

Alternative Report on the implementation of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

“The Situation of the youth in Guatemala”



Guatemala, October 2018

Introduction

1. Asociación Red de Jóvenes para la Incidencia Política –INCIDEJOVEN- as a part of the Red Latinoamericana y Caribeña de Jóvenes por los Derechos Sexuales –RedLAC-, who work to promote and defend the sexual and reproductive rights of adolescents and the youth in Guatemala, present the following alternative report on compliance with the state obligations established in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, especially regarding the sexual rights and reproductive rights of children, adolescents and youth.

2. Guatemala is a country with a long history of state sponsored violence, which has contributed to the normalization of violence as a societal relation. Guatemala has one of the highest homicide rates in the world and Guatemalans live in a context of generalized violence. The situation affects all sectors of society, however, it has different consequences for different segments of the population.

3. The youth of the country is in a vulnerable position to suffer from the different manifestations of violence, including poverty, the lack of opportunities, as well as psychological, physical and sexual violence. Girls, adolescent women and adult women suffer the consequences of the endemic violence due to the gender based discrimination and the devaluation of their lives in the society. The alarming statistics of violence against women illustrate the normalization and social acceptance of violence against women.

4. The different forms of violence against women, especially against girls and adolescent women, have severe consequences for their physical and psychological health, moreover, one of the manifestations of the adverse life-conditions in which they live, is the high number of unwanted pregnancies of girls and adolescent women.

5. This report seeks to provide the context of violence against women, particularly against young women, adolescents and girls, and evidence the lack of response from the State of Guatemala. The report addresses the generalized violence in the country; the violence against women, adolescents and girls; the lack of access to justice mechanisms; adolescent and child pregnancies and unwanted pregnancies as a form of torture. Lastly the report will introduce two case studies, which exemplify the violations of it's human rights obligations by the State of Guatemala: the first case study is the tragedy that occurred in the children's home, Virgen de la Asunción, where 41 adolescent women lost their lives due to the incapability and the lack of political will by the State to protect them.

6. The second case addresses the law initiative number 5272, which illustrates the influence held by religious groups in the State institutions and the power that they have to propose laws that clearly violate the fundamental rights of the population. The report

concludes with recommendations for the State in order to assure and guarantee the human rights of the Guatemalans.

1. Cultures of Violence

Each State Party shall make these offences punishable by appropriate penalties, which take into account their grave nature (article 4.2).

7. Internationally, Guatemala holds a well-deserved reputation as a “killers paradise”; the country has one of the highest homicide rates globally and a conviction rate of 1 to 3 per cent (Drysdale & Walsh, 2016: 31). The population lives in a context of multiple types of violence and an incapability and lack of will by the State to address the problems. In 2014, The National Institute of Forensic Sciences of Guatemala -INACIF- (El Instituto Nacional de Ciencias Forenses de Guatemala) reported that 16 homicides are committed daily and in 2013 the National Police (Policía Nacional) registered 5,253 homicides. The violence affects all sectors of the society, however it takes different pattern and manifests itself in varying ways depending on the population being victimized (Giles, 2014).

8. Between the years 2001 and 2009, 3,800 women were deliberately attacked and killed, in many cases tortured. For example, in 2005, 305 cases of femicide with torture marks were reported, in these bodies, 405 different types of torture marks were found (Giles, 2014). The existing data on feminicides reveal that the problem persists, as can be observed by the 262 cases registered between April 2015 and March 2016 (Cipadh, 2017).

9. Moreover, in the year 2011 in the framework of the Law against Femicide and other Forms of Violence against Women (Ley contra el Femicidio y otras Formas de Violencia contra la Mujer), 20,393 cases of violence against women were presented. To understand the magnitude of this amount of violence suffered by women in the country, it can be compared to Paraguay, a country similar to Guatemala in many aspects. The number of cases of violence against women in Guatemala is two thirds more elevated than those in Paraguay, furthermore, it is widely believed that the violence in Guatemala is significantly underreported because a large proportion of the violence aimed at women is never reported (Gosgrove & Lee, 2015: 313). The crisis of feminicides in Guatemala has escalated since the beginning of the 2000s and currently Guatemala has one of the highest rates in the world (Hudson & Leidl, 2015); United Nations estimates that every ten in 100,000 women die in violent contexts each year and two women are killed daily (Cipadh, 2017).

10. In its Periodic Report in the year 2017, the State informs that "The PNC (Civil national police), within the actions for the attention of violent murders of women, has carried out different trainings (Paragraph 44), the report goes on to list workshops and trainings provided by the State. The alarming numbers of feminicides in the country and

the unacceptable levels of impunity in these cases clearly show that the response of the State has not been sufficient and the trainings and the policies have not had the desired effect.

