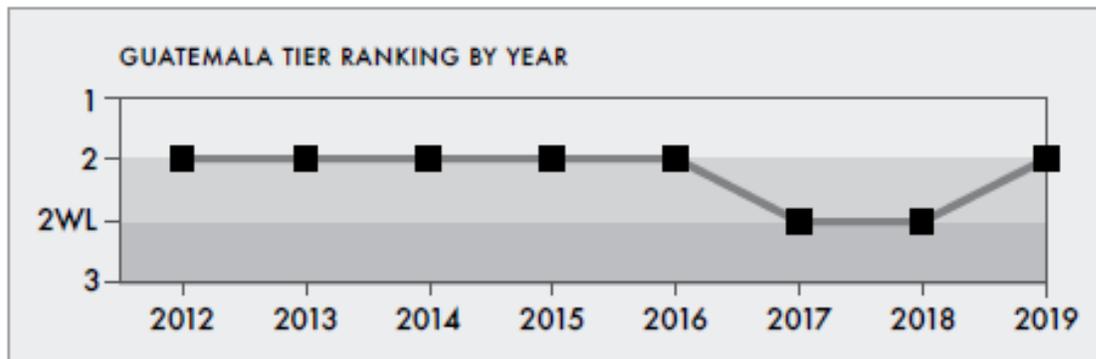


GUATEMALA: TIER 2

The Government of Guatemala does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared to the previous reporting period; therefore, Guatemala was upgraded to Tier 2. These efforts included investigating more traffickers, dedicating additional resources to increase judicial and prosecutorial capacity outside the capital, identifying and providing services to more victims, increasing funding for victim services, developing several new victim identification and assistance protocols, and launching several new awareness-raising campaigns, including for vulnerable populations. The Public Ministry provided social workers and psychologists to serve as liaisons between prosecutors and victims, accompany victims through the proceedings against their traffickers, and assist victims in accessing medical services. The government also investigated, prosecuted, and convicted government employees complicit in trafficking offenses. However, the government did not meet the minimum standards in several key areas. The government prosecuted and convicted fewer traffickers; did not address underlying problems in the nation's shelters providing for child trafficking victims; referred only 64 percent of victims to care, and specialized victim services remained inadequate given the scope of the problem and lack of services for adult victims.

Corruption and complicity remained significant concerns.



PRIORITIZED RECOMMENDATIONS:

Vigorously investigate and prosecute trafficking offenses, with increased focus on suspected cases of forced labor. • Convict traffickers under the 2009 anti-trafficking law, rather than lesser offenses, and sentence them to adequate penalties, which should include significant prison terms. • Review shelter standards and operations in shelters providing for child trafficking victims nationwide and address overcrowding, abuse, and neglect. • Investigate and hold government officials criminally accountable for complicity in trafficking. • Expand authority to refer victims to care to additional appropriate authorities and ensure all victims are referred quickly to appropriate care facilities. • Increase efforts to identify trafficking victims, particularly among vulnerable populations, such as working children, returning migrants, individuals in prostitution, and children apprehended for illicit gang-related activities. • Improve access to and quality of specialized services for adult victims. • Amend the 2009 anti-trafficking law to include a definition of human trafficking consistent with international law. •

Increase efforts to investigate, prosecute, and convict child sex tourists and others engaged in sex trafficking of children. • As part of developing a cadre of specialized prosecutors and judges outside of the capital, expand training to include training on the use of forensic and other evidence to ensure trafficking cases are investigated and prosecuted as such rather than as lesser offenses. • Provide reintegration and witness protection support to victims once they leave shelters to prevent re-trafficking. • Increase efforts to proactively look for indicators of forced labor, including in the agricultural sector where workers were particularly vulnerable to forced labor.

PROSECUTION

The government slightly increased law enforcement efforts. The anti-trafficking law of 2009 criminalized sex trafficking and labor trafficking and prescribed penalties from eight to 18 years' imprisonment. These penalties were sufficiently stringent and, with respect to sex trafficking, commensurate with penalties prescribed for other serious crimes, such as rape. Inconsistent with the definition of trafficking under international law, the law did not consider the use of force, fraud, or coercion as an essential element of an adult trafficking offense. The law defined trafficking broadly to include labor exploitation and illegal adoption without the purpose of exploitation.

The government initiated investigations of 272 complaints of trafficking-related offenses in 2018, compared to 254 complaints in 2017 and 243 complaints in 2016. In 2018, the government reported 140 of these complaints were specifically trafficking rather than related offenses compared to 127 in 2017. The Human Rights Ombudsman reported receiving 23 complaints of potential trafficking, which it referred to the Public Ministry. Authorities prosecuted 32 defendants for trafficking in 2018, compared with 52 defendants in 2017 and 43 defendants in 2016. Authorities secured 14 convictions against 22 traffickers, compared with 19 convictions in 2017 and 13 convictions in 2016, with sentences ranging from eight to 15 years' imprisonment. In October 2018, Public Ministry officials arrested 11 individuals, including eight prison guards, for allegedly facilitating child trafficking by recruiting and employing a 17-year-old girl as a domestic worker and offering her for commercial sexual services to an alleged drug trafficker who was in the custody of the prison guards in a private hospital. The government convicted the eight prison guards for failure to report sexual exploitation and sentenced them to three years in prison in February 2019. The government charged two other individuals with human trafficking and their cases were pending trial at the close of the reporting period.

