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1999 Country Reports on Human Rights Practices

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GUATEMALA

Guatemala is a democratic republic with separation of powers and a centralized national administration. The 1985 Constitution provides for election by universal suffrage of a one-term president and a unicameral congress. In the December runoff elections, Guatemalan Republican Front (FRG) candidate Alfonso Portillo won 68 percent of the vote in a free and fair election. He replaced President Alvaro Arzu Irigoyen of the National Advancement Party (PAN) on January 14, 2000. In the November general elections, the FRG won a majority (63 seats) in the 113-member Congress. The Arzu administration took limited steps to implement the Peace Accords that it signed with the Guatemalan National Revolutionary Unity (URNG) guerrillas in 1996. The judiciary is independent, but suffers from inefficiency, intimidation, and corruption.

The Minister of Government oversees the National Civilian Police (PNC), created in January 1997 under the terms of the Peace Accords. The PNC has sole responsibility for internal security; however, during the year some members of the predecessor National Police (PN) remained on duty, awaiting mandated training to become PNC officers. There are no active members of the military in the police command structure, but in 1998 and 1999, President Arzu ordered the army to support the police temporarily in response to a nationwide wave of violent crime. During the year, military forces were subordinated to civilian police in joint operations. The Constitution requires the Minister of Defense to be either a colonel or a general in the military. Some members of the security forces committed human rights abuses.

The mostly agricultural-based, private sector-dominated economy grew by approximately 4.7 percent in 1998. Coffee, sugar, and bananas are the leading exports, but tourism, textiles, and apparel assembly are key nontraditional export industries. More than half the work force is engaged in some form of agriculture, and subsistence agriculture is common in rural areas. Officially, inflation was about 7.5 percent in 1998, although most observers acknowledge that the official price index does not measure accurately actual price movements. In October 1998, Hurricane Mitch caused approximately 250 deaths and

infrastructure, crop, and other losses totaling an estimated \$550 million. However, with the help of foreign assistance, virtually all physical damage was repaired and the residual economic effects of Hurricane Mitch were minimal. There is a marked disparity in income distribution, and poverty is pervasive, particularly in the large indigenous community. Approximately 83 percent of citizens live in poverty; this figure rises to 90 percent among the indigenous population. Combined unemployment and underemployment was estimated at 64 percent. Per capita gross domestic product (GDP) was approximately \$1,700 in 1998. Remittances from citizens living abroad constituted a significant contribution to the national economy.

The Government generally respects the human rights of its citizens in many areas; however, despite some continued improvement in certain areas, serious problems remain in others. Some police officers were accused of extrajudicial killings and there was one credible report of forced disappearance attributed to the police. There were credible reports that police tortured, abused, and mistreated suspects and detainees. According to the United Nations Human Rights Verification Mission (MINUGUA), established in November 1994 to monitor compliance with the Government-URNG human rights accord, the number of human rights violations committed by police increased during the first 9 months of the year. Allegations of abuse and misdeeds by police officers increased, likely in part because PNC deployment greatly expanded the number of police on duty throughout the country. In May a nongovernmental organization (NGO) publicized the existence of what appeared to be a genuine military intelligence dossier documenting the abduction, torture, and in many cases, killing of 183 persons at the hands of state forces between 1983 and 1985. In June construction workers claimed to have discovered a clandestine cemetery on the grounds of a former military facility, but no human remains were found during an excavation of the site in October. Prison conditions remained harsh. Arbitrary arrest and detention and lengthy pretrial detention continued to be problems. With judges and other law enforcement officials subject to intimidation and corruption, the inefficient judicial system frequently is unable to ensure fair trials and due process. In October Congress elected magistrates to fill all seats on the Supreme Court of Justice (CSJ) and Court of Appeals (CA). Efforts to reform the judiciary continued, but the climate of impunity persisted. The Government achieved convictions in a few important cases involving past human rights violations; however, courts more often annulled or overturned convictions and commuted sentences in a number of significant human rights cases. Intimidation of witnesses, victims, prosecutors, and judges continued to be a problem. Allegations persisted that the security forces infringed on citizens' privacy rights.

On February 25, the Historical Clarification Commission (CEH) published its report on the internal conflict, in which it found government forces responsible for 93 percent of human rights abuses during the conflict. The Government failed to take an active role in carrying out the CEH's recommendations, and on May 16, voters defeated a package of key constitutional reforms in a national referendum, which represented another setback to the peace process. The MINUGUA continued monitoring peace implementation and human rights issues. Violence and discrimination against women persisted, as did societal abuse of children and discrimination against the disabled and indigenous people. Workers' efforts to form unions and participate in union activities are hindered by an ineffective legal system. Child labor and trafficking in children also are problems. Lynchings and mob violence continued, often resulting in deaths, and the Government frequently was unable to prosecute the perpetrators. The investigation continued into the 1998 murder of

an internationally renowned Catholic bishop and human rights activist. In October leaders of the principal banana workers' union were held at gunpoint by a group of armed civilians and forced to resign from both their jobs and union positions.

RESPECT FOR HUMAN RIGHTS

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

a. Political and Other Extrajudicial Killing

There were no allegations of politically motivated killings by government agents; however, members of the police committed some extrajudicial killings. The Government demonstrated a willingness to arrest and prosecute those responsible; however, in many cases the scarcity of law enforcement resources and a weak prosecutorial and judicial system prevented the Government from adequately investigating killings and other crimes or arresting and successfully prosecuting perpetrators.

The number of reported extrajudicial killings continued to decline significantly. The office of the Human Rights Ombudsman (PDH), which generally compiles data based on personal interviews with victims and their families, reported 16 complaints of extrajudicial killings during the year (3 were confirmed), compared with 32 in 1998, 134 in 1997, and 173 in 1996. From January 1 to September 30, based on 27 complaints alleging 39 extrajudicial killings, MINUGUA investigated 18 cases and confirmed 13 by year's end. It reported 35 such complaints in 1998. The Archbishop's Office of Human Rights (ODHAG) reported one extrajudicial killing by police officers and the killing and apparent torture of four prisoners.

On January 2, PNC officers detained three drunk individuals in Chiquimulilla, Santa Rosa, and beat them severely for allegedly having resisted arrest. Two were put in a cell while a third, Eliseo Rivera Padilla, was beaten further, until he lost consciousness. Rivera died en route to a hospital. An autopsy declared that the cause of death was "asphyxia by strangulation." According to MINUGUA, PNC officials in Chiquimulilla attempted to blame Rivera's two companions, but an internal investigation by the PNC's Office of Professional Responsibility (ORP) determined that the death had been caused by the beating administered by the PNC officers. On January 21, the authorities arrested 11 PNC officers and by May 11, the prosecutor had opened a case for extrajudicial killing and a subsequent coverup. Later, the charges were downgraded: Officer Armando Cante Tobar and inspectors Dario Gomez de Leon and Carlos Amilcar Grijalva were accused of unintentional homicide while several others were charged with covering up the crime. The authorities dropped charges against nine other officers. On April 8, the PNC suspended all officers against whom charges were filed, pending the outcome of the case, which remained before the courts at year's end.

On February 14, PNC officers Luis Antonio Monzon Flores and Rony Perfecto Carpio Diaz arrested Jose Martin Reynoso for public drunkenness in Poptun, Peten. Less than 30 minutes later, police officers brought Reynoso's dead body to a hospital. An autopsy determined that the cause of death was a heart attack, but noted several injuries to the body that suggested Reynoso had been tortured. MINUGUA reported that several witnesses changed their story after allegedly receiving considerable sums of money from relatives of the PNC officers involved. MINUGUA also noted that both the investigation

of the case and the medical examination of the body suffered from a serious lack of thoroughness and numerous procedural errors. On August 19, at the request of the prosecutor, a judge dismissed the case against the PNC officers.

On February 20, PNC officers chased and apprehended robbery suspect Noe Vincente Gomez in a butcher shop in Guatemala City. They also apprehended a shop customer, Santiago Rafael Ruiz, taking both individuals outside to a police vehicle, where witnesses reported hearing shots fired within the vehicle. The officers then drove the two to a nearby location, where other witnesses reported hearing additional shots fired inside the vehicle. By the time Ruiz and Gomez were taken to a hospital, Gomez was injured seriously and Ruiz was dead from gunshot wounds. Results of an investigation by the ORP were turned over to the judicial system for prosecution and two PNC officers, Gerson Andres de Rosa Rodriguez and Neftali Elixalon Lopez Salguero, were suspended from duty pending the outcome of the court case.

On March 9, in Ocos, San Marcos, during a PNC roundup of undocumented aliens, officers heard several shots and then found a recently killed Salvadoran citizen, Manuel de Jesus Ortega. Officers conducted an on-the-spot weapons check, which revealed that the weapon of a recent PNC Academy graduate, Nahum Perez Morales, had been fired. Perez denied killing Ortega. According to MINUGUA, witnesses reported seeing several officers fire their weapons and that a significant amount of money was missing from the victim's bag. MINUGUA reported that the initial investigation was mishandled significantly--for example, the authorities did not collect shell casings, take witness statements, or protect the crime scene. Prosecutors declined to reconstruct the events leading up to the crime and failed to investigate conflicting witness testimonies. An ORP investigation failed to shed light on the incident. Later, PNC officials informed MINUGUA that they had decided to transfer four high-ranking officers in San Marcos and replace all officials in nearby Tecun Uman and Malacatan.

On March 19, a group of civilians in remote Chiantla, Huehuetenango, detained Juan Jose Arguello for fighting and took him to the local National Police station. Arguello complained to a friend who visited him in jail that he had been beaten severely, first by businessmen and later by the police. His arrest was never documented formally. In exchange for Arguello's release, a PN inspector solicited a bribe from his mother. After paying for his release, Arguello's mother took him to a hospital, where he died on March 24 of internal injuries. Based on the mother's complaint and the autopsy report, prosecutors obtained arrest warrants for the three officers, of which two were captured and one, Inspector Merany Garcia Castellanos, escaped; he remained at large at year's end. An ORP investigation established the responsibility of the three officers and the prosecutor's investigation continued at year's end.

On April 10, PNC motorcycle officers chased and trapped criminal suspect Abelisario Hernandez Barillas in front of a business in Guatemala City. According to witnesses, the officers then shot and killed Hernandez and left him in the street. Ballistic tests and investigations by the ORP and the Public Ministry implicated officers Nicolas Hernandez Enriquez and Gerardo Juarez Gabriel. Hernandez was suspended and made available to the courts for prosecution while Juarez remained on duty. By year's end, the prosecution had made little progress in bringing the case to trial.

On August 18, in San Juan Chamelco, Alta Verapaz, PNC officers arrested Rodrigo

Larios Poou, and Manuel Xol for drunkenness and then allegedly beat them severely before taking them to a prison in Coban, Alta Verapaz. Twenty-one hours after arriving at the prison, Larios was taken to a local hospital where he eventually died of internal injuries. The PNC claimed that Larios' and Xol's injuries were caused when they allegedly attacked each other prior to their arrest. However, a medical examiner determined that their injuries could not have been caused in such a way and that they were instead victims of torture and abuse. The prison director received death threats for implicating police officers in Larios' death and cooperating with MINUGUA representatives investigating the incident. The authorities arrested two police officers shortly after the crime, and prosecutors were investigating and preparing a case at year's end.

On June 9, in the high security prison in Esquintla, prisoners Fredy Ayala Ramirez, Genio Alberto Ramirez Mejia, Guillermo Castellanos Rios, and Sergio Aroldo Monzon Sotoj were found hanged in their prison cells by makeshift ropes made from mattress strips. The bodies showed signs of torture, including bruises from an apparent beating with a metal object, puncture wounds, and broken legs. The authorities began an investigation of prison guards as well as other prisoners, but there was no progress by year's end.

On May 3, oil refinery businessman Edgar Ordonez Porta was kidnaped in El Paraiso, Puerto de San Jose. Three days later, his body was found in an abandoned well in a neighboring town. The victim's brother, Hugo Ordonez Porta, claimed that the military was involved in the murder and had interfered with the subsequent investigation by prosecutors. Hugo Ordonez is a partner in the small oil refinery and a member of the editorial staff of one of the major daily newspapers, El Periodico, which was sharply critical of the military during President Arzu's regime. Although the motive for the crime remained unclear, witness testimony linked government and military personnel and vehicles to the crime scene. Anomalies in the investigation, including the amputation of the victim's fingers after the body was found, changes in witness testimony, and several instances of involvement by military intelligence, seem to suggest at a minimum a coordinated coverup by prosecutors and the military. In May the authorities arrested a local municipal official, Lazaro Obispo Solorzano Lopez, and a disgruntled former employee of Ordonez, Henry Orlando Hernandez Montepeque; on September 24, Solorzano was charged with homicide. A trial was pending at year's end.

