abuse, for purposes of theft, extortion, prostitution, transporting contraband, and conducting illegal drug activities.

Institutionalized Children: More than 500 children and adolescents lived in shelters operated by the Secretariat for Social Welfare (SBS). In 2019 the Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons transferred control of three shelters to the SBS, as mandated by the government. Observers noted the SBS responsibly maintained and improved the shelters despite fears from human rights observers that the transfer happened too soon and the SBS was not prepared to handle control of the shelters.

Overcrowding was common in both private and SBS shelters, and government funding for orphanages remained limited. Local and international human rights organizations, including Disability Rights International, raised concerns that child abuse was rampant. The OHCHR reported Hogar Esperanza, a private shelter for orphans and child victims of violence, sheltered children with disabilities but had no specialists able to care for them. The OHCHR also reported Hogar Esperanza

was housing children in spaces that resembled cages. The OHCHR stated private shelters were often better than SBS shelters, but in cases like Hogar Esperanza, there was a clear need for reform to care adequately for children with disabilities.

Former SBS secretary Carlos Rodas and former deputy secretary for protection and shelter services Anahi Keller remained in pretrial detention with four others on charges of murder, abuse of authority, breach of duty, and abuse against minors following the deaths of 41 girls in a 2017 fire at the Hogar Seguro orphanage. As of October the case remained locked in a series of unresolved appeals and delays. The Constitutional Court ruled in July that the court in charge of the trial must accept evidence on the nature of the fire that was previously rejected in 2018. Some nongovernment analysts noted the judges might be intentionally delaying the Hogar Seguro case to wait for the new appeals court judges to be appointed, a process delayed since 2019. There were also accusations the judges intentionally delayed the case because the defendants were close to former president Jimmy Morales; several judges recused themselves from the case amid allegations of bias in favor of the defendants. The government did not make significant structural changes to the national system following the Hogar Seguro fire.

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 *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

Anti-Semitism

The Jewish population numbered approximately 1,500. Jewish community representatives reported no anti-Semitic incidents as of October.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

Persons with Disabilities

The constitution contains no specific prohibitions against discrimination based on physical, sensory, intellectual, or mental disabilities. The law, however, mandates equal access to public facilities and provides some other legal protections. In

many cases, however, the law was not enforced. The law does not mandate that persons with disabilities have access to information or communications.

There was no reliable data on the prevalence of disabilities in the school-age population, but the National Council for Persons with Disabilities reported 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. Most schools and universities did not have facilities accessible to persons with disabilities.

The Federico Mora National Hospital for Mental Health, the only public health-care provider for persons with mental illness, lacked basic supplies, equipment, hygienic living conditions, and adequate professional staff. The OHCHR reported the hospital housed persons with physical disabilities in the same wards as patients with mental health needs. Media and human rights organizations reported mistreatment of residents, including physical, psychological, and sexual violence by other residents, guards, and hospital staff, especially against women and children with disabilities. Disability Rights International and other human rights organizations continued to monitor the hospital for its history of employees trafficking women into sexual exploitation. Multiple legal actions were pending against the hospital.

The OHCHR reported the government's COVID-19 response did not adequately address the needs of persons with disabilities. The OHCHR received complaints from individuals with mobility restrictions who could not leave their homes due to the curfew and suffered from profound hunger. The government also did not make exceptions for persons on the autism spectrum and others who suffered distress from lack of physical space during lockdown. One public hospital for persons with disabilities, the Social Security Institute for Physical Rehabilitation, was closed to convert it into a hospital for COVID-19 patients. The OHCHR reported the government did not create a plan to continue rehabilitation care in another location. In response to the November tropical depression and hurricane, the government ordered evacuations but did not have the means to provide information or assist citizens with disabilities. The OHCHR reported one deaf teenager was ordered to evacuate but did not receive information on how to find shelter.

Indigenous People

The government's National Institute of Statistics estimated indigenous persons from 24 ethnic groups made up 44 percent of the population. The law provides for equal rights for indigenous persons and obliges the government to recognize, respect, and promote the lifestyles, customs, traditions, social organizations, and manner of dress of indigenous persons. The government does not, however, recognize particular indigenous groups as having a special legal status provided by national law.