11. It is important to mention that Guatemala has codified femicide in its Penal Code under the Law against Femicide and other Forms of Violence against Women, approved in the year 2008. The term femicide refers to the murders of women for being women, however this report will use the term feminicide, given that it is a political notion that understands that gender-based murders that occur in a context of impunity are not merely the responsibility of the individual perpetrators: a State that does not prevent, does not investigate and does not punish the acts of violence against women are accomplices in the deaths of women (Drysdale & Walsh, 2016: 35). This theorization captures the responsibility of the State because it comprehends that through the rampant impunity, the State creates the conditions in which these deaths occur, as stated by Marcela Lagarde, the State is responsible through omission, negligence and / or collusion (Lagarde, 2006).

The violence against women in Guatemala has its roots in a history of the model of development, war and culturally sanctioned oppression of women (Cosgrove & Lee, 2015:309). It is clear that the human rights violations, the majority committed by State agents, during the armed conflict (1960-1996) left permanent features in the culture of the country, contributing to the normalization of violence, including the violence against women. A disturbing aspect is the fact that in many cases of sexualized torture today, the way in which these acts are committed have similarities to the torture that was exercised against women during the armed conflict (Drysdale & Walsh, 2016: 31), which demonstrates the persistence of the normalization of the use of violence against women.

12. Despite the alarming number of feminicides in Guatemala, these murders are merely one of the manifestations of the different types of violence's that women are subjected to and not all women are affected in the same way. The gender component is multidimensional and intersectional, given that it intersects with other variables such as age, class, race, ethnicity, the level of poverty, sexual orientation and the political and economic context (Oosterveld, 2011: 80).

13. As the gender inequality index, published by the United Nations Development Program (UNDP) shows, in 2015 Guatemala ranked 113 out of 188 countries, with a value of 0.494 on a scale of 0 to 1. Therefore, Guatemala is one of the most unequal countries in terms of gender in questions of health, empowerment and labor force. Furthermore, Guatemala also faces problems of inequality between social classes, which can be illustrated by the fact that although it's GDP per capita is roughly equal of that of Costa Rica, the majority of the population lives in poverty or extreme poverty (Drysdale & Menjivar, 2016: 36).

14. The violence to which the population is subjected to is not only physical, there are patterns of structural violence, which is integrated into the social structures and

manifests as inequalities in power relations and life opportunities. The structural violence creates the conditions for exploitation, corruption and the indifference towards the necessities of women and the poor, because this violence holds gender and social class components, which are at the root cause of the different types of violence against women. Moreover, the normalization and acceptance of structural violence makes it difficult for women to access the justice system mechanisms, as well as informs the State responses to address gender-based violence, especially with regards to poor women (Drysdale & Menjivar, 2016: 36).

2. Violence and the youth

Children are especially vulnerable to certain violations of human rights, such as torture and other forms of ill-treatment. Article 37 c) of the Convention on the Rights of the Child establishes the obligation to consider the needs of people of this age. The Human Rights Committee, The European Court of Human Rights and the Inter-American Court of Human Rights have also recognized the need for States to provide special measures or intensify "due diligence" to protect the freedom and personal safety of all children (Special Rapporteur on torture A / HRC / 28/68 Paragraph 32).

15. Guatemala has been referred to as *Latin America's Youngest Nation*, due to the high percentage of youth in the country: out of the approximately 15 million Guatemalans, an estimated 60 percent are under the age of 15 (Gibbons et.al 2017: 390); 33 percent are between the ages of 13 and 29 and 68 percent of the population are between the ages of 0 and 30 (Política Nacional de la Juventud 2012-2020). Evidently, especially in a country with this type of a population composition, the youth should be a top priority for the State, however, in Guatemala there are very few programs based on scientific evidence aimed at the youth, created to intervene, generate development and to reduce violence (Gibbons et. a, 2017: 391), which leaves the youth in a vulnerable position and with limited opportunities due to the lack of political will to address and attend the problems and the specific needs of the youth.

16. The segment of society most affected by the violence in the country is the youth: The United Nations Development Program (UNDP) estimates that "the life expectancy of 12% of men and 6% of women is 30 years" (UNDP, 2012). Moreover, a survey conducted in the country revealed that 36 percent of the participants in sixth grade had been robbed in the last month and on the other hand Guatemala has the second highest rate of homicides of children and adolescents of the ages 0 to 19 years in the world and homicides are the main cause of deaths of adolescent men in the country. On the other hand, UNICEF reports that 25 percent of adolescent women report having been physically abused before reaching the age of 15 (Gibbons et al 2017: 391). These figures demonstrate the vulnerability of the children and youth in the country, as well as the lack of protection for the most vulnerable populations in the society by the State and the systematic nature of the violence that they suffer from.