Although most cases from past years remained unresolved, there were some convictions during the year for past extrajudicial killings by members of the security forces. However, in several high profile cases, courts overturned, annulled, or reversed prior convictions against alleged human rights abusers. Observers and human rights groups criticized these decisions as confirmation of the ongoing impunity that pervades the weak and corrupt legal system. At year's end, trials continued in several high profile cases.

In the January 1997 killing of congressional Deputy Joel Salomon Mendoza Pineda and his nephew, a trial court found two individuals guilty and sentenced them for the crime. The court case against two former congressional deputies and the former mayor of Escuintla remained open, although a trial date had not been set at year's end.

The Constitutional Court in the summer rejected an appeal by coplaintiff ODHAG to reverse the Supreme Court's April 1998 decision that commuted the prison term of Obdulio Villanueva Arevalo, the member of the Presidential Military Staff (EMP) who was convicted of killing milkman Pedro Sas Rompich in 1996. Villanueva was on duty as

a presidential bodyguard when he shot and killed Sas Rompich for allegedly driving his truck toward President Arzu in a threatening manner. Sas Rompich's family rejected the Court's decision requiring that Villanueva pay restitution in the amount of about \$161,000 (1 million quetzals), arguing that the incident should be characterized as an extrajudicial killing by the Government, not a common crime by Villanueva as an individual. There was no apparent progress on the investigation of the EMP interception of laboratory test results relating to the victim's body in this case.

On August 13, after nearly 4 years of pretrial detention and the longest oral trial in the country's history, a 3-judge panel in Coban found Second Lieutenant Camilo Antonio Lacan Chaclan and each of the 24 members of his former patrol guilty of either negligent homicide or complicity in negligent homicide in the Xaman massacre. In October 1995, an army patrol entered a refugee-returnee community at Xaman, Alta Verapaz, and became involved in a confrontation with an angry but unarmed populace. In the conflict that ensued, the patrol members fired over 250 rounds, killing 11 returned refugees, including women and children, and injuring 30. The court sentenced 11 defendants, including Lacan Chaclan, to 5 years in prison, commutable for about \$0.65 (5 quetzals) per day. It found the remaining 14 defendants guilty of negligent homicide and sentenced each of them to 4 years in prison, which are also commutable. Although some welcomed the verdict as a modest blow against impunity, human rights groups strongly criticized the sentences, which amount to little more than time served, as too lenient. In the months before and during the trial, observers noted apparent judicial bias, anomalies, and the harassment and intimidation of prosecutors, judges, and witnesses. The prosecutor appealed the court's decision because he believed that the sentences were too lenient. Claiming that the verdict was negotiated with the military, the former private plaintiff in the case, the Rigoberta Menchu Foundation, threatened to bring the case before the Inter-American Commission on Human Rights (IACHR), but had not done so by year's end. On December 6, an appellate court in Coban annulled the trial court's verdict, citing "fundamental errors", including "failure to observe, correctly interpret, or correctly apply the law." The court found 15 of the 25 members innocent, including Lacan Chaclan, and released them. The court resentenced the remaining 10 soldiers to 12-year sentences for homicide and causing other nonlethal injuries. Those sentenced could be eligible for release as early as April 2000, since the law provides for a 50 percent reduction in sentences for good behavior, and the defendants already have served 4 years in prison. Shortly after Lacan Chaclan was released from prison, the Army announced that he soon would receive a scheduled promotion. This statement resulted in widespread public criticism, and the Army later stated that it would conduct a full review of the situation before making its final decision.

On July 17, one of the former police officers sentenced to death in 1996 in the so-called Patrol No. 603 case, Anibal Archila, died in prison of a diabetic episode, reportedly due to lack of medical attention. The case stems from a 1995 murder and attempted murder in what appeared to be a "social cleansing" operation, defined as a killing in which persons deemed socially undesirable (e.g., gang members, local delinquents, or convicts released from prison) are found murdered in circumstances suggesting that the murder was planned and carried out by an organized group. Defense attorneys for the remaining two inmates filed a series of motions in an attempt to delay their executions. The Constitutional Court had denied all three men an appeal of their death sentences in July 1998.

On February 3, a trial court sentenced former military commissioner Armando Tucubal to

30 years in prison for the 1994 murder of evangelical minister Pascual Serech in Chimaltenango. (Military commissioners were generally local civilian leaders who represented the army, serving as intermediaries with members of civilian defense patrols [PAC's]; the commissioners were formally decommissioned in 1985.) Tucubal had been convicted in September 1997 for the killing and sentenced to 20 years in prison. Charges remained pending against former military commissioner Victor Roman, an alleged collaborator in the crime and also the accused perpetrator of the 1995 murder of evangelical pastor Manuel Saquic. Roman remained at large despite an order for his capture and the offer of a reward.

On April 5, the Supreme Court denied an appeal by the private plaintiffs to reinstate homicide convictions against several former senior government officials and a former officer in the now-defunct National Police in the 1994 shooting death of University of San Carlos student demonstrator Mario Alioto Lopez Sanchez. The plaintiffs appealed the Supreme Court's ruling in the Constitutional Court. An officer of the PN remains in prison after having been convicted of unintentional homicide in the case.

An appellate court ruling remained pending in the case of the April 1994 murder of Constitutional Court president Epaminondas Gonzalez Dubon. Both the prosecution and defense appealed aspects of the May 1998 murder conviction of Marlon Salazar and Roberto Antonio Trabanino, who were serving 27-year prison sentences for the crime at year's end. A third suspect, Mario Rene Salazar, remained at large at year's end.

The August 1994 killing by police of four workers at La Exacta farm remained under investigation, and the criminal case remained suspended, but it could be reopened with additional evidence. The parties continued to seek a resolution through the IACHR's amicable settlement procedures. The parties also failed to negotiate a settlement in the pending labor court charges. The Center for Legal Assistance in Human Rights (CALDH) continued to represent the families of the deceased, the injured, and those who lost their jobs and homes during the illegal eviction in these discussions with the Government, represented by the President's Human Rights Commission (COPREDEH).

On April 29, a criminal court confirmed the convictions and 25-year sentences imposed on 12 former PAC members for their role in the 1993 killing of Juan Chanay Pablo. On April 30, a crowd of approximately 500 persons, armed with sticks, machetes, homemade explosives, and smoke bombs, broke into a police station in Huehuetenango and freed the 12. Although arrest warrants were issued to recapture the escapees, they remained at large at year's end, despite credible media reports that they returned to their home region of Colotenango and were being protected by former PAC comrades. Prosecutors in Huehuetenango claimed to be waiting for information from the PNC's Criminal Investigations Service (SIC) regarding the whereabouts of the escapees. MINUGUA and other observers believe that military or former PAC members planned and executed the jailbreak, which was timed to take advantage of reduced police staffing during the transfer of authority from the PN to the new PNC. There was no progress in the investigation of Brigadier General Luis Felipe Miranda Trejo, the alleged intellectual author of the crime, who was elected to Congress in the November elections and therefore enjoys legislative immunity from prosecution.

On April 28, an appeals court overturned the 1997 conviction and 30-year prison sentence of former PAC member Juan Acabal Patzan for the 1993 murder of newspaper publisher

and former presidential candidate Jorge Carpio and three associates, citing the unexplained loss of key evidence, including the alleged murder weapon. The court also ordered the release of brothers Marcelino and Nazario Tuy Taniel, who were serving 5-year sentences for manufacturing and possessing explosives thought to be connected to the murders. The case remained open, including charges against former PAC member Francisco Ixcoy Lopez, who remained at large; a warrant for his arrest has been outstanding since 1995. A court decision remained pending on the private plaintiffs' motion to reopen charges against a number of persons --including former senior government officials--believed to have participated in the crime as material or intellectual authors, or to have assisted in its coverup. There was also a case pending before the IACHR.

In a hearing on the evidence in January, Judge Henry Monroy ordered a trial of the three high-ranking military officers accused of ordering the 1990 murder of anthropologist Myrna Mack, ruling that sufficient evidence existed that the three ordered or covered up the killing. However, based on the May rejection of the constitutional reforms, which would have ratified the abolition by Congress of military tribunals, the defendants filed yet another motion seeking to have the case removed to the military tribunals. (The military tribunals no longer are used to bring criminal charges; they still exist, but address only violations of military codes and rules.) On September 3, the court denied the defendants' motion, allowing a trial to be scheduled for spring 2000. A case also was pending before the IACHR at year's end. Enlisted man Noel de Jesus Beteta, who confessed to the killing, is serving a 30-year sentence.

On December 3, the Inter-American Court of Human Rights ruled that there was sufficient evidence that police officers Samuel Rocacl Valdes and Nestor Fonseca were responsible for the 1990 deaths of three minors--Julio Roberto Caal Sandoval, Jovito Josue Juarez Cifuentes, and Anstraun Villagran. The bodies of the three youths, who had been living on the street, were found mutilated on the outskirts of Guatemala City. The Court also ruled that the Government failed to protect the rights of the victims and to provide them with justice.

The 1989 disappearances of 10 university students, 5 of whom later were found dead, and the 1996 murder of Miguel Us Mejia, a member of CERJ (an indigenous human rights organization), and his wife, Lucia Tiu Tum, remained unresolved.

Proceedings to set the amount of compensation owed to the families of the victims in the "white van" case remained open, pending a petition for reparations from these families. In March 1998, the IACHR had found the Government liable in the case, in which members of the now-disbanded Treasury Police kidnaped and then either released or killed 11 persons in 1987-88.

On May 20, the National Security Archive, an NGO, announced its possession of what appeared to be a genuine military intelligence dossier that documented the abduction, torture, or killing of 183 persons by government forces during the 1983-85 period. Commonly referred to as the "military diary," the document's release provoked a prolonged and intense public debate about its veracity and admissibility as evidence in potential criminal suits against the Government. Shortly after the document's public release, human rights groups began locating relatives of the victims and preparing to file dozens of criminal cases. The Government responded by appointing 35 prosecutors to

handle the cases, with an additional prosecutor designated to manage the cases and their investigation.

On February 25, an appeals court in Alta Verapaz annulled the November 1998 convictions and death sentences of 3 former PAC members for their roles in the 1982 massacres in the villages of Rio Negro and Agua Fria, in which some 250 persons are believed to have been killed. In its decision, the appellate court cited errors, inconsistencies, and insufficient evidence to support the trial court's decision, remanding the case back to the lower court for a September 7 retrial. On September 14, the retrial was suspended temporarily when a crowd of several hundred persons armed with stones and clubs surrounded the jail in Salama, Baja Verapaz, threatened to kill the judge, and attempted to free the accused. On September 20, the trial resumed under heightened security, and on October 7, the trial court in Salama again convicted and sentenced to death the three defendants found guilty of murdering two of the Rio Negro victims. Because the Rio Negro case represented the first conviction of the perpetrators of a wartime massacre, human rights groups considered the trial court's decision an important legal precedent in the fight against impunity.

For much of the year there was no significant progress in the case of the 1982 military massacre at Las Dos Erres, as prosecutors worked to secure relocation abroad for two potential key witnesses and their families in exchange for testimony against their former army comrades. On March 18, the court cited a technical deficiency and declared a mistrial in the case against Vicente Cifuentes, the former PAC member arrested in March 1997 for the 1985 killings of American journalists Nicholas Blake and Griffith Davis. The indictment had given the date of the killing incorrectly. The case was remanded to the trial court to correct this error, and was expected to come to trial in January 2000. Three other suspects in the case remained at large, despite at least one attempt to capture them. On January 22, the IACHR ordered the Government to pay Blake's survivors about \$161,000 (1 million quetzals) in compensation for impeding the investigation of the death, to investigate those responsible for the murders, and to sanction them. The COPREDEH, which represents the Government in the case, stated that it accepted the IACHR's decision and fully intended to pay the damages award. However, due to budgetary constraints, the Government petitioned the IACHR to allow installment payments, rather than one lump sum. The IACHR denied that petition, and imposed a March 30, 2000 deadline for payment; after that date, the Government would be required to pay interest as well as the amount of the award. At year's end, the COPREDEH was seeking the budgetary restructuring that would be necessary to make the payment before the deadline.

