



GUATEMALA

**Submission to the Human Rights Committee
for the 115th Session
(Information For Adoption Of List Of Issues Prior To Reporting)
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By

The Advocates for Human Rights, a non-governmental organization in special consultative status with ECOSOC since 1996

I. Introduction

- 1. The Advocates for Human Rights** (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates has published 25 reports on violence against women as a human rights issue, provides consultation and commentary on draft laws on domestic violence, and trains lawyers, police, prosecutors, and judges to effectively implement new and existing laws on domestic violence. Since 2014, a growing number of women fleeing gender-based violence in Guatemala have requested legal assistance from The Advocates in applying for asylum in the United States.
- 2. Domestic violence and other crimes of violence against women remain serious problems in Guatemala.** In 2013, there were 31,836 reports of violence against women and 198 reports of femicide.¹ Guatemala has the third highest rate of femicide in the world, ranking only behind El Salvador and Jamaica.² Yet crimes of violence against women are underreported and likely only reflect a small percentage of the actual rate of violence against women in Guatemala.³ Even when violence against women is reported, the government of Guatemala fails to adequately investigate and prosecute. Public Ministry statistics show that during the first 10 months of 2014, there were 8,871 cases of sexual or physical assault

¹ Report of the United Nations High Commissioner for Human Rights on the Activities of her office in Guatemala, January 13, 2014. U.N. DOC A/HRC/25/19/Add.1 (hereinafter referred to as “High Commissioner Report 2014”).

² Femicide: A Global Problem, Small Arms Survey (Feb. 2012) *available at* http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-14.pdf.

³ *Id.*



reported but only 304 convictions.⁴ The rate of impunity for femicide in 2014 remained at around 98-99 percent.⁵

II. Overview of Legal Framework

3. Domestic violence, rape, sexual assault, sexual harassment, and other forms of violence against women are forms of discrimination against women and violate women's human rights. Violence against women violates a woman's rights to life and security of person (Article 6), freedom from torture and ill-treatment (Article 7), equality before the courts (Article 14), equal protection before the law (Article 26), and protection of the family (Article 23), among others under the International Covenant on Civil and Political Rights (ICCPR).
4. During its last review of Guatemala in 2012, the Human Rights Committee ("Committee") expressed concern at the "persistence of very high level of violence against women"⁶ in spite of the country's progress. The Committee was likewise concerned at "the frequent inadequacy of the investigation mechanisms used by law enforcement officials and forensic doctors and the small number of treatment centres which are the only support to women survivors of violence."⁷
5. In its 2012 Concluding Observations, the Committee recommended that Guatemala "continue its efforts to prevent sexual and gender-based violence and to encourage to the victims to report such acts." Specifically the Committee recommended that Guatemala 1) include the importance of protection of women against violence in school curricula; 2) require training to respond to gender-based violence for all legal and law enforcement officials as well as all health service providers, especially "to the collection of forensic evidence, treatment of victims, coordination between the authorities responsible for investigation, punishment and victim protection"⁸; and 3) and ensure that all victims of sexual or gender-based violence have access to treatment centers and shelters.
6. Other treaty bodies have expressed similar concerns with the high levels of violence against women in Guatemala. In its 2009 review of Guatemala, the Committee on the Elimination of Discrimination against Women ("CEDAW") noted with concern the high incidence of

⁴ *Guatemala 2014 Human Rights Report*, United States Department of State, p. 15, (2014) (hereinafter referred to as 2014 Department of State Human Rights Report").

⁵ *Id.*

⁶ Human Rights Committee, *Concluding Observations: Guatemala*, April 19 2012, UNDOC CCPR/C/GTM/CO/3 (hereinafter referred to as "HRC Concluding Observations 2012").

⁷ *Id.*

⁸ *Id.*

sexual violence at home and with sexual harassment in the workplace.⁹ CEDAW expressed concern about “cases of extreme violence against women manifested by the murder of women motivated by gender-specific causes, which has been described as ‘femicide’.”¹⁰ CEDAW also noted with concern that, despite the passage of the Femicide Law of 2008, “the climate of impunity has not been eradicated and women are still afraid to report cases.”¹¹ In its Concluding Observations, CEDAW called upon Guatemala “to make sure that all women and girls have access to protection and redress.”¹²

7. Both the Committee on the Rights of the Child¹³ (CRC) and the Committee against Torture¹⁴ (CAT) have also expressed concern about gender-based violence. In 2013, CAT noted deep concerns about the levels of violence against women, which had risen since Guatemala’s previous review.¹⁵ The CAT called upon Guatemala to redouble efforts to raise awareness about the danger women face and implement legislation aimed at combating it.¹⁶
8. **Since its last review by the Human Rights Committee in 2012, Guatemala has taken some steps toward combatting violence against women in the fulfilment of its obligations under the ICCPR.** Violence against women is addressed in the Guatemalan Criminal Code and the 2008 Femicide Law, which criminalizes murder motivated by gender and establishes penalties of 5 to 8 years for physical, economic, and psychological violence committed against women because of their gender.¹⁷

⁹ Committee on the Elimination of Discrimination against Women, *Concluding Observations: Guatemala*, February 12, 2009, UNDOC CEDAW/C/GUA/CO/7, ¶ 21 (hereinafter referred to as “CEDAW Concluding Observations 2009”).