Indigenous communities were underrepresented in national politics and remained largely outside the political, economic, social, and cultural mainstream. This was mainly due to limited educational opportunities (contrary to law), limited communication regarding their rights, and pervasive discrimination. Government agencies dedicated to supporting indigenous rights lacked political support. These factors contributed to disproportionate poverty and malnutrition among most indigenous populations.

Indigenous lands were not effectively demarcated, making the legal recognition of titles to the land problematic. Indigenous rights advocates asserted that security authorities' lack of familiarity with indigenous norms and practices engendered misunderstandings.

Indigenous representatives claimed actors in a number of regional development projects failed to consult meaningfully with local communities. In some cases indigenous communities were not able to participate in decisions affecting the exploitation of resources in their communities, including energy, minerals, timber, rivers, or other natural resources. They also lacked effective mechanisms for dialogue with the state to resolve conflicts.

The Russian conglomerate Solway, which bought the Fenix nickel mine in Izabal Department in 2014, continued to stand accused of violence against indigenous activists and illegal extraction of undeclared materials. Observers in Izabal reported that as of September, the mine continued operations despite the 2019 court order to suspend activities. Observers reported that Solway employees were giving baskets of food and other bribes to locals to keep them from protesting the mine, as protests routinely disrupted mine operations. Observers also reported Solway was believed to have bribed municipal officials in El Estor to keep news of a COVID-19 outbreak on the mine compound from becoming public. The 2019 Constitutional Court order required the provisional closure of the mine until the Ministry of Energy and Mines conducted consultations compliant with Convention 169 of the International Labor Organization (ILO) with local communities.

Xinka authorities reported the court-ordered consultations were not progressing in regards to the San Rafael mine. In 2018 the Constitutional Court ordered the Ministry of Energy and Mines to hold ILO Convention 169-compliant consultations with Xinka populations and upheld the suspension of the operating license of the San Rafael Mine until after conclusion of the consultations.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity

Extreme violence against LGBTI persons remained a persistent issue. According to OHCHR observations, there were more than 13 killings of LGBTI persons from January to October in which the violence could plausibly be linked to the victims' sexual orientation. The local NGO National Network for Sexual Diversity and HIV, as well as the Lambda Association, reported that 16 LGBTI persons had been killed as of October, including several transgender individuals who the NGOs believed were targeted due to their sexual orientation. Lambda reported that most homicides and general crimes of prejudice against LGBTI persons occurred either in the capital, Guatemala City, or in the regions of Izabal and Jalapa. LGBTI groups claimed LGBTI women experienced specific forms of discrimination, such as forced marriages and "corrective" rape intended to cause pregnancy, although these incidents were rarely, if ever, reported to authorities.

According to LGBTI activists, gay and transgender individuals often experienced police abuse. LGBTI human rights groups stated, for example, that police regularly engaged in extortion and harassed male and transgender individuals whom they alleged to be sex workers.

Lambda and other LGBTI organizations reported a lack of will on the part of police to investigate fully hate crimes and violence against LGBTI persons. In August, for example, assailants killed a Salvadoran transgender woman in Guatemala City, likely due to her LGBTI identity, according to Lambda. The woman was applying for asylum in Guatemala due to discrimination in her own country. Lambda reported that police had largely abandoned investigating the case despite the victim's mother claiming to have information on the identities of the perpetrators.

The law does not extend specific antidiscrimination protections to LGBTI individuals based on their sexual orientation, gender identity or expression, or sex characteristics.

There was general societal discrimination against LGBTI persons in access to education, health care, employment, and housing. The government made minimal efforts to address this discrimination.