In the April retrial of former military commissioner Candido Noriega on 155 criminal charges for crimes committed mostly in the early 1980's, the court once again found Noriega innocent, citing insufficient evidence. Alleging a series of irregularities and judicial bias in favor of the accused, the Conference of Religionists of Guatemala (CONFREGUA), a Catholic organization and a coplaintiff in the case, appealed the decision. On July 23, an appellate court annulled the lower court's decision and remanded the case for a third trial, ordering that a panel of judges from the neighboring department of Totonicapan consider the case, to ensure impartiality. On September 20, the new trial began, but because numerous witnesses refused to testify due to fear of reprisals, Noriega was retried for a reduced list of crimes, including 11 killings, 7 abductions, rape, breaking and entering, arson, and various threats. On November 12, the trial court found Noriega guilty of 6 murders and 2 cases of manslaughter, and sentenced him to a total of 220 years

in prison. Due to lack of evidence, the court absolved Noriega of other charges, including rape, torture, kidnaping, and burning persons alive. The court also ordered the Public Ministry to investigate further Noriega's alleged accomplice, Juan Alesio Samoya, as well as the military officers who served at the so-called Base 20 in Quiche in 1982. In late November, Noriega's attorney appealed the court's decision, and the appeal was pending at year's end.

In the past several years, approximately 70 clandestine cemeteries have been exhumed by forensic anthropologists. Most of the bodies recovered have been those of victims of military or paramilitary killings in the 1980's from areas such as Rabinal, Las Dos Erres, and Panzos. Forensics groups use the information obtained from the exhumations to verify eyewitness reports of massacres and to determine, at least in general, who might have been responsible. The forensic evidence has been used in some criminal cases. During the year, the ODHAG's Forensic Anthropology Unit exhumed bodies from burial sites at the following locations: Tablero (San Marcos), San Luis Tinajas, Chijotom and Santa Maria Sibhia (Alta Verapaz), and Petanac (Huehuetenango). As of September, workers at these sites had found 87 skeletons and identified 26. During the year, the Foundation of Forensic Anthropology (FAFG) conducted excavations of 13 massacre sites from the early 1980's, where they exhumed a total of 180 human remains. Threats and intimidation against persons working on exhumations continued, but at lower levels than in previous years.

On July 9, a newspaper reported the discovery of a clandestine cemetery on the grounds of a facility formerly used by the now-defunct Mobile Military Police (PMA). In late 1998, workers claimed to have found what they believed to be human skeletons with pieces of olive green clothing and military-style boots while building a dormitory for female police officers on the grounds of the new PNC academy. The workers reportedly were told to continue construction, and the discovery was not revealed to the Public Ministry until June. The discovery generated considerable public interest because it was believed to be the first clandestine cemetery found on the grounds of a former military facility. In October a court-ordered excavation of the site was conducted but no human remains were found. FAFG anthropologists found only animal remains and fragments of license plates suspected to have been used in clandestine operations during the internal armed conflict. In July PNC Academy Director Brigido Fuentes reported receiving death threats for having revealed the cemetery's existence publicly.

On December 2, indigenous leader Rigoberta Menchu filed a criminal suit in a Spanish court against eight former military and civilian leaders for human rights abuses committed during the internal conflict. The suit alleges that the defendants, including retired General and former de facto President Efraim Rios Montt, former President and retired General Fernando Lucas Garcia, former de facto President Oscar Humberto Mejia Victores, and others were responsible for "crimes against humanity," including genocide, torture, and terrorism. The suit cites 3 cases--the 1980 assault on the Spanish Embassy in which over 30 persons died, the killing of Menchu's mother and her 2 siblings, and the killing of 4 Spanish priests over the course of the conflict. On December 18, Spanish Judge Guillermo Ruiz Polanco accepted Menchu's suit. Attorneys for Mejia Victores later filed criminal charges in Guatemala against Menchu, accusing her of treason, violating the Constitution, and failing to report a crime (for filing charges in Spanish court.)

Intimidation of witnesses continued to be a problem, although there were no reports of the

killing of witnesses. For example, in the second trial of former military commissioner Candido Noriega, witnesses received death threats and harassment so intense that many chose not to testify in the third trial in September. As a consequence, the list of charges against Noriega had to be reduced significantly. In May unidentified individuals abducted, assaulted, and interrogated lay worker Jeremias Tecu, who was accompanying witnesses in the Candido Noriega trial. Witnesses and relatives of murder victim Juan Chanay Pablo received death threats following the May jailbreak of former PAC members convicted of his 1993 murder. Many observers reported threats and intimidation against witnesses, lawyers, and family members of the plaintiffs in the Xaman massacre trial. In August a family member and witness in the murder of presidential candidate Jorge Carpio Nicolle received death threats after an appeals court annulled the convictions of four former PAC members. ODHAG personnel and prosecutors investigating the killing of Bishop Juan Gerardi reported increased threats and other acts of intimidation as the investigation gained momentum; during the year both the judge and the prosecutor resigned and fled the country, due in part to threats.

There were several allegations of politically motivated killings during the year, and the authorities demonstrated a willingness to investigate these murders.

On January 4, Olman Alexis Viera Rodriguez, an alleged member of the organized criminal gang Valle del Sol, was shot to death in his home by unidentified assailants. Prior to the killing, based on his own "private investigation" of the Bishop Gerardi murder case, former Judge Juan Carlos Solis Oliva, who is related to two of the military suspects being investigated in the case, had alleged that the Gerardi murder was linked to a smuggling ring involving the Valle del Sol gang, the military, and several clerics. At the time of his death, Viera Rodriguez was rumored to be the inside source of information (and therefore a potential witness) for Solis Oliva's now-discredited theory. Investigation of the murder continued as police concluded that gang-on-gang violence was the motive. By year's end, Solis Oliva's independent investigation apparently had ended and was regarded widely as an effort to absolve his relatives.

On January 12, Zacapa Municipal Workers Union leader Robinson Morales Canales was killed, followed by the March 8 murder of Angel Pineda. Both men had protested labor rights violations and corruption in the Zacapa mayor's office, including charges of corruption in several municipal construction projects. Police were investigating Zacapa Mayor Carlos Vargas y Vargas, his driver, and bodyguard as the intellectual and material authors of the murders, and the investigation was pending at year's end. On February 3, police arrested Carlos Anibal Paz Gordon, a former employee of a company owned by persons close to Mayor Vargas, as the material author of the crime. Police continued to search for Paz Gordon's alleged accomplice, whom they know only by a nickname. Charges were filed against Paz Gordon and his trial is scheduled to begin on February 15, 2000. MINUGUA reported that the legal system in Zacapa seriously mishandled several aspects of the investigation against the material authors, including poor evidence collection at the crime scene, faulty and untimely delivery of arrest warrants, illegal detention, and exposure of a witness to death threats by improperly revealing his name. In addition, prosecutors made little effort to investigate possible connections between the material authors and the suspected intellectual author, Mayor Vargas.

On May 13, four masked men killed New Guatemalan Democratic Front (FDNG) executive committee member Roberto Gonzalez Arias in his car. He previously had

received a series of death threats. Although FDNG party officials concluded that the murder was politically motivated, police focused their investigation on an unpaid debt owed by Gonzalez Arias. On May 25, the PNC arrested Alejandro Garcia Monterroso, a suspect in the murder, which they believe may have resulted from a vendetta stemming from the death of one of Gonzalez's neighbors. No progress was reported in the case at year's end.

On May 18, unknown assailants abducted and killed Tomas Tol Salvador, another FDNG leader, in Quiche. Tol Salvador was also a human rights activist for the Council of Ethnic Communities, an indigenous organization (see Section 4).

On May 25, former Judge Herberto Zapata Gudiel was killed in a restaurant parking lot in Puerto Barrios. Zapata allegedly received numerous death threats prior to the attack. In 1998 Zapata had sentenced to death brothers Helse and Obdulio Hernandez Salazar, members of the Agosto Negro gang, for two murders. On June 3, police arrested the sister of the Salazar brothers and one other person and continued to search for additional suspects. However, by year's end, the prosecutor was focused on a new theory of motive, based on evidence tying Judge Zapata to a narcotics trafficking ring involving another prosecutor and a member of the military. The prosecutor has requested the release of the Hernandez siblings because he established that they were not involved in the crime.

On July 27, unidentified assailants shot and killed Mayan priest Raul Coc Choc at his home in the department of Chimaltenango. Coc Choc was a leader of the National Association of Mayan Priests; members of the board reported that he had received numerous death threats over the telephone. Religious and indigenous leaders called for a thorough investigation. After detaining and later releasing a suspect, the judge ordered the case provisionally closed for lack of evidence, thereby enabling the prosecutors to continue their investigation.

On August 30, unknown assailants shot and killed sociologist Maria Ramirez Sanchez, in what appeared to be a professional killing. Because Ramirez was an employee for the same organization where anthropologist Myrna Mack worked when she was killed for political reasons in 1990, the media and human rights groups speculated that the motive for Ramirez's murder also was political. However, her coworkers discounted the possibility of a work-related political motive, and there was no evidence to suggest that the killing was politically motivated. The prosecutor was unable to find a suspect using a police composite photo, and there was little progress in the investigation at year's end.

Several past cases of politically motivated killings remained unresolved, including the murders of Bishop Gerardi, acting mayor of Santa Cruz del Quiche Luis Yat Zapeta, and Retalhuleu prosecutor Shilvia Jerez Romero de Herrera.

The investigation continued in the April 1998 murder of Bishop Juan Gerardi Conedera, the Coordinator of the Archbishop's Office on Human Rights (ODHAG), but was hampered by the resignations of both judges and prosecutors. Bishop Gerardi was killed just 2 days after his public delivery of the final report of the "Recovery of Historical Memory" project, which held the military, military commissioners, and civil patrols responsible for approximately 80 percent of the human rights violations committed during the 36-year-long internal conflict. In January a new prosecutor, Celvin Galindo, took over the case and revitalized the investigation, with increased focus on the military's potential

political motive for the killing. Lawyers for Father Mario Orantes, who was held in jail as a suspect, had asked the Court of Appeals to recuse Judge Isaias Figueroa; on January 12, the court rejected their motion. However, Judge Figueroa withdrew from the case, citing defense counsel's lack of confidence in his impartiality, and was replaced by Judge Henry Monroy. On February 17, Judge Monroy ordered that Father Orantes be released from jail for lack of sufficient evidence, although he remains a suspect. (Orantes had been arrested and charged with the killing in October 1998.) The press reported in March that Guatemala City Bishop Mario Rios Montt said that in November 1998, he had been offered the release of Father Orantes in exchange for formally stating that the army and Government were not involved in the killing. Rios Montt declined to name the person who offered him this deal. On March 23, Judge Monroy suddenly resigned and fled the country, primarily because of persistent threats and intimidation, and eventually was replaced by Judge Flor de Maria Garcia Villatoro. In October former Judge Monroy said that he had been approached during his tenure as judge in the Gerardi case by Howard Yang, then-Secretary of Strategic Planning for the Arzu administration, who allegedly suggested that Father Orantes was the most likely suspect and that the investigation should focus on him.

In May prosecutors obtained DNA samples from 17 suspects, including Father Orantes and 12 active or former members of the military, and sent them for comparison with DNA samples found at the scene of the crime. Preliminary and final DNA test results failed to shed light on the identity of the crime's material author. New witnesses, including a taxi driver and a former member of the EMP, gave testimony implicating the EMP and several of its officers. During the year, the prosecutor took the testimony of current and former senior military officers, including the former Defense Minister General Hector Barrios Celada, and impounded various EMP records and log books. Threats and other acts of intimidation against prosecutors and ODHAG personnel increased sharply as the investigation gained momentum. On October 6, Calvin Galindo suddenly resigned as prosecutor and fled the country with his family, citing increased death threats and intimidation, including an unconfirmed plot to kidnap one of his children. In an earlier incident in August, Galindo's neighbors had reported a suspicious vehicle circling the streets near his home. When police stopped the vehicle, they identified the five occupants as army Lieutenant Victor Canagui and four army specialists. Galindo and his staff in the Bishop Gerardi investigation reported wiretapping and surveillance. ODHAG personnel also complained of death threats, wiretapping, and surveillance. On April 16, just days before the first anniversary of Bishop Gerardi's death, armed men broke into the home of ODHAG Director Ronal Ochaeta, threatened his maid, but stole nothing of value. The break-in was interpreted widely as an act of intimidation related to the Gerardi case (see Section 4).