17. It is clear that both young men and women are profoundly affected by the violence, which has consequences for all aspects of their lives, however, research has shown that the violence takes different forms and has different patterns for women than for men. Women, especially young and adolescent women are at higher risk to experience sexual violence, gender-based violence (Comisión Interamericana de Derechos Humanos, 2015:106), as well as psychological violence. It is evident that these conditions further have implications for their sexual and reproductive health.

18. According to the United Nations Population Fund, -UNFPA-, adolescent women are at greater risk of violence and, on the other hand, the violence and trauma exerted against them have more extreme consequences than the violence suffered by men, since the discrimination they experience because of their gender generally results in a lower socioeconomic status and, therefore, they have fewer resources to escape or prevent abusive situations. The consequences of gender-based violence for adolescents and girls include, among others, unplanned and unwanted pregnancies, sexually transmitted infections, depression, post-traumatic stress disorder and anxiety (Cosgrove & Lee, 2015: 310-11).

19. In Guatemala, girls and adolescents are often in an unfavorable position within the family. In 2016, 14,000 children were admitted to the hospital due to beatings or fractures caused by the application of disciplinary punishments by their parents, mothers and / or caregivers. Forensic doctors also report that many of the children have been hanged, drowned and injured to death (Trejo, 2017). Moreover, in 2013, 36,170 cases of intrafamily violence were reported: 3,420 out of these victims were between 15 and 19 years of age (INE, 2017). However, it should be mentioned that UNICEF estimates that only 25 percent of the violence committed against children and adolescents is known by the institutes that make up the justice system, the rest of the cases are not reported due to low confidence in the justice system and the State institutions (Rodríguez, 2014).

20. Furthermore, the machista, authoritarian and adultcentric culture prevalent in the country justifies child abuse and the corporal punishments are seen as a legitimate form of discipline (UNICEF, 2013). Therefore the abuse against children and adolescents frequently is not understood as violence, moreover, there is a strong social stigma associated with being a victim of intrafamily violence, as well as opposing it openly. Victims who dare to denounce the acts committed against them are often rejected by their families and communities, which creates a "culture of silence" and victims tend to remain isolated and without access to the necessary resources (Halvorsen, 2014: 427).

21. On the other hand, in public schools; spaces provided by the State where children and adolescents should be able to feel safe and protected, face great challenges and conditions of violence. According to the information provided by the National Survey on Violence and School Climate in 2015, there is conflict, exclusion and violence in the classrooms, which "promotes a culture in which norms, values and attitudes allow,

encourage and justify authoritarianism and the use of violence in interpersonal and community relations”.

22. The results of the Survey revealed that 14 percent of the participants reported having been bullied five or more times during the last month; 16 percent of primary school students and 20 percent of middle school students had experienced some form of sexual harassment within the facilities. On the other hand, a third of the teachers admitted "having played the role of aggressor towards their students." (Encuesta Nacional Sobre Violencia y Clima Escolar, 2015: 15).

23. The Periodic Report presented by the State of Guatemala to the Committee, notes that "INACIF approved" The Guide for the Legal Medical Recognition of Victims of Sexual Assault "(February 16, 2015), which describes the procedure for assisting women victims of violence and the indications for collecting the evidence. This document is complemented with the forms "Informed Consent for the Realization of Medical Examinations and Related Procedures", "Forensic Medical Sexual Recognition" and "Indications of Analysis" (Paragraph 46). Despite some minimal efforts by the State, the problem of sexual violence in the country continues to be alarming, as the figures reveal, and it is important to note that most cases are not reported.

24. Girls and adolescents women are the most vulnerable to being victims of sexual violence, this is reflected in statistics that indicate that in Guatemala 4.7 percent of women report having experienced sexual violence as children (PAHO, 2017) and UNICEF highlights that 19 cases of sexual violence against children and adolescents are recorded daily. The data on sexual crimes against children in early childhood (0-6 years) reveal that boys and girls suffer approximately the same amount of sexual violence, however, this type of violence is significantly higher among adolescent women (13-17 years of age) than among adolescent men of the same age (PDH, 2017). On the other hand, the VI National Survey of Maternal and Child Health (VI Encuesta Nacional de Salud Materno Infantil -ENSMI- 2014-2015) found that 10 percent of adolescent women between 15 and 19 years of age had had sexual relations with a man 10 or more years older. This demonstrates the normalization of sexual relations between adolescent women and adult men, these relations place the adolescents in a vulnerable position and at risk of sexual abuse.