The Judicial System dedicated resources to increase investigative and prosecutorial capacity outside the capital. In December 2018, the Judicial System approved the opening of a specialized First Instance Criminal Court and Criminal Trial Court in Quetzaltenango to compliment the Public Ministry's antitrafficking unit. The Quetzaltenango regional anti-trafficking unit received 19 complaints, an increase over previous years due to greater capacity in the Western Highlands. Some judges, especially in the interior, lacked adequate training to apply forensic evidence in prosecutions, which led to cases tried as sexual assault rather than trafficking. Observers reported recent training for judges improved their awareness of and ability to identify trafficking crimes, but more training was needed given the decrease in prosecutions and convictions. The government provided or participated in training on trafficking indicators and processing trafficking cases offered by international organizations and a foreign government for police academy recruits, crime scene experts, prosecutors, and judges on trafficking indicators and processing trafficking cases.

PROTECTION

The government increased protection efforts. The government identified 371 trafficking victims (308 female victims and 63 male victims) in 2018, compared with 316 in 2017, 484 in 2016, and 673 in 2015. Reported data did not specify the types of trafficking involved in those cases. The government made efforts to address child forced labor by conducting an operation in coordination with three municipalities against 82 tortilla vendors and convenience stores, which resulted in the identification of 47 possible child labor victims and arrest of 17 alleged traffickers. The interagency anti-trafficking commission initiated the development of a new victim identification guide and planned to finalize and disseminate it in 2019. Meanwhile, officials use the inter-institutional protocol for the protection and attention to victims, first published in 2016. The commission worked to strengthen the Immediate Response Team (ERI) convened by the Public Ministry and led by the Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons (SVET), including by developing an ERI action guide on the formal process for identifying, referring, and protecting victims. While some government officials received training to implement another protocol to identify potential forced labor victims during labor inspections, NGOs expressed concern the labor ministry did not proactively look for indicators of forced labor, including in the agricultural sector where workers were particularly vulnerable to forced labor.

The attorney general implemented a victim assistance protocol and victims' bill of rights by establishing procedures for victim attention, investigations, protection, and reparations. Guatemalan law required judges make all referrals to public or private shelters. In 2018 judges referred 239 victims to care facilities compared to 210 in 2017 and 256 victims in 2016. In practice, judges did not make timely referrals, delaying access to needed assistance. Judges at times referred child victims to their families, leaving some vulnerable to re-trafficking, as family members often were involved in their exploitation. Authorities repatriated four Guatemalan victims from abroad in 2018.

Authorities repatriated two Honduran trafficking victims in coordination with foreign consular officials and in accordance with an established protocol. Civil society expressed concern some adult foreign victims chose to leave shelters and return to their home countries due to lengthy investigation processes. The government screened returning unaccompanied children for trafficking indicators using Secretariat of Social Welfare (SBS) protocols for the attention and reception of such children in two government shelters. An NGO maintained a specialized shelter for unaccompanied minors that assisted repatriation, deterred irregular migration, and screened for trafficking. The government provided 19.4 million quetzals (\$2.51 million) in funding in 2018 for government shelters, as well as NGOs that provide specialized services, mostly for child trafficking victims compared to 17.6 million quetzals (\$2.28 million) in 2017. The government allocated 21 million quetzals (\$2.72 million) in funding for 2019. While funding has increased, NGOs advocated for additional funding to increase service provision.

The government and NGOs provided shelter and services to 238 trafficking victims, compared to 127 trafficking victims in 2017, including victims of sex trafficking and forced labor, adults and children, female and male victims. SVET shelters provided such services in cooperation with other government agencies and implemented improvements to provide vocational training leading to certifications in computer programming and cooking. SBS shelters provided basic services, including food and housing, and more advanced services, such as healthcare, vocational education, and therapy. SBS adopted a new shelter model to limit the number of children per shelter to 15 and a process to evaluate each child within the first 72 hours before determining treatment. As of January 1, 2019, SBS assumed leadership over two of the three SVET-managed shelters for child trafficking victims. Authorities determined the third shelter would better serve the gap in shelter for adults and began the process of dedicating it strictly for adult trafficking victims and migrants. SVET developed a protocol for specialized attention to

children in shelters, which it distributed to public and private shelters, and a model of integral attention for adult victims to be used in the new adult shelter. The government-run shelters housed 77 trafficking victims (74 females and three males) in 2018 compared to 89 trafficking victims (82 females and seven males) in 2017 and 77 in 2016. SVET reported the average time victims stayed in its shelters was four months, and SBS reported the average time children stayed in its specialized program in Coatepeque was 10 months. Four NGOs provided shelter and services to 161 children and adults ranging from housing, healthcare, education, psychological services, and legal services. Observers reported NGOs provided the highest quality and most comprehensive care for child victims. One NGO shelter provided services to adult female victims, but it restricted victims' freedom of movement. Observers expressed concern the government had not established a mechanism to provide victims with follow-up and reintegration support once they leave shelters, which could jeopardize victims' safety and increase vulnerability to re-trafficking.