The high-level government commission established in 1998 to support the investigation took no action during the year and was defunct by year's end. The Government's own investigation of the murder had not yet established the motive for the killing by year's end. In April the ODHAG publicly accused Otto Ardon Medina, the former public prosecutor for the Gerardi case, of misconduct in his investigation of the case; in July the ODHAG filed criminal charges against Ardon. The investigation continued at year's end.

Police continued to investigate the May 1998 murder of acting mayor of Santa Cruz del Quiche Luis Yat Zapeta. The authorities arrested Bernardino Zapeta Vicente, Tomas Zapeta Ixcoy, and Manuel Pacajoj Mejia as material authors. In July 1998, the authorities

had arrested former mayor Silverio Perez de Leon and treasurer Cayetano Alvarez Velasquez, who remained the primary suspects in the murder that police believe was committed in revenge for Yat's successful effort to remove Perez de Leon from office on charges of corruption. A trial remained pending against all five suspects at the end of the year, although a specific trial date had not been set.

In the case of murdered Retalhuleu Prosecutor Shilvia Jerez Romero de Herrera, a trial court found Tirso Valenzuela Leiva, a suspected member of the Agosto Negro criminal gang, guilty of the murder, and sentenced him to death. Suspects Jorge Lopez Monroy, Juan Vidal de Leon, Jaime Quezada, and Waldemar Hidalgo Marroquin, also alleged Agosto Negro members, were set free. On February 23, a court sentenced other members of the gang to prison for the killing of Danita Gonzalez Plank, one of several sensitive cases formerly handled by Jerez, and the possible motive for her killing.

Unlike the previous year, there were no reports of alleged social cleansing operations, nor were there developments in cases reported in prior years, other than in the Patrol 603 case.

In June and August, the ODHAG and CALDH brought criminal charges against former leaders of the Guerrilla Army of the Poor (EGP) for the alleged killings of five former EGP guerrillas in the early 1980's. The charges were initiated after relatives of the EGP members who disappeared broke off negotiations with former EGP leaders to determine the whereabouts of the remains. The CALDH later halted the legal process after negotiations resumed. The ODHAG reported little progress in the investigation based on its charges. A prosecutor proposed travelling to Nicaragua to establish contact with potential witnesses, but this trip had not occurred by year's end.

Popular frustration with the inability of the Government to control crime, and of the courts to assure speedy justice, as well as a tradition of extrajudicial repression of crime during years of military rule, led to continued lynchings and mob violence. Lynchings, which often involved burning victims alive, increased significantly. MINUGUA reported 90 lynchings or attempted lynchings by September 30, in which 41 victims died and 93 were injured (an average of 10 lynchings a month). These figures are significantly higher than the previous 3-year period in which 182 lynchings were reported (an average of 5.4 lynchings a month). However, there was a decrease in the number of deaths and injuries, due mostly to the increased presence and intervention of the PNC and other authorities. There continued to be instances in which local municipal officials led or participated in lynching attempts. Generally, victims were killed by mobs for either property-related crimes or suspected membership in criminal gangs. Most of the attacks took place in rural areas in the mostly Mayan communities of the western highlands. Generally, these were the same communities where, during the internal conflict, local militias (PAC's) were accustomed to conducting populist summary hearings in the town square and then publicly executing alleged criminals or guerrillas. The police, sometimes with the assistance of the military or volunteer firemen, or in some cases, MINUGUA personnel, were often successful in rescuing victims of mob attacks.

In the first 3 months of the year, the ODHAG reported nine lynchings and numerous attempted lynchings, many of which occurred in Guatemala City during the week before Easter. During that time, University of San Carlos students customarily roam the streets wearing masks, soliciting money, and committing acts of vigilantism against alleged wrongdoers. The vast majority of lynchings never were investigated, and convictions were

rare in the few cases that were brought to trial. However, as ongoing PNC deployment reached more remote communities, the authorities demonstrated increased willingness and ability to identify and arrest the perpetrators of lynchings. On September 4, a trial court sentenced five individuals to 50 years in prison for their role in 2 lynchings in Totonicapan in 1998. On September 21, the authorities arrested four individuals suspected of organizing a June lynching in El Limon, Chisec, Alta Verapaz.

On August 24, a crowd of several hundred residents of Zacualpa, Quiche, captured and killed five alleged members of a local criminal gang known as "The Specialist." The crowd prevented the PNC and volunteer firemen from rescuing the victims by using roadblocks and holding PNC officers captive until the lynchings were completed, although police were successful in saving other individuals from the angry crowd. Investigators identified several leaders of the mob and reportedly sought arrest warrants. In September residents of Zacualpa created local security committees to protect themselves from the criminal gang, claiming that the justice system is incapable of punishing crime.

With MINUGUA's assistance, in July the Government inaugurated an educational campaign to combat lynchings in the hardest-hit areas of Alta Verapaz and Quiche, which included a training program for educators, printed materials, and radio and television advertisements in three languages. In February in an effort to deter lynchings, Catholic Archbishop Victor Hugo Martinez of Los Altos announced that Catholic churches would suspend religious services for 6 months following any lynching within his jurisdiction--the departments of Quetzaltenango and Totonicapan.

b. Disappearance

There was at least one credible report of disappearance attributed to police forces. A prosecutor attributed the February disappearance of Francisco Gonzalez Vasquez to two Zacapa police officers. The prosecutor sought and obtained an arrest warrant for PN inspector Marvin Gomez, but Gomez had not been apprehended at year's end.

In addition, the PDH's office reported 12 complaints of forced disappearance during the year (4 of which were attributed to government forces), compared with 18 in 1998, 30 in 1997 and 47 in 1996. MINUGUA reported one unconfirmed complaint of forced disappearance during the year, compared with one in 1998 and three in 1997.

There was also at least one credible report of a politically motivated disappearance. On April 30, prominent indigenous leader and FDNG party member Carlos Coc Rax disappeared while crossing Lake Izabal on a boat from the town of El Estor. At the time of his disappearance, Coc Rax had received numerous death threats related to his defense of several indigenous communities involved in land and lumber disputes with large landowners and logging and mining companies near Lake Izabal.

Disappearances in high-profile cases from recent years remained unresolved at year's end. Arnoldo Xi, an indigenous- and peasant-rights activist who reportedly was shot and abducted in March 1995, remained missing. The whereabouts of Lorenzo Quiej Pu, a human rights activist who disappeared in January 1994, also remained unknown. Also unsolved was the case of Juan Jose Cabrera (known as "Mincho"), the guerrilla commander captured in 1996 while taking part in a kidnaping, who has never reappeared.

MINUGUA concluded that the EMP was responsible for his capture, but the media and critics of the Government accused the EMP and MINUGUA of covering up this finding in the interest of not disrupting the peace process. There also was no clarification of several late-1997 cases reported by MINUGUA in which persons believed to have been involved in kidnappings were captured by heavily armed and well-coordinated units that bore many of the characteristics of a clandestine security force. The disappearances of San Marcos PAC members Margarito Lopez and Obdulio Zapeta, army enlisted man Diego Chel Matom, and farmers Ramona Munoz and Maritza Gil, who allegedly were kidnaped in 1993 by guerrillas, also remained unresolved at year's end.

The fate of guerrilla leader Efraim Bamaca Velasquez, who disappeared following a March 1992 clash between army and URNG forces, remains unknown. The IACHR continued its deliberations regarding the Government's liability and damages in the case, based upon the Government's 1998 acceptance of partial liability due to the judicial system's inability to determine Bamaca's whereabouts.

In August 1998, Adriana Portillo Bartow filed criminal charges in the 1981 abduction and disappearance of her two children and four other members of her family. The lawsuit named former Interior Minister Donald Alvarez Ruiz, former National Police Director German Chupina Barahona, and Pedro Garcia Arredondo, the former chief of Commando Seis (a plainclothes police urban counterinsurgency force) as defendants. Garcia Arredondo was reelected as mayor of Nueva Santa Rosa in the November elections, and therefore has immunity from prosecution. There was no significant progress in the case and it remained pending at year's end.

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

The Constitution provides for the integrity and security of the person and prohibits physical or psychological torture of prisoners; however, there were credible reports of torture, abuse, and other mistreatment by members of the PNC. These reports typically involved the use of excessive force during arrests or other police operations. The Government and the PNC showed willingness to investigate, prosecute, or otherwise punish officers who committed abuses, and to transfer cases to the Public Ministry.

The PDH's office reported four complaints of torture during the year, compared with two in 1998 and one unconfirmed case in 1997. The ODHAG reported one case of torture during the year, compared with no cases in 1998, no cases in 1997, and four cases in 1996. The sole case reported by ODHAG involved apparent torture in the June 9 deaths of four prisoners (See Section 1.a.). MINUGUA's 4th report on the peace process, covering the period between August 1998 and November 1999, noted a sharp rise in complaints of abuses committed by the PNC. However, most of this increase involved violations of due process, and in part may be related to a greater public willingness to report such offenses. MINUGUA investigated 24 complaints of torture, of which 22 were confirmed at year's end. The majority of these torture cases involved abuse or mistreatment of suspects and detainees by PNC officers or SIC investigators. While there were some credible reports of coverups in these cases, the PNC generally punished the use of excessive or illegal force by officers.

Amnesty International reported several incidents of police abuse, including the case of a man who allegedly was shot and kicked to death in February by police officers in the

capital (see Section 1.a.). In May plainclothes officers of the Criminal Investigation Section from Quetzaltenango reportedly arrested six men for fighting at a community festival in San Vicente Pacaya, Coatepeque. On the way to the police station, the men allegedly were taken out of the vehicles, beaten, robbed, and then beaten again at the station. The case remained under investigation by the prosecutor's office in Coatepeque. A judge in Chiquimula reported receiving threats and blackmail attempts from a PNC officer accused of running over two persons with his patrol car.

Casa Alianza reported that, although the number of incidents of abuse of street children was roughly equal to 1998 levels, far fewer incidents allegedly were committed by members of the security forces. Most acts of violence against street children were committed by individuals, by private security guards, or in gang- and drug-related violence among street children. Casa Alianza alleges only two cases of abuse of street children by PNC officers: one case of mistreatment and one of rape, which was still being investigated at year's end.

There were no reports that police used excessive force in evictions of landless peasants occupying farms in attempts to gain land during the year. Because of violent confrontations in the past, the Government continued its policy of securing an eviction order from a court, informing the occupiers of the coming eviction, and sending in a lightly armed police contingent to end the occupation by using dialog and verbal persuasion. The public continued to experience difficulty in demonstrating or securing legal title to land, and virtually no progress was made toward genuine land reform. The Ministry of Government carried out numerous evictions without incident during the year using this policy.

Corruption continued to be a problem, and there were credible allegations of involvement by individual police officers in criminal activity, including kidnaping (see Section 1.b.). The authorities arrested some police officers. The authorities continued to take stronger actions against officers found to have engaged in illegal activities, referring some violations to the criminal justice system rather than simply imposing administrative punishments. However, some observers claimed that, rather than discipline its officers, the PNC often just transferred them to a different part of the country. Ongoing impunity for police who commit abuses remains a problem.

All PNC members are required to meet minimum education requirements and pass an entrance examination. Former PN staff who wish to integrate into the PNC must complete successfully a 3-month retraining course. There also are screening procedures to detect suspected human rights violators and agents involved in criminal activities. New recruits must complete a 6-month training course before entering on duty. The training course, developed with the assistance of MINUGUA, foreign countries, and international organizations, includes extensive human rights components. However, some observers claimed that the retraining course was insufficiently rigorous and that relatively few members of the PN were screened out during retraining, allowing the incorporation of some poorly qualified PN members into the ranks of the new PNC.

Pursuant to the Peace Accords, former members of the military were eligible to apply for positions in the PNC but were required to apply like other civilians and complete the 6-month training course required of all civilian applicants. However, the Government incorporated some former members of the military and the former Mobile Military Police

into the ranks of the PNC upon the completion of only the shorter course intended for current members of the PN. The former PMA members were not subjected to a competitive selection process but were screened carefully before they were allowed to enter the program. As of September, there were 13,452 PNC personnel on duty, including 8,429 former PN members and 5,023 new recruits. An additional 2,486 former PN members awaited training classes to join the PNC. Although government plans called for 20,000 PNC members to be on duty around the country by year's end, resource constraints limited that number to about 16,000.