¹⁰ *Id.*

¹¹ *Id.*

¹² CEDAW Concluding Observations 2009 at ¶ 22. CEDAW recommended implementing “gender-sensitive training on violence against women for public officials, particularly law enforcement personnel, the judiciary and health service providers, to ensure that they are sensitized and can respond effectively to violence against women.” More broadly, CEDAW called on Guatemala to “take measures to modify social and cultural attitudes which are the root causes of most forms of violence targeting women, in particular murder motivated by gender prejudice.”

¹³ Committee on the Rights of the Child, *Concluding Observations: Guatemala*, U.N. Doc CRC/C/GTM/CO/3-4. October 25, 2010. The CRC expressed concern about the young age at which girls get married in Guatemala and recommended the minimum age of marriage be raised. CRC also expressed concern about gang violence which threatened the rights of all children. The CRC recommended Guatemala develop a comprehensive policy that addressed the root causes of gang culture.

¹⁴ Committee against Torture, *Concluding Observations: Guatemala*, U.N. Doc CAT/C/GTM/CO/5-6. June 21, 2013.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Ley contra el femicidio y otras formas de violencia contra la mujer [Law Against Femicide and Other Forms of Violence Against Women] (hereinafter referred to as “2008 Femicide Law”), Decreto del Congreso [Congressional decree], No. 22-2008 available at http://www.oas.org/dil/esp/Ley_contra_el_Femicidio_y_otros_Formas_de_Violencia_Contra_la_Mujer_Guatemala.pdf.



9. The government of Guatemala has also established several agencies and institutions to give effect to the law, including the Special Prosecutor for Crimes against Women, the Presidential Secretariat for Women (SEPREM),¹⁸ the Office for the Defense of Indigenous Women (DEMI),¹⁹ the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI),²⁰ and the government-run Integrated Support Centres for Women Survivors of Violence (CAIMUs).²¹ Nonetheless, poor implementation has meant these laws and mechanisms have had little effect in reducing levels of violence against women in Guatemala.²²

III. Violence Against Women in Guatemala

10. The Advocates has received direct information about violence against women in Guatemala from women survivors who fled gender-based violence in Guatemala to seek asylum in the United States.²³ While each client's case is different, their experiences confirm that the legal system and policies in place in Guatemala are not providing women and girls with adequate protection from gender-based violence or providing victims with the necessary support and services. Moreover, the legal system and policies fail to hold perpetrators of violence accountable. For example, while Guatemala has the third highest rate of femicide in the world,²⁴ the conviction rate for femicide in 2014 was only 1-2 percent.²⁵
11. **Domestic violence remains a serious problem in Guatemala.** In the first eight months of 2014 alone, the Public Ministry reported 48,132 complaints of intrafamily violence against women and children.²⁶ Many of the women interviewed by The Advocates reported experiencing violence and sexual assault against them by their intimate partners. One girl, who is now 16, met her husband when she was 11 and he was 22; they were married when she was 14. She was repeatedly raped and physically beaten by her husband throughout their relationship. Even when she was pregnant and on bedrest, he continued to beat her until she miscarried.²⁷

¹⁸ *Id.* ¶ 72-76.

¹⁹ *Id.* ¶ 77.

²⁰ *Id.* ¶ 78-82.

²¹ *Id.* ¶ 80-82.

²² Karen Musalo & Blaine Bookey, *Crimes without Punishment: An Update on Violence Against Women and Impunity in Guatemala*, 10 HASTINGS RACE AND POVERTY L. J. 265 (2013) (hereinafter referred to as “Musalo & Bookey, *Crimes without Punishment*”).

²³ The case information presented in this submission is compiled from intake and other interviews conducted by The Advocates for Human Rights with asylum seekers from Guatemala between January 2014 and July 2015 (hereinafter referred to as “Interviews conducted by The Advocates (January 2014-July 2015)”). Some details have been removed to maintain confidentiality and to protect the identities of the women and their families.