HIV and AIDS Social Stigma

Discrimination on the basis of HIV/AIDS status is prohibited by law. Societal discrimination against persons with HIV or AIDS remained a problem, however, despite efforts by the Ministry of Health to address it. Forms of discrimination included being required by some government authorities to reveal HIV/AIDS test results to receive certain public benefits or from employers in order to be hired. In addition, patients with HIV or AIDS experienced discrimination from medical personnel when receiving services at some public hospitals and clinics, and they had their right to confidentiality violated by disclosure of their status. Discrimination against LGBTI persons with HIV or AIDS was particularly common and affected access to HIV-prevention programs, especially for transgender individuals.

Other Societal Violence or Discrimination

Vigilante mobs attacked and killed those suspected of crimes such as rape, kidnapping, theft, or extortion on several occasions. The NGO Mutual Support Group reported three persons were lynched and 45 injured in attempted lynchings by vigilante groups from January through August.

On June 6, villagers in San Luis, Peten, killed Domingo Choc, an indigenous spiritual guide and expert on medicinal plants and traditional healing methods. The mob confronted Choc in his house, where they beat him and burned him to death on allegations that he was practicing witchcraft. The mob violence was widely circulated in social media and caught national and international attention, due to its graphic nature and Choc's ties with the anthropology departments of University of College London and Zurich University for research on indigenous healing practices. Multiple local NGOs and international organizations raised the killing as evidence of continued violent discrimination against indigenous peoples and their belief systems. While police continued to investigate the incident, observers and analysts noted the perpetrators, caught on video, seemed to be primarily motivated by religious animus against traditional Mayan spiritual practices and traditions, accusing Choc of being a witch. President Giammattei

strongly condemned the incident and convened an interfaith group to discuss the need to prevent violence against indigenous spiritual guides in the future.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers, with the exception of security force members, to form and join trade unions, conduct legal strikes, and bargain collectively. The law, however, places some restrictions on these rights. For example, legal recognition of an industrywide union requires that the membership constitute a majority of the workers in an industry and restricts union leadership to citizens. Ministries and businesses are required to negotiate only with the largest union, as determined by annual membership. The law prohibits antiunion discrimination and employer interference in union activities and requires employers to reinstate workers dismissed for organizing union activities. A strike must have the support of the majority of a company's workforce. Workers are not restricted to membership in one union or one industry.

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 may address grievances by means of conciliation for collective disputes and arbitration directly through the labor courts. For sectors considered essential, arbitration is compulsory if there is no agreement after 30 days of conciliation. During the six successive states of calamity declared between March and September 30 due to the COVID-19 pandemic, no union attempted a strike, although were strikes expressly prohibited. The Solidarity Center said the trade union leadership was largely inactive, and only one member of the National Confederation of Christian Trade Unions' labor observatory continued substantive work during the pandemic.

The law prohibits employer retaliation against workers engaged in legal strikes. If authorities do not recognize a strike as legal, employers may suspend or terminate workers for absence without leave. A factory or business owner is not obligated to negotiate a collective bargaining agreement unless at least 25 percent of workers in the factory or business are union members and request negotiations. Once a strike

occurs, companies are required to close during negotiations. Strikes were extremely rare, but work stoppages were common.

The government did not effectively enforce the law. Government institutions, such as the Ministry of Labor and the labor courts, did not effectively investigate, prosecute, or punish employers who violated freedom of association and collective bargaining laws. Penalties were not commensurate with those for other laws involving denials of civil rights, such as discrimination. Labor courts also failed to compel compliance with reinstatement orders, including payment of back wages, for workers illegally dismissed for engaging in union activities. The Public Ministry was ineffective in responding to labor court referrals for criminal prosecution in cases where employers refused to comply with labor court orders. Like other courts, the labor courts also largely closed from March to June due to COVID-19.

The Ministry of Labor has the authority to sanction employers for violating union and collective bargaining rights. Business groups complained the time frame to investigate and verify compliance with Ministry of Labor remediation orders was too short and resulted in more cases being referred to the labor courts without an opportunity to conciliate. Worker representatives reported no significant improvement in compliance with the law as a result of the new sanction authority, noting that the inspectorate emphasized collection of fines, which now go to the labor inspectorate, over remediation of the underlying violations. Lack of information about the law's implementation made it difficult to assess its impact on improving labor law enforcement.