The PNC's Office of Professional Responsibility (ORP) handles internal investigations of misconduct by police officers. The ORP received 1,517 complaints during the year, of which nearly half were for minor infractions. Of the more serious complaints, 224 were for abuse of authority, 258 were for bad conduct, 93 for threats or extortion, 83 for illegal detention, and 40 for homicide. In cases where sufficient evidence suggested that criminal acts were committed, ORP investigators forwarded them to the Public Ministry for further investigation and prosecution. For example, of the 40 alleged homicide cases, 23 were sent to the Ministry. While this number represented an increase over 1998 levels, a significant portion of this increase likely was attributable to the fact that thousands of additional officers were deployed during the year. In addition, strong anecdotal evidence suggested that the public was less afraid and more willing to bring complaints against the PNC than against its predecessor. Most observers still considered the PNC to be a significant improvement over the PN, although there were signs of increasing friction as communities began to face the practical challenges of integrating the new police force into the community and supporting its work.

In 1998 the PNC accepted some 60 police candidates from indigenous communities in the Ixil region--approximately 30 of whom graduated on their first attempt--to ensure that PNC personnel in those communities are proficient in the local language and are able to operate effectively in those communities.

No active members of the military serve in the police command structure, but in 1998 President Arzu ordered the army to support the police temporarily in response to a nationwide wave of violent crime. Arzu extended this order and it remained in effect at the end of the year. While the measure was popular politically, given the public's preoccupation with crime and security, it appeared to open the door to renewed military involvement in internal security and police functions, a role that is prohibited by the Peace Accords. Despite this ambiguity, military personnel were subordinated to police control during joint patrols or operations.

The case of Sister Dianna Ortiz, who was kidnaped near Antigua, tortured, and sexually abused by a group of armed men in November 1989, remained in the investigative phase. However, the prosecutor agreed to send interrogatories to her, so as to accommodate her reluctance to return to Guatemala. There was no real progress in her case at year's end.

Prison conditions remained harsh but not life threatening. The prison system continued to suffer from a serious lack of resources, particularly in the areas of prison security and medical facilities. The Government reported that prison capacity nationwide was 8,373 persons, and there were approximately 8,460 inmates in September. Some institutions were overcrowded; for example, in September the Preventive Detention Center for Men in Guatemala City was approximately 70 percent over its designed capacity. A project to

expand prison capacity at the maximum security prison in Esquintla was completed during the year. Prisoners also complained of inadequate food. Corruption--especially drug-related--is widespread. Prison officials reported frequent escape attempts and other manifestations of prisoner unrest, and the frequency of jailbreaks continued to be a matter of serious public concern. The 573 female prisoners in the penal system are held in facilities separate from men, and minor children are held in other detention facilities. The Government permitted access to prisons by family members.

The Government permits prison visits by independent human rights monitors.

d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest and detention; however, there were frequent credible reports of arrests without judicial warrants, illegal detention, and failure to adhere to prescribed time limits in legal proceedings. The Constitution requires that a court-issued arrest warrant be presented to a suspect prior to arrest unless he is caught in the act of committing a crime. Police may not detain a suspect for over 6 hours without bringing the case before a judge. Once a suspect has been arraigned, the prosecutor generally has 3 months to complete his investigation and file his case. The law also provides for bail and access to lawyers.

There are no comprehensive, reliable data on the number of arbitrary detentions, although most accounts agree that the security forces routinely ignored writs of habeas corpus in cases of illegal detention. The PDH reported 20 complaints of illegal detention during the year, compared with 18 in 1998. From January through September, MINUGUA investigated some 89 complaints of illegal or arbitrary detention during the year, and confirmed 85 by year's end.

Reliable estimates suggest that approximately 62 percent of those incarcerated are awaiting trial. The law sets a limit of 3 months for pretrial detention; however, longer detentions still occurred routinely. Prisoners often are detained past their legal trial or release dates. Prisoners sometimes were not released in a timely fashion after completing their sentences due to the failure of judges to issue the necessary court order.

In the wake of Hurricane Mitch in 1998, President Arzu decreed a state of public emergency, ratified by the Congress, which resulted in the suspension of certain constitutional rights, enabling law enforcement officials to detain persons without a judicial warrant or without discovering them in the act of committing a crime. The state of emergency expired on January 31. There were no reports of abuse of authority due to the suspension.

The Constitution prohibits exile, and it is not practiced.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary; however, the judicial system often fails to provide fair trials due to inefficiency, corruption, insufficient personnel or funds, and intimidation of judges, prosecutors, and witnesses. The courts' response to human rights violations, as well as to general criminal activity, has been inadequate, although during the year the Government achieved convictions in some important human

rights cases from previous years. However, more often, prior convictions for human rights violations were reversed or annulled for technical deficiencies or procedural shortcomings. Observers believe that at least some of these rulings were actually the result of corruption or intimidation of judges. There were numerous credible allegations of corruption in the judiciary.

Members of the judiciary and prosecutors continued to receive threats aimed at influencing current decisions or as reprisals for past decisions. Death threats and intimidation of the judiciary were commonplace in most cases involving human rights violations, particularly where the defendants were current or former members of the military, military commissioners, or PAC's. For example, in May a former judge in Puerto Barrios was killed in apparent retaliation for death sentences he handed down while on the bench (see Section 1.a.). Judges and prosecutors in the Xaman massacre case allegedly received numerous threats before and during the trial (see Section 1.a.). The prosecutor and his staff in the Bishop Gerardi murder investigation reported wiretapping, surveillance, and frequent death threats (see Section 1.a.). In March and October, respectively, a judge and a prosecutor in the Gerardi case resigned and left the country due, at least in part, to threats and intimidation (see Section 1.a.). In September the mob that attempted to free former military commissioner Candido Noriega also threatened to kill the judge (see Section 1.a.). A small number of prosecutors handling high-profile cases have been assigned bodyguards; however, in general the Government has not allocated sufficient resources to the judiciary's physical security.

The judiciary is composed of the Constitutional Court, the Supreme Court, appellate courts, lower courts, and courts of special jurisdiction (e.g., labor courts). The Constitution provides that Congress elect all Supreme Court (CSJ) and Appellate Court (CA) magistrates every 5 years from lists prepared by panels composed of active magistrates, representatives of the bar association, and law school deans. In October new CSJ and CA magistrates were chosen, amid some accusations that political parties were attempting to fill the courts with their sympathizers prior to the November general elections. Despite such allegations, the selection process was more participatory and transparent than ever before. There are several community courts in indigenous rural areas (see Section 5).

The Criminal Procedures Code, which came into effect in mid-1994, provides for the presumption of innocence, the right to be present at trial, the right to counsel, plea bargaining, and the possibility of release on bail. Trials are public--allowing victims, family members, and human rights groups to observe the process--and verdicts are rendered by three-judge panels. The code also provides for language interpretation for those who require it; however, in practice this provision is not always honored due to budgetary and other constraints (see Section 5). The Public Ministry, which is independent of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as coplaintiffs. Lengthy investigations and frequent procedural motions by both defense and prosecution often lead to excessively long pretrial detention (see Section 1.d.). Courts showed little willingness to exercise discretion in dismissing frivolous or patently invalid motions. As a consequence, parties continued to use such motions as delaying tactics, frequently holding up trials for several months or even years.

Inefficiency and corruption in the courts, Public Ministry, and police continued to impede

the proper functioning of the judicial system and undermine the right to due process. The Supreme Court continued to seek the suspension of judges and to conduct criminal investigations for improprieties or irregularities in cases under its jurisdiction. According to government statistics, through August the Supreme Court imposed 1,215 sanctions against members of the judiciary for offenses ranging from simple impropriety to illegal conduct. Of those sanctions against judges, 1,159 were findings of impropriety, 66 were warnings, 9 judges were fired, and 1 was suspended. Magistrates received 13 findings of impropriety. The Public Ministry has been hampered in its efforts to investigate crimes and prosecute offenders by inadequate training and equipment and insufficient numbers of investigators. In addition, prosecutors remained susceptible to intimidation and corruption. It was difficult to attract qualified personnel to the courts because of the low salaries offered. Notwithstanding this difficulty, the judiciary fired over 500 employees in August, alleging that they had participated in an illegal work stoppage in 1996 (see Section 6.a.). In October the CSJ reinstated 125 of these employees. Some observers speculated that the firings were politically motivated. In October Congress passed a law on legal careers, which established a system to regulate the income, terms of office, promotion, training, and disciplinary measures, as well as other activities of judges and magistrates, to support their professionalism and independence. The new law took effect on December 2, and is intended to speed trials and reduce corruption by recognizing and protecting competent judges while creating mechanisms to remove incompetent or corrupt ones.

In cooperation with foreign donors, the Government continued its efforts to reform the judicial system. In September 1997, the Government formed an interagency mechanism to coordinate reform efforts among the judicial branch, the Public Ministry, the Ministry of Government, and the Public Defenders Service, which are the four principal governmental institutions involved in the administration of justice. Since 1994 the Government has created 215 judgeships throughout the country. One of the most successful reform efforts has been the creation of "justice centers," which bring together judges, public defenders, prosecutors, private law practitioners, police, municipal representatives, military officers, and civil society in a team approach to dispute resolution and problem solving. The centers have installed modernized docket and case filing systems in the courts, thereby increasing efficiency and public service. Centers are located in Zacapa, Quetzaltenango, Escuintla, Nebaj, the Peten, and most recently, Huehuetenango. The Supreme Court extended the administrative model of the justice centers to include the criminal courts in the capital by creating a new Clerk of Court office, which has streamlined the processing of cases, increased transparency, and improved customer service. Other judicial reforms included the attendance of over 400 prospective judges and assistant judges at special courses at the School of Judicial Studies, from which applicants were selected to fill vacancies in the judiciary.

Despite some progress, much remains to be done to reform the judiciary and establish effective rule of law, as mandated by the Peace Accords. Many of the structural and procedural weaknesses of the judiciary would have been addressed by the proposed constitutional reforms that were defeated in a national referendum in May (see Section 3). An August visit by U.N. Special Rapporteur on Justice Param Cumaraswamy highlighted many of the justice sector's acute problems and the continued need for sweeping reforms. Although his final report was not expected until January 2000, Cumaraswamy offered several conclusions at the end of his visit. Cumaraswamy observed that the judicial system has not recovered from the damage it sustained during the internal conflict, noting

its lack of independence and complicity as a former tool of repression. In addition, he concluded that the judicial system is hampered by inefficiency, incompetence, corruption, influence peddling, and lack of resources. The Rapporteur also criticized the threats and intimidation experienced by judicial employees, the prevalence of lynchings and other forms of vigilante justice, and low prosecution rates as manifestations of ongoing impunity.

There were no reports of political prisoners.

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

The Constitution provides for the inviolability of home, correspondence, and private documents; however, allegations persist that the authorities sometimes disregard these provisions. Elements of the security forces reportedly continued to monitor private communications. Press reports continued to accuse the Presidential Military Staff of wiretapping telephones. The prosecutor and his staff in the Bishop Gerardi murder investigation reported wiretapping and surveillance (see Section 1.a.).

The military continued to honor the 1994 presidential order to suspend all conscription, including forced recruitment.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of expression, and the Government generally respected this right in practice. Unlike the previous year, there were no reports of self-censorship. There were some unconfirmed reports that members of the press were targets of intimidation.

In addition to regular and open criticism of government policies, the media publicizes communiques from human rights organizations, unions, and groups opposed to the Government or its policies. The press criticized the military and other powerful sectors. For example, the press reported a number of allegations by human rights groups that the EMP continues to monitor private telephone conversations (see Section 1.f.). The press also frequently published stories on reputed drug traffickers and on official corruption.

The Government prepared public information programs, which the radio and television stations were required to broadcast. The Government controlled two national channels, one by the Presidency and one by the Ministry of Education. Critics alleged that the channel controlled by the Presidency was a propaganda organ rather than a source for public information, particularly during the election campaign. Opposition parties had no such access to the media but could purchase broadcast time. During the election campaign, opposing parties frequently accused the Government of using its nightly information program to publicize the Government's accomplishments, in violation of a prior Supreme Electoral Tribunal (TSE) ruling that prohibits such activity.

There were no reports of threats or violence against journalists.

The trial of the two alleged killers in the June 1997 murder of journalist Jorge Luis

Marroquin Sagastume was expected to begin in September. The victim's relatives continued to pursue charges filed against the crime's alleged intellectual author, former Jocotan Mayor Manuel Ohajaca, who apparently acted out of revenge or personal animosity.