²⁴ Femicide: A Global Problem, Small Arms Survey (Feb. 2012) available at http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-14.pdf.

²⁵ 2014 Department of State Human Rights Report at p. 15.

²⁶ 2014 Department of State Human Rights Report at p. 15.

²⁷ Interviews conducted by The Advocates (January 2014-July 2015).

12. Another woman interviewed reported that her partner, with whom she had 5 children, physically and emotionally abused her for many years. Even after they separated 13 years ago, he continued to regularly abuse her and threaten to kill her.²⁸ Other clients interviewed reported being physically abused by their fathers, as well as witnessing the domestic violence perpetrated by their fathers against their mothers.²⁹
13. **Rape and sexual violence remains widespread in Guatemala.** Public Ministry statistics show that during the first 10 months of 2014, there were 8,871 reported cases of sexual or physical assault on women.³⁰ In addition to spousal rape and intrafamily sexual violence, many of The Advocates' clients reported experiencing sexual violence committed by relatives, neighbors, or strangers. One 18-year-old woman was raped by a stranger while working as a housekeeper as a young teen in Guatemala City. The rapist told her to keep quiet or else he would kill her. She later fled Guatemala after a neighbor repeatedly threatened to kill her, telling her she had to "be his girlfriend, or no one's".
14. **Violence by and impunity for gang members creates an unsafe and violent environment for women in Guatemala.** Women who come into contact with gangs are subject to threats, kidnapping, extortion, rape and sexual assault, and murder. In particular the two largest gangs, MS-13 and MS-18, often utilize violence against women as way to initiate new members.³¹ Along with drug trafficking, kidnapping has been one of the gang's main sources of funding.³²
15. The Advocates has received numerous reports from asylum seekers about crimes committed by gang members in Guatemala. One client, a 12-year-old girl with severe mental disabilities, was kidnapped by gang members in 2014 and held for two weeks. Her grandmother received a note saying "If you want to see your granddaughter alive, pay us 50,000 quetzles."³³ Another client reported that gang members repeatedly threatened to rape and kill his 14-year-old sister on her way to and from school.³⁴

IV. The Guatemalan Government Fails to Protect Women From Violence

16. **Persistent stereotypes and prejudices regarding the role of women in society perpetuate violence against women in Guatemala, contributing to underreporting of violence and sexual assault against women.** Deeply entrenched biases regarding the status of women in Guatemala have resulted in wide acceptance of domestic violence, which

²⁸Interviews conducted by The Advocates (January 2014-July 2015).

²⁹Interviews conducted by The Advocates (January 2014-July 2015).

³⁰2014 Department of State Human Rights Report at p. 15.

³¹Guatemala Human Rights Commission, *Femicide Law* at p. 4-5.

³²2014 Department of State Human Rights Report at p. 15.

³³Interviews conducted by The Advocates (January 2014-July 2015).

³⁴Interviews conducted by The Advocates (January 2014-July 2015).



women are expected to endure because it is viewed as “normal.”³⁵ In addition to societal and cultural pressures on victims not to report, girls and women frequently do not report crimes due to lack of confidence in the justice system, social stigma, and fear of reprisal.³⁶

17. Domestic violence, rape and sexual assault, and other crimes of violence against women are ineffectively investigated, prosecuted and adjudicated. Police have minimal training or capacity to investigate sexual crimes or assist survivors of such crimes.³⁷ Full investigation and prosecution of cases of rape and domestic violence move very slowly, averaging one year in time.³⁸ Government agencies responsible for investigating and prosecuting crimes often display bias against female victims of violence.³⁹ Officials, including judges and police, have refused to investigate on numerous occasions due to the appearance or attire of the victim.⁴⁰ In its ruling on the murder case of Guatemalan teen María Isabel Franco, the Inter-American Court of Human Rights identified some of the serious deficiencies and errors that occur in the investigation process of a case involving violence against women in Guatemala.⁴¹ As a result, impunity for perpetrators of crimes of violence against women remains very high in Guatemala.⁴²

18. The experiences of individuals interviewed by The Advocates corroborate the ineffectiveness of the police and judicial system in dealing with violence against women in Guatemala. One woman who was abused by her husband told The Advocates that when she went to the police to get help, her husband met her at the police station. A judge met with both of them and told them to “try and work things out.” When they returned home, her husband beat her again. Another woman told The Advocates that she did not go to the police to report the abuse because her partner, a police officer, told her that if she went to the police “there was nothing that would be done.”