The Unit for Crimes against Unionists within the Office of the Special Prosecutor for Human Rights in the Public Ministry was responsible for investigating attacks and threats against union members as well as for noncompliance with judicial orders in labor cases. Staffing for the unit remained stagnant, and successful prosecutions remained a challenge exacerbated by the pandemic.

The National Tripartite Commission on Labor Relations and Freedom of Association encouraged social dialogue between the Ministry of Labor, unions, and businesses, and monitored and facilitated implementation of the 2013 ILO roadmap and its 2015 indicators.

Three subcommissions established under the National Tripartite Commission--on legislation and labor policy, on mediation and dispute settlement, and on implementation of the roadmap--held meetings during the year. In November the

subcommission on implementation of the roadmap presented its full report in Geneva. The mediation and dispute settlement subcommission developed the capacity of governmental, union, and business members to mediate labor conflicts, with the ILO providing technical support and training. The subcommission on labor and legislation made a diagnostic analysis of labor law and drafted reforms.

Prior reports demonstrated a lack of progress in all nine elements of the roadmap except sanctions on labor violations. After being inactive in the first quarter of the year, the National Tripartite Commission met virtually after March. The Ministry of Government did not convene the Interagency Committee to Analyze Attacks against Human Rights Defenders, including trade unionists, on a regular basis due to the pandemic. On October 26, the Ministry of Government reconvened the committee through a published ministerial agreement. Two days later, and without explanation, the committee was closed again through another ministerial agreement.

The country did not demonstrate measurable progress in the effective enforcement of its labor laws, particularly those related to freedom of association and collective bargaining. Labor officials pointed to the pandemic as the reason for lack of enforcement. Violence and threats against trade unionists and labor activists remained serious problems, although COVID-19 prevented serious attempts to document cases, and much of the formal sector was inactive from March through September. From January to September, the Solidarity Center registered three violent attacks, 13 death threats, and 10 acts of criminalization and defamation against trade unionists and labor activists. Authorities did not thoroughly investigate most acts of violence and threats and often discarded trade union activity as a motive from the outset of the investigation, allowing these acts to go unprosecuted. Several labor leaders reported death threats and other acts of intimidation. The Special Prosecutor's Office for Crimes against Judicial Workers and Unionists reported that by December 11, it had received 244 complaints of crimes or offenses against trade unionists and labor activists compared with 487 complaints from January to August 31, 2019.

Procedural hurdles, restrictions on and delays in forming unions, and impunity for employers rejecting or ignoring court orders limited freedom of association and collective bargaining. Government statistics on attempted union registrations indicated most registrations were initially rejected, and when they were issued, it was after the legally established period. In addition credentials of union leaders were regularly rejected and delayed. As a result union members were left without additional protections against antiunion retaliation.

Employers routinely resisted attempts to form unions, delayed or only partially complied with agreements resulting from direct negotiations, 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 the Public Ministry alleging employer retaliation for union activity. Common practices included termination and harassment of workers who attempted to form unions, creation of illegal company-supported unions to counter legally established unions, blacklisting of union organizers, threats of factory closures, and deliberate failure to register unionized workers for certain government benefits. Local unions reported businesses used fraudulent bankruptcies, ownership substitution, and reincorporation of companies to circumvent legal obligations to recognize newly formed or established unions, despite legal restrictions on such practices.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. The government failed to enforce the law effectively. Reports persisted of men and women subjected to forced labor in agriculture and domestic service. Penalties were not commensurate with those for other analogous serious crimes, such as kidnapping. Criminal penalties for forced labor range from eight to 18 years' imprisonment and a fine. The government has specialized police and prosecutors who handle cases of human trafficking, including forced labor, although local experts reported some prosecutors lacked adequate training. There were also reports of forced child labor (see section 7.c.).