The Constitution provides for academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of peaceful assembly, and the Government respects this right in practice. Peaceful demonstrations were common, and demonstrators sometimes occupied government institutions. In all these cases, the police acted with restraint, and the authorities negotiated a peaceful departure of the demonstrators.

The Constitution provides for freedom of association, and the Government respects this right in practice. The Government did not interfere with political associations. However, organizations must obtain legal status, a formerly cumbersome and expensive procedure. The URNG and several NGO's have alleged that this law particularly disadvantaged organizations representing marginalized social sectors, including indigenous groups. In December 1997, the Congress enacted a statute that sought to provide a less cumbersome mechanism for registering civil associations. Regulations implementing this statute were adopted in 1998, and media reports suggest that the new law and regulations have streamlined the registration process considerably.

c. Freedom of Religion

The Constitution provides for religious freedom, and the Government respects this right in practice. There is no state religion; however, the Constitution recognizes explicitly the separate legal personality of the Catholic Church. Members of a religion need not register simply in order to worship together. However, the Government requires religious congregations (other than the Catholic Church), as well as other nonreligious associations and NGO's, to register as legal entities in order to be able to transact business.

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

The Constitution provides for these rights, and the Government generally respects them in practice. In October 1998, President Arzu temporarily suspended constitutional provisions protecting freedom of movement until January, in response to hurricane Mitch (see Section 1.d.).

The Government grants refugee status and asylum in accordance with the provisions of the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperates with the office of the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees from other countries. The issue of the provision of first asylum did not arise. There were no reports of the forced return of persons to countries where they feared persecution.

Voluntary repatriation of refugees from Mexico concluded. The UNHCR estimated that approximately 2,000 refugees returned, bringing the total to over 40,000 since initiation of

the program in 1993. Guatemalans who still remain in Mexico do so by choice.

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

Citizens have the right to change their government by peaceful and democratic means, through secret ballot and universal suffrage for those 18 years of age and older. Members of the armed forces and police may not vote. Since the return to democracy and civilian rule in 1985, there have been nine free elections. International observers concluded that both the November general elections and the December runoff presidential election were free and fair. During and after the November round of elections, political parties lodged numerous complaints of fraud and misconduct against each other. The vast majority of these complaints were unaccompanied by evidence and appeared to be partisan attempts to disqualify opponents or annul election results. However, the most serious allegation was a complaint brought to the Supreme Electoral Tribunal (TSE) by the FRG that the PAN-led Guatemala City Administration interfered with city bus transportation on election day to prevent FRG supporters from reaching the polls. Based on this and other FRG allegations of PAN fraud, the FRG leadership requested a recount of the Guatemala City results. The TSE ruled against a recount, finding insufficient evidence of fraud or misconduct. Due largely to unexpectedly high voter turnout, the TSE was slow to report the November vote count. Public uncertainty over the delayed count contributed to violence and disturbances in a number of municipalities with highly contested local races.

Voters elect the 113-member, unicameral Congress every 4 years using a system of proportional representation based on population, with deputies elected both from districts and from a nationwide list. The Congress had 91 deputies from districts and 22 from the national list. The November elections involved 13 political parties, including 2 2-party coalitions. Four parties and both coalitions won seats in the legislature, led by the FRG with a 63 seat majority, followed by the PAN with 37 seats, and the New Nation Alliance coalition, which included the URNG party, with 9 seats. Voter participation in the November round was at a 13-year high. Congress can and does act independently of the executive, but fragmentation along party lines and a weak support and staff structure result in a legislature that is relatively weak.

The former URNG guerrillas met all legal requirements for qualification as a political party and competed in the November general elections.

On December 26, FRG presidential candidate Alfonso Portillo won a runoff election against PAN candidate Oscar Berger, with 68 percent of the popular vote, in an election that international observers characterized as free and fair.

Government efforts to implement the Peace Accords were selective. On May 16, in a national referendum, voters rejected the entire package of 50 constitutional reforms approved by Congress in 1998, dealing a significant blow to the peace process. Only 20 percent of the electorate voted. The defeated amendments included provisions to recognize, respect, and protect indigenous languages and traditional customs, professionalize the judicial service, give civilian courts jurisdiction over military personnel, and define the army as an apolitical organization. While ordinary laws could be enacted to accomplish many of the reforms, the constitutional reforms nonetheless held great symbolic value for the peace process.

Prior to the vote, on January 9, the Constitutional Court granted a temporary injunction to prevent the Supreme Electoral Tribunal from calling a national plebiscite on the amendments, following a request by the Center for the Defense of the Constitution (CEDECON), a private, nonpartisan association of lawyers. Following the Constitutional Court's decision, COPMAGUA--an indigenous NGO--and the URNG political party blocked roads in Guatemala City and several other locations to protest the decision. On February 9, the Constitutional Court overruled a decision by Congress to send the 50 amendments as a single package for the referendum, but ruled that Congress would be acting within the Constitution if it grouped the amendments into 6 thematic categories before sending them to voters. Congress then grouped the amendments into four categories before sending them to voters. Every major political party had expressed support for the amendments, although none actively campaigned on their behalf.

There are no legal impediments to women's participation in politics and government, but women are underrepresented in the political arena. Nevertheless, women hold some prominent political positions. Voters elected nine women to Congress in November; women hold two seats on the Supreme Court; and one on the Constitutional Court. There were two female ministers in the Arzu government.

The Constitution provides for equal rights for indigenous people. Some have attained high positions as judges and government officials, including 15 members of the new Congress; there were 6 indigenous members in the 80-member Congress before the elections. Indigenous leader Rigoberto Queme was reelected as mayor of Guatemala's second-largest city, Quetzaltenango, in a narrow victory in which there were credible allegations of vote-buying by Queme's political organization, the Xel-ju Civic Committee. Indigenous people still are underrepresented significantly in politics due to limited educational opportunity and pervasive discrimination (See Section 5). There were no indigenous members in the Cabinet of the Arzu Government. On August 17, the Congress opened outreach offices in Quetzaltenango (in a heavily indigenous area), Jutiapa, and Coban, in order to facilitate communication between the legislative branch and citizens in outlying areas.

There was an unconfirmed report from a human rights organization that groups of indigenous women from Quiche effectively were prevented from registering to vote in time for the May constitutional referendum. Reportedly, officials told them at various times that the registration campaign was not yet underway, that the proper forms were not available, or that notarized copies of additional documents were required. By all accounts voter registration was generally difficult, complicated, time consuming, and expensive, particularly for poor, mostly indigenous rural voters, who had to incur considerable expense just to travel to the towns or cities where registration took place. However, women and indigenous voter participation in the November general elections increased.

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

The Government permits local human rights groups to operate without restriction. Numerous domestic and international groups investigate and report freely on human rights issues. Senior government officials also met with numerous foreign government officials and international human rights monitors. While many international human rights organizations and their workers do not enjoy formal legal status, they continue to operate

openly.

During the year, many NGO's credibly reported receiving threats or being intimidated by unidentified persons. Human rights activists and jurists working on cases involving human rights abuses, drug trafficking, and other sensitive matters frequently reported receiving anonymous threats. At least one observer claimed that forensic and human rights workers exhuming a clandestine cemetery at San Francisco Nenton, Huehuetenango, were victims of intimidation and harassment. In addition, at least two murders, one disappearance, and one abduction of human rights activists allegedly were committed for political reasons, possibly related to the victims' human rights work. These cases included the killing of FDNG party member and indigenous human rights activist Tomas Tol Salvador (see Section 1.a.), the death of sociologist Maria Ramirez Gonzalez (see Section 1.a.), the disappearance of Lake Izabal indigenous leader Carlos Coc Rax (see Section 1.b.), and the abduction of a security escort in the Candido Noriega case (see Section 1.a.).

The ODHAG personnel working on the Bishop Gerardi murder case reported frequent and persistent death threats, surveillance, and other acts of intimidation. On April 16, three armed men broke into the home of ODHAG director Ronalth Ochaeta, hit and threatened his domestic employee, but stole nothing of real value. The break-in was widely considered to be an act of intimidation because it occurred just days before the ODHAG was to commemorate the first anniversary of Bishop Gerardi's death. Furthermore, the assailants reportedly left behind a piece of cement cinder block--the same type of object used to kill Bishop Gerardi. Several months later, Ochaeta resigned and left the country.

Every 5 years, Congress elects the Human Rights Ombudsman from three candidates chosen by the Congressional Committee on Human Rights. The Ombudsman reports to Congress, and monitors the rights provided for by the Constitution. The PDH's rulings do not have the force of law. The Ombudsman, Julio Arango Escobar, operates with a large degree of independence from other branches of the Government, often ruling on controversial issues not normally considered human rights topics, such as bus fares and electricity rates. During the year, Arango continued to complain that the Congress neither funded his office adequately nor implemented his recommendations on human rights. The office's lack of funding limited the possibility of developing adequate investigative capabilities. Relations between the Ombudsman's office and MINUGUA were strained, in part by Arango's issuance of a statement accusing MINUGUA officials of complicity in the jailbreak of the former PAC members convicted for killing Juan Chanay Pablo (see Section 1.a.). MINUGUA responded by explaining that its involvement in the case was limited to assisting Arango's own representative in filing a petition requesting that the convicted PAC members be jailed closer to home, so as to facilitate family visits. Arango also publicly criticized the harmonious working relationship between MINUGUA and COPREDEH, claiming that MINUGUA's intent was to marginalize the PDH. Upon the expiration of MINUGUA's mandate at the end of 2000, the PDH is scheduled to take over MINUGUA's human rights verification function.

COPREDEH actively sought to forge a responsive and cooperative relationship with both domestic and international human rights monitors, often acting as a liaison between such groups and other government offices. COPREDEH sought to negotiate amicable settlements in many cases of past human rights violations pending before organs of the inter-American human rights system, rather than litigating such cases.

On February 25, the Historical Clarification Commission (CEH) fulfilled its Peace Accord mandate by issuing "Guatemala: Memory of Silence," its 12-volume report on the internal conflict based on witness and survivor testimony and historical records provided by the Government (including the military), international organizations, and human rights NGO's. Volume One outlined the CEH's mandate and procedures and explained the causes and origins of the internal conflict, in which an estimated 200,000 persons disappeared or were killed. Volumes Two and Three listed the acts of violence and human rights abuses. Volume Four detailed the consequences and effects of the violence, and Volume Five offered conclusions and recommendations. Volumes Six through Twelve contained the case data collected and used by the Commission in its findings.

Given the CEH's relatively weak mandate, most observers were surprised at the strength and breadth of the report's findings, conclusions, and recommendations. The report found that government forces (the army, military commissioners, paramilitary groups, and PAC's) were responsible for approximately 93 percent of all human rights abuses and acts of violence. The report also found the Government responsible for acts of genocide against the Mayan community, citing the coincidence of significant army deployments to those predominantly indigenous regions in which the vast majority of massacres were committed during the bloodiest period of the conflict, from June 1981 to December 1982. The report found that the guerrillas were responsible for about 3 percent of all abuses and acts of violence. Following publication of the report, human rights defenders reported being threatened, having their telephones tapped, and being followed; some left the country temporarily.

Many observers were disappointed by the Arzu administration's ambivalent and legalistic response to the findings and recommendations of the CEH. Human rights groups continued to criticize the Government's refusal to create a foundation to follow up on the CEH's recommendations or to carry out far-reaching reforms of the military.

MINUGUA maintained a staff of approximately 400 persons, with regional offices to monitor implementation of the human rights provisions of the Peace Accords and to strengthen democratic institutions. MINUGUA stated that the Government generally cooperated with its investigations but cited occasional isolated incidents in which government officials or institutions had obstructed its efforts.

In July the Government hosted a visit by U.N. Special Rapporteur for Children's Issues Ofelia Calceñas-Santos, whose visit focused on child abuse, adoption, and other children's issues (see Section 5).

In August the Government hosted a visit by U.N. Special Rapporteur on Justice Param Cumaraswamy, who met with government officials, diplomats, NGO's, and other civil society groups in a thorough review of the justice sector (see Section 1.e.).

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language or Social Status

The Constitution states that all persons are free and equal in dignity and rights, and that the State must protect the life, liberty, justice, security, peace, and development of all citizens. However, in practice, the Government is frequently unable to enforce these provisions, due to inadequate resources, corruption, and a dysfunctional judicial system.