³⁵ Musalo & Bookey, *Crimes without Punishment* citing affidavit of expert witness on gender discrimination in Guatemala. See Expert Declaration of Elisa Portillo Najera” (Feb. 3, 2012) (hereinafter referred to as “Expert Declaration of Elisa Portillo Najera”) available at

http://cgrs.uchastings.edu/sites/default/files/Elisa_Portillo_Najera_Affidavit.pdf

³⁶ 2014 Department of State Human Rights Report at p. 15.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Expert Declaration of Elisa Portillo Najera at ¶ 38.

⁴⁰ Guatemala Human Rights Commission/USA, *Guatemala’s Femicide Law*, 2, (2009) (hereinafter referred to as “Guatemala Human Rights Commission, *Femicide Law*”). The report notes that Guatemala’s Human Rights Ombudsman found that the main deterrent to a proper investigation of one female victim was due to the fact that the police believed she was “a nobody” because she was wearing sandals and a belly button ring.

⁴¹ Among the deficiencies in the investigation included failure to take a statement from the victim’s mother when she reported her daughter’s disappearance, the failure to collect and test physical evidence, and police report which appear to show the police investigating the behavior of the victim. *María Isabel Véliz Franco v. Guatemala*, Case 12,578, Report No. 170/11, Inter-Am. C.H.R., (2011)

⁴² 2014 Department of State Human Rights Report at p. 15.

19. Even if a woman is able to access legal system protections, it does not always ensure her safety. Often offenders are given the minimum sentence of five years, which under Guatemalan law can be commuted by paying a nominal fine, leaving the abuser free to return to the home.⁴³ One client reported to The Advocates that she was able to file for and was granted an order for protection. However, it did not stop her husband from pursuing her and ultimately she was forced to flee to the United States to escape him.⁴⁴
20. **Guatemala has failed to create and maintain adequate shelters for women fleeing domestic violence.** Although the 2008 Femicide Law requires protection, including shelter, for victims of domestic violence, resources and facilities are insufficient to meet the need. There are currently only eight government-operated shelters in Guatemala.⁴⁵ These shelters have limited capacity and women with male children above the age of 12 are often not allowed to stay.⁴⁶ Further, the shelters are not located in rural areas where indigenous women, who are particularly vulnerable, would have access to them.⁴⁷
21. **Statistical information about violence against women is not collected or analyzed sufficiently, and is not accessible to all Guatemalans.** Although the 2008 Femicide Law requires the government to collect statistics on violence against women,⁴⁸ the Guatemalan government has failed to develop an adequate system for doing so. The law does not mandate a uniform complaint intake form across institutions, resulting in disaggregated data on violence against women.⁴⁹ The government also has done a poor job of disseminating the information it has collected. Where statistics are available, they are difficult to find and available only in Spanish, despite the numerous indigenous languages spoken throughout the country.

V. **Suggested Questions for List of Issues:**

- What steps is the State Party taking to address the societal and cultural pressures on victims and increase the reporting of crimes of violence against women, including sexual assault and domestic violence?
- What training, if any, is given to government officials, particularly prosecutors, police and judges in working with victims of violence against women?
- What steps, if any, is the government taking to ensure that medical personnel are equipped to spot cases of violence against women, and empowered to report such cases?

⁴³Expert Declaration of Elisa Portillo Najera at ¶ 42.

⁴⁴Interviews conducted by The Advocates (January 2014-July 2015).

⁴⁵2014 Department of State Human Rights Report at p. 15 (noting that there are also “several other shelters funded by private donors or municipal governments”).

⁴⁶Expert Declaration of Elisa Portillo Najera at ¶ 50.

⁴⁷*Id.* ¶ 52-53

⁴⁸2008 Femicide Law.

⁴⁹Musalo & Bookey, *Crimes without Punishment*.



- What steps is the State party taking to end impunity for femicide, domestic violence, rape and sexual assault by ensuring accountability and punishing perpetrators of those crimes against women?
- What steps is the State party taking to ensure full implementation of the 2008 Femicide Law, including public education, effective prosecutions, and training for government officials?
- How does the State party monitor and review the performance of police, prosecutors and judges relating to the adjudication of cases involving violence against women?
- What steps is the State party taking to strengthen the criminal justice response to gender-related killings of women and girls, in particular measures to support its capacity to investigate, prosecute and punish all forms of such crimes and provide reparation or compensation to victims and their families or dependents, as appropriate?
- What steps is the State party taking to ensure the safety of women and children from gang violence?
- Please elaborate on steps being taken to ensure that all survivors of domestic violence have access to shelters.
- What efforts has the government taken to give rural and indigenous communities shelter options?
- When will the State party adopt a uniform complaint intake mechanism to ensure consistent and comprehensive data related to violence against women?
- What steps is the State party taking to ensure statistical information is readily available to all Guatemalans?