Observers reported monitoring and oversight of all government shelters for children remained weak, noting the government did not implement structural changes to overhaul the system in the aftermath of the March 2017 fire in an overcrowded government-managed shelter, which resulted in the deaths of 41 girls and injuries to others. The shelter had previously faced allegations of corruption, sexual exploitation, and a UN investigation into the shelter's management. In addition, Guatemala's president had called for a restructuring of the country's shelter system and authorities published a new 2017-2032 action plan on the protection of children and adolescents, including trafficking victims and children in state-run institutions. In the previous reporting period, the government prosecuted seven government officials for offenses including, but not limited to, abuse of power, neglect of their duties, and maltreatment of minors, some of whom may have been trafficking victims, for the March 2017 fire and as of March 2019, the courts planned to proceed to trial in May 2019 against three government officials.

Authorities encouraged victims to assist in the investigation and prosecution of traffickers and made options available for victim testimony to be given either in a Gesell Chamber or from behind a partition in the courtroom to protect the victim's identity and privacy. The Public Ministry employed social workers and psychologists to serve as liaisons between the office and victims, accompany victims through the proceedings against their traffickers, and assist victims in accessing medical services; the Public Ministry assisted 270 individuals in 2018. Judges must order restitution when sentencing traffickers, and victims also had the right to file civil claims for compensatory damages and harm suffered as a result of traffickers exploiting them in sex trafficking or forced labor; the government did not report any victims received restitution or a civil damages award in 2018 or 2017, compared to seven victims who received restitution in 2016. The Judiciary reported judges consistently order restitution, but observers reported a gap in enforcement of orders for payments. Guatemalan law provided legal alternatives to the removal of foreign victims who may face hardship or retribution upon return to their home countries, but all known foreign victims opted for repatriation. Foreign victims had the same access to care as domestic trafficking victims.

PREVENTION

The government increased prevention efforts. SVET served as the secretariat for the interagency anti-trafficking commission, which coordinated government efforts against trafficking, expanded to include eight new members, held 15 meetings attended by both government officials and NGOs, and implemented the national anti-trafficking action plan for 2018-2024. SVET coordinated several

departmental networks, which identified trafficking cases and in 2018 conducted an information campaign in 18 departments in the country. The anti-trafficking commission convened agencies and civil society in November 2018 to develop a 2019 operational plan assigning targets, due dates, and entities responsible. The government funded and conducted a wide range of initiatives to educate potential victims, the public, government officials, and tourists about the dangers, causes, and consequences of trafficking, including by continuing its support of the “Blue Heart” campaign for a third year and by providing materials in indigenous languages and in braille. The government launched a new national anti-trafficking campaign focused on informing youth about the dangers of forced labor and recruitment by criminal groups for illicit activities. The government created new messaging to raise the awareness among the general public, particularly in border regions, and among staff at migrant shelters to improve their ability to identify trafficking. The government took steps to respond to the June 2018 volcanic eruption, which forced thousands of Guatemalans from their homes, and to the migration of thousands of Central Americans beginning in October 2018 by providing training for shelter workers on trafficking indicators and educational materials and radio spots on the risks of trafficking in emergency situations for the public. SVET and the General Transportation Directorate promoted an awarenessraising campaign in the public transportation system in 19 departments of the country. The government did not operate a trafficking-specific hotline but encouraged the public to call the hotline operated by the national police, which operated 24 hours a day and year-round and accepted reports anonymously. The Human Rights Ombudsman encouraged the public to call its 24-hour hotline to report potential trafficking cases. Neither agency reported how many calls it received in 2018.

SVET reactivated the National Working Group for the Prevention and Protection of Children and Adolescents against Sexual Exploitation in Activities Related to Travel and Tourism, developed an operational plan to implement its 2018-2022 strategic plan, trained members of the national taxi association, and ran prevention campaigns on sex tourism targeting students, visitors to hospitals, activists, airport security officials, tourist police, businesses, tourism operators, and travelers. The government investigated a suspected sex tourist for allegedly exploiting children in commercial sexual exploitation during the reporting period. The government developed draft regulations related to labor recruiting of Guatemalan workers in the previous reporting period but did not finalize or implement them in 2018. The government worked with the private sector to promote policies to exclude products made with forced labor in efforts to reduce the demand for forced labor. The government did not make efforts to reduce the demand for commercial sex acts.