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

c. Prohibition of Child Labor and Minimum Age for Employment

The law does not prohibit all of the worst forms of child labor. The Ministry of Labor regulations set the minimum age for employment at 15 years. The law bars employment of minors younger than age 15, but it also allows the Ministry of Labor to authorize children younger than 15 to work in exceptional cases. The ministry's inspectorate reported it did not authorize any exceptions during the year. The law prohibits persons younger than 18 from working in places that serve alcoholic beverages, in unhealthy or dangerous conditions, at night, or beyond the number of hours permitted. The legal workday for persons younger than 14 is six

hours; for persons 14 to 17, it is seven hours. Child labor was nonetheless prevalent in the agricultural sector, in dangerous conditions, and with parents' knowledge and consent.

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. Penalties were not commensurate with those for analogous serious crimes, such as kidnapping. The government did not effectively enforce the law, a situation exacerbated by the weakness of the labor inspection and labor court systems. The government devoted insufficient resources to prevention programs. During restrictions imposed due to the pandemic, the Protection Unit largely worked from home, ineffectively enforcing the law.

The NGO Conrad Project Association of the Cross estimated the workforce included approximately one million children ages five to 17. Most child labor occurred in rural indigenous areas of extreme poverty. The informal and agricultural sectors regularly employed children younger than 14, 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 as shoe shiners and bricklayer assistants. An estimated 39,000 children, primarily indigenous girls, worked as domestic servants and were often vulnerable to physical and sexual abuse and sex trafficking. Traffickers exploited children in forced begging, street vending, and as street performers, particularly in Guatemala City and along the border with Mexico. Traffickers particularly targeted indigenous individuals, including children, for forced labor, including in tortilla-making shops. Criminal organizations, including gangs, exploited girls in sex trafficking and coerced young males in urban areas to sell or transport drugs or commit extortion.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings> and the Department of Labor's *List of Goods Produced by Child Labor or Forced Labor* at <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

d. Discrimination with Respect to Employment and Occupation

The law explicitly prohibits discrimination with respect to employment or occupation based on race, color, sex, religion, political opinion, national origin or citizenship, age, and disability. The government did not effectively enforce the law and related regulations. Penalties were not commensurate with laws related to

civil rights, such as election interference. Discrimination in employment and occupation occurred. Anecdotally, wage discrimination based on race and sex occurred often in rural areas.

e. Acceptable Conditions of Work

The law sets national minimum wages for agricultural and nonagricultural work and for work in garment factories. The minimum wage for agricultural and nonagricultural work and for work in export-sector-regime factories did not meet the minimum food budget for a family of five.

The legal workweek is 48 hours with at least one paid 24-hour rest period. Workers are not to work more than 12 hours a day. The law provides for 12 paid annual holidays and paid vacation of 15 working 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 government sets occupational health and safety (OSH) standards that were inadequate and not current for all industries. The government did not effectively enforce OSH laws. Penalties for OSH violations were not commensurate with those for crimes such as negligence. The situation worsened during the pandemic. Many manufacturing facilities, including textile and clothing manufacturing, as well as call centers were exempted from otherwise strict lockdown protocols within days of the March state of calamity. The press reported numerous outbreaks in such facilities until the end of August, when mask usage increased and sanitary measures were properly implemented in the workforce. Among the factories affected was KP Textiles, a garment factory supplying GAP; American Eagle; and Amazon, where more than 200 workers tested positive for COVID-19 and whose owners originally refused to take precautions or allow labor inspectors to enter. While the factory eventually was inspected and shut down, it opened again and was not fined. The law does not provide for the right of workers to remove themselves from situations that endanger health or safety without jeopardy to their employment.

Inspectors often lacked vehicles or fuel to carry out inspections, and in some cases they failed to take effective action to gain access to worksites in response to employers' refusal to permit labor inspectors access to facilities. Inspectors were encouraged to seek police assistance as required. Inspections were generally not

comprehensive, and if complaint driven, focused on investigating the alleged violation rather than attempting to maximize limited resources to determine compliance beyond the individual complaint. From March to early April, Ministry of Labor inspections were suspended. Approximately half the unit returned in April and focused on inspecting possible violations of COVID-19 guidelines and hygiene. By August inspectors had returned to normal operations but with a large backlog of labor hearings due to the closed courts.