Women

Violence against women, including domestic violence, remains common among all social classes. The 1996 Law on Intrafamily Violence provided that the Public Ministry, the national police, family courts, legal clinics, and the PDH can receive complaints of domestic violence. Domestic violence is defined as "whatever action or omission by direct or indirect manner causes damage, or physical, sexual, psychological, or patrimonial suffering" to a person within the family group. The law provides for the issuance of restraining orders against alleged aggressors and obligates the national police to intervene in situations of domestic violence. The law allows a rapist to be exonerated when the victim agrees to marry the man, but the Public Ministry must also approve the marriage when the victim is below the age of 18.

Victims rarely report criminal sexual violence, although the number of complaints of such offenses continues to increase significantly. PNC statistics showed 323 rapes during the year, compared to 220 in 1998 and 167 in 1997. Many observers believe that this increase does not reflect an increase in the number of rapes committed, but reflects an increased willingness on the part of victims to come forward, greater public confidence in the PNC, and improved record keeping of crime statistics. Despite these advances, relatively few rape cases go to court, in large part because police have little training or investigative capacity for such crimes, and because many rape victims are still reluctant to report and prosecute such crimes. Unofficial statistics suggest that there were 80 convictions during the year for rape or related crimes, compared with 67 convictions in 1998.

Complaints of spousal abuse continued to rise due, at least in part, to increased nationwide educational programs, which have encouraged women to seek assistance. In 1998 the PDH reported approximately 2,600 complaints of domestic violence nationwide. Judges may issue an injunction against an abusive spouse or companion, and the police are charged with enforcing such injunctions. The Women's Rights Department of the PDH and various NGO's provide medical and legal assistance and information on family planning. The Women's Rights Department drafted proposed regulations to implement the provision of the Law on Intrafamily Violence establishing a National Commission for the Prevention of Domestic Violence, but the regulations had not yet been adopted at year's end. In September the Arzu Government created the office of Ombudsman for Indigenous Women and appointed Juana Catinac Xom de Coyoy as its first Director. The office was created to provide social services for victims of intrafamily or social violence, as well as mediation, conflict resolution, and legal services, with the first branch offices to be opened in those areas where indigenous women suffered the most during the internal conflict.

Sexual harassment in the workplace is common.

The Constitution asserts the principle of equality between the sexes. Nonetheless, in practice, women face job discrimination, are less likely to win management positions, and on average receive significantly lower pay than men. Some women are subjected to preemployment pregnancy tests. Women are employed primarily in low-wage jobs in the textile industry, agriculture, retail businesses, and the public sector. More working women than men are employed in the informal sector of the economy, where pay and benefits are generally lower. Women may own, manage, and inherit property on an equal basis with men. During the year, Congress repealed the rarely enforced Civil Code article that

enabled a husband to deny his wife the right to work outside the home, when, in his judgment, that would compromise her duties as housekeeper and mother. Congress also repealed the article that placed the husband in charge of administering the family's property, replacing it with one that puts both spouses on equal footing with regard to joint or individually owned property.

The National Women's Forum, inaugurated in November 1997, continued to promote women's issues by participating in local and regional forums organized by political parties during the general election campaign. In addition, the Forum prepared a plan for development and women's issues, which is scheduled to be presented to the Government in January 2000. The Forum's suggestions for promoting the development of women were included in a cabinet-level document on that topic for the Arzu administration.

Children

The Constitution charges the Government with protecting the physical and mental health, as well as the moral well-being, of minors. However, despite these provisions, the Government in the past has not devoted sufficient resources to ensure adequate educational and health services for children. The Government budgeted approximately \$296 million (2.25 billion quetzals) for education and approximately \$163 million (1.24 billion quetzals) for health care, an increase over 1998 levels.

The Constitution provides for compulsory education for all children up to the sixth grade. However, less than half the population actually receives a primary education, and only 3 of 10 students that begin primary school complete it. Only one of eight girls who begin school graduate from sixth grade. According to the CALDH, between 50 and 57 percent of children between the ages of 7 and 17 can be considered completely "outside of the educational system." Public expenditure for education was equivalent to only 1.7 percent of GDP. Children in rural and indigenous areas are less likely to complete primary school.

Approximately 2.3 million children between the ages of 5 and 12 were enrolled in schools as of January; a 15 percent increase in enrollment from 1998, according to the Ministry of Education. The Ministry also reported that 2,841 communities now have access to educational services for the first time. There have been special initiatives to promote the education of girls, and about 46,000 girls received incentive scholarships from the Ministry of Education during the year.

A recent United Nations Children's Fund report, titled "Progress of the Nations," concluded that the country's children are at significant risk for infant mortality, abnormally low body weight, low school attendance, and AIDS. According to the study, 56 percent of rural children and 35 percent of urban children under age 5 show signs of underdeveloped growth. The PDH reported that 73 percent of children under 5 years of age suffer from malnutrition, and that 38 percent of elementary school-age children and 79 percent of secondary school-age children do not attend school.

Most estimates indicate that reports of child abuse continue to increase. The Procuracy General reported 1,478 cases of child abuse during the year, compared to 1,172 cases in all of 1998.

The abuse of street children (see Section 1.c.) remained a serious problem in major cities.

Most credible estimates, including a May report by the Presidential Secretariat on Social Work and NGO's, put the number of street children at approximately 6,000, with the majority of these youths concentrated in Guatemala City. Criminals--reported to include private security guards and corrupt police or military personnel--often recruit these children into thievery or prostitution rings. According to Casa Alianza, drugs, prostitution, and gangs posed the greatest danger to this vulnerable group during the year. In contrast to previous years, most violence against street children was committed by individuals, private security guards, and other street children, not by police or other government forces, although there were two reports of abuse of street children by PNC officers (see Section 1.c). The Government and a number of NGO's operate youth centers, but the funds devoted to them are not sufficient to alleviate the problem. The Government created a Permanent Commission for Children and Youth in 1996 to investigate cases of mistreatment. Implementation of the new Minors' Code, which would offer greater legal protection to children, was deferred until March 1, 2000, due to strong political opposition from certain sectors. Opponents, including religious leaders, argued that the code derogated parental rights and threatened the integrity of the family.

COPREDEH continued weekly meetings of the Permanent Commission for Children, composed of representatives from Casa Alianza and from the judicial and executive branches, with the aim of addressing the problems of street children. The Government continued its program to train instructors to educate civil society groups and the public about children's rights. The PDH reported that it investigated cases of sexual exploitation of children in Escuintla, Alta Verapaz, Huehuetenango, and San Marcos.

The Ministry of Labor has noted an increase in child prostitution in the towns along the borders with Mexico and El Salvador. Along the border with El Salvador, many child prostitutes are brought into the country from El Salvador, Nicaragua, and Honduras by organized rings, who force the children into prostitution (see Section 6.f.).

In July the Government hosted a visit by U.N. Special Rapporteur for Children's Issues Ofelia Calcetas-Santos, whose mandate included investigating matters such as child pornography and prostitution. Although her final report is not scheduled to be published until April 2000, Calcetas called for a new adoption law to combat trafficking in children, increased efforts to reduce child abuse, and greater attention and resources to the physical, educational, and emotional needs of children.

People with Disabilities

The Constitution provides that the State should protect disabled persons. Nonetheless, physically disabled persons are discriminated against in education and employment practices, and few resources are devoted to combat this problem or to assist the disabled. However, in 1996 Congress passed a law mandating equal access to public facilities, prohibiting discrimination based on disability, and providing other legal protections. The PDH is drafting proposed regulations to implement the provisions of the Law on Protection of the Elderly and the Law on Attention to Disabled Persons.

The law defines a disabled person as one whose physical, mental, or emotional deficiencies limit performance of normal activities. It stipulates equal opportunity for disabled persons in health, education, work, recreation, sports, and cultural activities. It also provides that all disabled persons receive the benefits of labor laws, social security,

and have the right to work. In addition, the law establishes equal education opportunities, the requirement that buildings meet access codes, and the right to equal pay. While implementation of the new law has been slow, a National Council for the Disabled, composed of representatives of concerned government ministries and agencies, met regularly to formulate regulations needed to implement the legislation.

Indigenous People

The Constitution states that the country is composed of diverse ethnic groups and obliges the Government to recognize, respect, and promote the lifestyles, customs, traditions, forms of social organization, and manner of dress of indigenous people. The Government is obliged to consult with its indigenous population before enacting any legislation that could affect it. In September the Arzu Government created the office of Ombudsman for Indigenous Women and appointed Juana Catinac Xom de Coyoy as its first Director.

Indigenous people constitute over one-half the population but remain largely outside of the country's political, economic, social, and cultural mainstream. The 1994 census, the most recent, states that 42.8 percent of the population are indigenous; however, most observers believe that this figure is low. There is no single indicator of indigenous status, and there are at least 22 separate indigenous ethnic groups. In addition to the indigenous Mayan groups, there is an indigenous Xinca community of some 6,000 persons. A separate minority group is the Garifuna, who are descendents of Africans brought to the Caribbean coast as laborers.

Indigenous people were the most common victims of extrajudicial killings and other serious human rights abuses during the internal conflict. The commissions established to discuss the implementation of constitutional provisions relating to indigenous rights met during the year to formulate recommendations to the Government regarding protection of indigenous culture, languages, traditions, lands, and sacred sites. Indigenous people are organizing into interest groups to promote bilingual education, women's rights, and community development. The Government also is devoting increased resources to bilingual education. In April the Minister of Education stated that students at the Western National School of Commercial Sciences could wear traditional dress; the school had attempted to expel two students who refused to wear the school uniform.

Rural indigenous people have limited educational opportunities and thus have fewer employment opportunities. Many indigenous people are illiterate or do not speak Spanish. Linguistic barriers hinder interaction with the Government and limit access to public services, including the judiciary, since few current officials speak any of the 24 indigenous languages. In 1998 the Indigenous Languages Officialization Commission issued a report, in which it recommended that a variety of public services be provided in the four most widely spoken indigenous languages (Kiche, Qeqchi, Mam, and Kaqchikel), with a lesser degree of services provided in less widely spoken indigenous languages.

Indigenous people arrested for crimes are often at a disadvantage due to their limited comprehension of Spanish. The Criminal Procedures Code states that the courts must provide interpretation for anyone requiring such services during criminal proceedings. There are 67 interpreters at all levels of the legal system, from the police to the formal courts, to assure non-Spanish speakers the means to bring complaints, resolve conflicts, and provide testimony. Interpreters are concentrated in former conflict areas of the

country; more interpreters were in training. In January 1998, several community courts were created in primarily indigenous, rural areas to decentralize justice and incorporate customary Mayan law for minor offenses. The University of San Carlos offers a postgraduate degree in indigenous customary law. Judges, prosecutors, public defenders, judicial translators, and others already have received the degree, which emphasizes criminal law and human rights.

In May the movement for greater indigenous rights suffered a major setback when the constitutional reform packages were defeated. These reforms would have expanded and solidified a number of rights for the indigenous community, in accordance with both the Constitution and the Peace Accords. Observers attributed much of the success of the informal antireform campaign to misplaced or exaggerated fears that the reforms would grant too much power to indigenous groups and create a separate and privileged justice system for them.

Several indigenous leaders disappeared or were killed during the year. On May 18, unknown assailants abducted and killed Tomas Tol Salvador, an activist for the Council of Ethnic Communities and an FDNG leader, in Quiche (see Section 1.a.). On April 30, prominent indigenous leader and FDNG party member Carlos Coc Rax disappeared while crossing Lake Izabal on a boat from the town of El Estor (see Section 1.b.). On July 27, unidentified assailants shot and killed Mayan priest Raul Coc Choc at his home in the department of Chimaltenango (see Section 1.a.).

Section 6 Worker Rights

a. The Right of Association

The Constitution and the Labor Code provide workers with freedom of association and the right to form and join trade unions. The Government does not control unions. Major reforms to the Labor Code in 1992 mandated steps to improve worker rights by facilitating freedom of association, strengthening the rights of working women, increasing penalties for violations of labor laws, and enhancing the role of the Labor Ministry and labor courts in enforcing the statutes. All workers have the right to form or join unions, including public sector employees, with the exception of members of the security forces.

The Labor Code envisions a well-articulated institutional structure for enforcement. However, in practice the poverty of the populace, the legacy of violent repression of labor activists during the internal conflict, the deep-seated hostility of the business and military establishment towards independent and self-governing labor organizations, and the weakness of the labor inspectors and labor court system constrain the exercise of worker rights and limit enforcement of labor standards. In its Fourth Report on the Peace Process, MINUGUA noted that "genuine trade union freedom does not exist" due to antiunion violence.