The Ministry of Labor conducted inspections to monitor compliance with minimum wage law provisions but often lacked the necessary vehicles or fuel to enable inspectors to enforce the law, especially in the agricultural and informal sectors. The ministry did not employ a sufficient number of labor inspectors to deter violations, and many of them performed reviews on paper or administrative duties rather than clearly defined inspection duties. During the pandemic the ministry closed its offices to the public, and workers were unable to present complaints in person. The ministry established a hotline to receive complaints, but workers stated that often no one answered their calls. The ministry later developed a web portal for complaints, but not all workers had access to internet. The number of inspections conducted decreased during the pandemic.

On July 9, the Ministry of Labor issued a ministerial accord allowing certain businesses to suspend the payment of worker's midyear bonus due to financial hardship caused by the pandemic. The Constitutional Court invalidated the accord, however, and ordered businesses to make the bonus payments on time and in full, in accordance with the law. On July 8, the ministry reported that it would enforce compliance with payment of the bonus, which must be paid to all workers during the first two weeks of July, and emphasized the benefit must be paid by companies that continued operations during the COVID-19 emergency. Ministry inspectors shifted focus in July from COVID-19 hygiene inspections to the bonus payments but had limited staff to complete the inspections. In addition the ministry noted it had coordinated with two banks and a federation of credit and savings cooperatives so that employers affected by the pandemic would have access to the working capital credit fund and fulfill their labor obligations. The ministry also announced that employers who were not financially able to pay the bonus had to inform ministry officials through an affidavit as established by law.

Labor inspectors reported uncovering numerous instances of overtime abuse, but effective enforcement was undermined due to inadequate fines and labor courts' reluctance to use compulsory measures, such as increased fines and referrals to the criminal courts, to obtain compliance. During the pandemic these issues worsened

as the labor courts closed to the public, performing minimal administrative duties as officials tried to work from home. Other factors contributing to the lack of effective enforcement included labor court inefficiencies, employer refusal to permit labor inspectors to enter facilities or provide access to payroll records and other documentation, and inspectors' lack of follow-up inspections in the face of such refusals. In one case in June, a business protested the presence of a congressional deputy and a PDH official in an attempted labor inspection. Members of the business community accused the PDH of performing inspections without permission and without the ministry, although ministry presence is not legally required for the PDH to inspect facilities. The business community agreed the PDH has a right to inspect but said the PDH did not always follow official protocols. Due to inefficient and lengthy court proceedings, the resolution of labor court cases was often delayed, in many instances for several years. Employers failing to provide a safe workplace were rarely sanctioned, and a law requiring companies with more than 50 employees to provide onsite medical facilities for their workers was not enforced.

The Solidarity Center explained that almost all organized labor activity ceased during the pandemic as elderly trade union officials were unwilling or unable to venture outside their homes and equally unwilling to cede authority to younger union leaders. Nonetheless, trade union leaders and human rights groups reported employers required 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 agricultural and informal sectors was widespread. Advocacy groups estimated the vast majority of workers in rural areas who engaged in daylong employment did not receive the wages, benefits, or social security allocations required by law. Many employers in the agricultural sector reportedly conditioned payment of the minimum daily wage on excessive production quotas that workers generally were unable to meet. To meet the quota, workers felt compelled to work extra hours, sometimes bringing family members, including children, to help with the work. Because of having to work beyond the maximum allowed hours per day, workers received less than the minimum wage for the day and did not receive the required overtime pay. According to ILO statistics, 74 percent of the workforce worked in the informal sector and outside the basic protections afforded by law.

Local unions highlighted and protested 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 export and agricultural industries, resulted in limiting or denying employees' access to the public health system and reducing or underpaying workers' pension benefits during their retirement years.

Many employers of domestic servants routinely paid below minimum wage, failed to register their employees with the Guatemalan Institute of Social Security, and demanded 16-hour days for six or more days a week for live-in staff. Many of these same employees were summarily dismissed at the beginning of the pandemic or advised to stay in the home of their employer without traveling back to their own families or communities for fear of spreading the virus. An undetermined number of dismissed employees returned to their previous employers as conditions stabilized.