Only 2 percent of the 3.5 million person work force belong to labor organizations, according to the Labor Ministry. The approximately 1,300 registered unions and 400 company-sponsored "solidarity organizations" are independent of government and political party domination. Labor code amendments have simplified the process for unions to obtain legal status. The Minister of Labor further revised the administrative process in 1996, reducing the number of steps within the Ministry for consideration of union

applications and establishing strict timetables; the time for the procedure was reduced to 20 days from 60. The Labor Ministry also has initiated a program to assist unions with their applications, and the Minister has warned officials that noncompliance with the timetable could lead to dismissal of those responsible for the delay. These new regulations have accelerated the approval procedure and largely eliminated the backlog of union applications. The Labor Ministry granted legal status to 25 unions during the year.

On October 13, a group of men, many of them armed, took control of the union hall of the SITRABI banana workers union in the town of Morales, Izabal. There are credible reports that leaders of the vigilante group repeatedly threatened to kill some of the union leaders. During the incident, which lasted over 8 hours into the morning of October 14, at least a dozen rank-and-file unionists reportedly were held for much of that time on the bus in which they had come to the union hall. There are several credible reports that armed men forcibly entered the home of one of the union leaders and made him go with them to the union hall. Various union leaders and rank-and-file members were shoved and struck. Union leaders were forced to sign letters of resignation from their positions in the union and from their jobs. The Ministry of Labor immediately declared these coerced resignations to be invalid. MINUGUA's report on the incident called it "one of the most serious violations of human rights since the signing of the Peace Accords." Following their investigation of the incident, Public Ministry prosecutors sought indictments against 12 individuals on charges of abduction, illegal detention, intimidation, and coercion.

Workers have the right to strike, but labor code procedures for having a strike recognized as legal are cumbersome. Labor organizers criticize the requirement that two-thirds of the work force must approve a vote to strike, the prohibition of strikes by agricultural workers at harvest time, and the right of the Government to prohibit strikes that it considers seriously harmful to the national economy. In 1996 Congress approved a law that further restricted the right to strike for workers employed in essential public services, including urban and interurban transport, mail, and telegraph. Unions strongly opposed the law, and some members of Congress called the measure unconstitutional and contrary to commitments to the International Labor Organization. However, the Constitutional Court declared it constitutional in 1997. This essential services strike legislation gives the State the authority to intervene forcefully should strikes threaten the orderly functioning of society. Employers may suspend workers or fire them for absence without leave if the authorities have not approved their strike legally. The strike regulation law calls for binding arbitration if an impasse has been reached after 30 days of negotiation.

Although the public sector historically has been the scene of frequent strikes, almost always called without legal authorization, there were no public sector strikes during the year. However, prison guards reportedly threatened to strike during the year, but chose not to do so after the authorities pledged to improve working conditions. In 1998 the Government declared illegal a 1996 strike by judicial workers. In September the judiciary fired about 500 of these workers, ostensibly for having participated in this illegal 1996 strike. Unions and human rights organizations questioned the methodology used by the magistrates in charge of the court system to select employees for dismissal, alleging that the dismissals were politically motivated. The Congress established a commission to review the cases of those who were dismissed. In October the CSJ reinstated about 125 persons (see Section 1.e.).

The law protects workers from retribution for forming and participating in trade union

activities, but enforcement of these provisions is inconsistent. While an increasing number of employers accept unionization, many routinely seek to circumvent labor code provisions in order to resist union activities, which they view as disruptive and as a challenge to their full control of the workplace. An ineffective legal system and inadequate penalties for violations have hindered enforcement of the right to form unions and participate in trade union activities. Although the Labor Code provides that workers illegally fired for union activity should be reinstated within 24 hours, in practice employers often file a series of appeals, or simply defy judicial orders of reinstatement. Penalties for defying such orders were increased somewhat in the 1992 labor code reform and again in Decree 35-98, which went into effect in June 1998.

Trade union leaders and members generally did not suffer labor-related violence; however, there were a few notable exceptions during the year. There has been little progress in the investigation of the January 12 killing of Robinson Morales Canales, who had been the executive secretary of the Zacapa municipal workers union during a long-running labor conflict with the mayor of the town (see Section 1.a.). There have been no arrests in the case of Hugo Duarte Cardon, another member of the Zacapa municipal workers union, who was killed in July 1998. Most of the investigations into previous years' cases of violence against, including the murder of, various labor leaders appear to have been suspended.

An active "solidarity" movement claims approximately 170,000 members in about 400 companies. Unions may operate legally in workplaces that have solidarity associations, and workers have the right to choose between the two or to belong to both. The Government views these associations as civic organizations that need not interfere with the functioning of trade unions. The amended Labor Code stipulates very clearly that trade unions have an exclusive right to bargain collectively on work conditions on behalf of workers. However, unions charge that management promotes solidarity associations to avoid the formation of trade unions or to compete with existing labor unions. There were credible reports that some of these associations did not always adhere to democratic principles in their formation and management, and that workers are unable to participate fully and freely in decisionmaking. Similar credible charges were made against some trade unions.

At the request of trade union leaders, the Human Rights Ombudsman's office for economic and social issues receives complaints related to trade union activities. Union leaders and workers filed over 100 complaints with the PDH during the year, and the Ombudsman has made public statements about labor conditions in various sectors of the economy. The PDH can investigate union complaints and issue a statement, but the office has no enforcement powers beyond attempting to ameliorate the situation through publicity and moral persuasion.

Unions may and do form federations and confederations and affiliate with international organizations.

b. The Right to Organize and Bargain Collectively

Workers have the right to organize and bargain collectively; however, the practice of collective bargaining is limited by the weakness of the union movement, the requirement that 25 percent of the workers in a factory or business must be union members in order for

collective bargaining to take place, the lack of experience with collective bargaining, and management's aversion to negotiating formally with worker organizations. While both management and the unions honored some well-written collective contracts, in other instances both parties openly ignored and violated contracts. Most workers, even those organized by trade unions, do not have collective contracts to cover their wages and working conditions but do have individual contracts as required by law. Most workers receive the minimum wages established by tripartite commissions, which operate under the guidance of the Ministry of Labor.

Employers legally cannot dismiss workers for helping to form a trade union; workers file complaints in this regard with the labor inspectors for resolution. The Labor Code provides for the right of employers to fire union workers for cause, permits workers to appeal their dismissal to the labor courts, and requires the reinstatement within 24 hours of any union worker fired without cause. The revised code prohibits employers from firing workers for union organizing and protects them for 60 days following the official publication of approval of the union. It also prohibits employers from firing any member of the executive committee of a union and protects them for an additional 12 months after they are no longer on the executive committee. An employer may fire a member of the union's executive committee for cause only after a trial and issuance of a court resolution.

Despite governmental, bilateral, and multilateral efforts to improve them, the labor courts remain ineffective. However, efforts to restructure and modernize the labor court system continue. There are 20 labor courts, including 7 in the capital and 13 elsewhere around the country. An additional nine courts deal with labor issues as part of their jurisdiction. The weakness of the judicial system as a whole, the severe shortage of competent judges and staff, and a heavy backlog of undecided cases all contribute to the labor courts' lack of credibility and enforcement ability. The small number of competent and motivated labor inspectors and the lack of training and resources devoted to detecting and investigating labor code violations compound the weakness of the labor courts. However, government efforts to improve the labor inspection system also continue. The Ministry of Labor increased its rate of inspections and fired some incompetent or corrupt inspectors. Ministry figures show that over 2,000 inspections or investigations of complaints were conducted by August. The Ministry continued a review of inspections at farms and plantations in rural areas and cited those employers who were paying less than the minimum wage.

The Ministry of Labor has reorganized its labor inspection system to permit some complaints to be heard at the Ministry of Labor rather than requiring that inspectors travel to each work site. The Ministry increased the number of court cases filed for failure to comply with the Labor Code and continued an educational campaign on worker rights (especially the rights of minors and women), including providing some documents in indigenous languages. In an effort to improve enforcement of the Labor Code outside the capital, the Ministry of Labor continued to decentralize its operations. Eight of the Ministry's 24 branch offices outside the capital were accorded regional authority, and their resources increased accordingly.

Labor laws and regulations apply throughout the country, including in the few export processing zones (EPZ's). The laws governing the EPZ's are not discriminatory on the subject of organizing trade unions or collective bargaining. Union leaders often blame employer pressures and their unofficially restricted access to the EPZ's for their inability

to organize workers in these zones. While labor standards in the EPZ's are no different from those found outside the zones, actual working conditions are often better.

c. Prohibition of Forced or Compulsory Labor

The Constitution bars forced or compulsory labor, and the practice does not exist. The law does not specifically prohibit forced or bonded labor by children, but they are covered by the general statute. Forced or bonded labor by children generally did not occur; however, there were reports that children were trafficked for the purpose of prostitution (see Sections 5 and 6.f.).

d. Status of Child Labor Practices and Minimum Age for Employment

The Constitution bars employment of minors under the age of 14 without written permission from the Ministry of Labor. However, children below this age regularly are employed in the informal and agricultural sectors, usually in small family enterprises. The law prohibits minors from night work and extra hours (the legal workday for minors under the age of 14 is 6 hours; for minors 14 to 17 years of age, it is 7 hours), from working in establishments where alcoholic beverages are served, or from working in unhealthy or dangerous conditions. However, between 3,000 and 5,000 children commonly are employed in the illegal cottage-based fireworks industry. The Labor Ministry believes that approximately 10 percent of the children in this industry work illegally in factories, while younger children, under the age of 14, typically work at home on piecework taken in by their families. Laws governing the employment of minors are not enforced effectively, due to the shortage of qualified labor inspectors and the weakness of the labor court system. The Association for Girls and Boys in Central America (PRONICE) estimates that approximately 2 million children work. The majority of child laborers work in agriculture (family farms, coffee, and sugar cane harvesting), while others work in domestic service, construction, various family businesses, stone quarrying, fireworks manufacturing, or other jobs. Children below the age of 14 years are not allowed to work without written permission from the Ministry of Labor. There are fewer than 5,000 such permits in effect, the majority of them for work in the in-bond processing for export, or maquila, sector. The Ministry of Labor is engaged actively in reducing the number of these permits and issued less than 1,500 for the year. However, many children under the age of 14 work without legal permission and are open to exploitation. They generally receive no social benefits, social insurance, vacations, or severance pay, and earn below-minimum salaries.

The Labor Ministry has a program to educate minors, their parents, and employers on the rights of minors in the labor market. In 1992 the Government formed the Child Worker Protection Unit within the Ministry of Labor. Implementation of the 1997 Children's and Minor's Code has been delayed because of political controversy over its provisions. Economic necessity forces most families to have their children seek some type of employment to supplement family income, especially in rural and indigenous communities. Children who work generally do so in family enterprises. Education is compulsory for all children up to the sixth grade. The law does not prohibit specifically forced or bonded labor by children, but it generally did not occur (see Section 6.c.).

e. Acceptable Conditions of Work

Although the law sets minimum wages, the legally mandated minimum wage for most unskilled and semiskilled workers is not always paid. A tripartite committee representing labor and management in specific economic sectors and overseen by the Ministry of Labor, is named each year to make recommendations for increases in the minimum wage. In the event that agreement is not possible, the Government may decree such increases. President Arzu implemented the most recent minimum wage increase by decree, after the commission was unable to reach a consensus, and it took effect on February 1. The basic rate is \$2.53 (19.71 quetzals) for industrial workers for an 8-hour workday, including a required hourly bonus, and is \$2.29 (17.86 quetzals) per day plus mandatory productivity bonuses for agricultural workers. The minimum wage is not sufficient to provide a decent standard of living for a worker and family. According to the United Nations Development Program, at least 80 percent of the population lives below the poverty line, including approximately 60 percent of those employed.

The legal workday is 8 hours, and the workweek is 44 hours, but a tradition of longer hours remains in place due to economic conditions. The amended Labor Code requires a weekly paid rest period of at least 24 hours. Trade union leaders and human rights groups charge that workers sometimes are forced to work overtime, often without premium pay, in order to meet work requirements. Labor inspectors report uncovering numerous instances of such abuses, but the lack of stiff fines or strong regulatory sanctions, as well as inefficiencies in the labor court system, inhibit adequate enforcement of the law.

Occupational health and safety standards are inadequate. As with other asp