25. The Survey further reports that more than 3 percent of adolescent women between 15 and 19 years of age have been victims of sexual violence, however, it is worth mentioning that this figure may be underreported. Moreover, the Ministry of Public Health and Social Assistance, -MSPAS- in 2014 reported 3,815 cases of sexual violence of which 79 percent of the victims were women and the majority were between 10 and 19 years of age (Plan Nacional de Prevención de Embarazos en Adolescentes - PLANEA- 2018-2022, 2017: 25).

26. These statistics, although most likely underreported, demonstrate the prevailing cultural attitudes about women and especially about young women and adolescents. Evidently, the bodies of women are seen as property of men and the violence against them continues to be normalized, as well as invisibilized; this tendency is further evident in the case of girls and adolescents who are harmed within their family as demonstrated by a survey conducted by UNICEF, which highlights that an alarming 19 percent of adolescent participants between 15 and 19 years reported experiences of forced sexual relations and / or involuntary sexual behaviors by their fathers (Unicef, 2014, qtd. in Gibbons et.al. 2017: 391). Additionally, the data provided by The Human Rights Ombudsman, -PDH- from the month of January 2017 reflect the vulnerability of girls and adolescent women to face of violence against them: 38.66 percent of these crimes were exercised against adolescents between 13 and 17 years of age; 13.02 percent against girls between 7 and 12 years of age, and 5.13 percent against girls in early childhood (0 to 6 years old). This means that over half of the total of victims of sexual crimes were girls and adolescent women under the age of 18 (PDH, 2017).

27. Sexual crimes committed against women, adolescents and girls reflect a degrading view of women in the Guatemalan society; information provided by UN women well demonstrates this vision: according to a survey 80 percent of the male participants and 70 percent of the women participants considered that women require the permission of men (their husbands, partners, parents etc.) to leave the house (Cipadh, 2017). Therefore, it is evident that the society exercises a strong control over women due to them being considered as property of others, contributing to the normalization of violence against women.

3. Access to Justice

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction (Article 12).

28. The State of Guatemala in its Periodic Report in 2017 to Committee highlights that; “The SVET, reports statistics of complaints filed with the MP (Public Ministry) regarding Sexual Violence, as well as judgments issued by the OJ, which reports statistics on sentences issued in the Courts and Tribunals specializing in crimes of femicide and sexual violence, of the year 2010 to April 2016. It is important to mention that in 2010, there were only 3 jurisdictional bodies, in 2012 with 7 and in 2014 specialized justice in 11 departments of the Republic of Guatemala. “(Paragraph 40). While there is some progress in legal matters to address violence against women, the majority of cases remain unpunished.

29. The available data on the violence against women in the country demonstrate that the State of Guatemala does not have an efficient and systematic response to address the problem, which in turn contributes to an environment that encourages the violence, and

moreover, represents a society that is permissive towards violence against women (Musalo & Bookey, 2013:269). In this sense, scholars have argued that elevated indicators of violence against women is not solely a manifestation of the unequal power relationships between genders, instead this type of violence should be understood as a mechanism that reinforces and maintains an asymmetric balance of power between men and women (United Nations Women, "Guatemala", n.d). Furthermore, elevated levels of cases of feminicides tend to be accompanied by an elevated level of social acceptance towards violence against women by the wider population (Bookey & Musalo, 2013: 271-273).

30. As afore mentioned, feminicides are not only crimes committed by individual actors, instead the existence of feminicides is based in the systematic impunity, the historically rooted inequality between genders, and the persistence of violence as a societal relation. Therefore, the culture of impunity permits that the majority of the perpetrators of violence against women, including in cases of feminicides, to escape their crimes without punishment (Cosgrove & Lee, 2015:314).

31. In its periodic report, the State of Guatemala informs the Committee that in order to address gender-based violence, "SEPREM, made a proposal of a conceptual framework on violence against women for the preparation of a survey to measure this type of violence, which (the proposal) is in the process of consultation with women's organizations and international cooperation agencies, financed by UNDP to through the Infosegura Project. After its validation, the IDB will be able to finance a pilot project test; and, finally, with INE, the corresponding process for the preparation and implementation of the survey will be coordinated as a final result "(Paragraph 41). On the other hand, paragraph 51, highlights the following: "On Violence against women, of the 58 current Public Policies, it can be indicated that 10 includes within its objectives the prevention and reduction of violence including women."

32. Although, Guatemala has made some legislative advances regarding the protection of women, adolescents and girls against violence and misogyny, there are problems in their implementation. It is worth mentioning that in 2008 for the first time the country's women had codified, legal protection against harm, violence and death through the approval of the Law against Femicide and other Forms of Violence against Women (Ley contra el Femicidio y otras Formas de Violencia contra la Mujer) (Cosgrove & Lee, 2015: 319).

33. Other advances include the establishment of a special office for crimes against women in 2006; the unit of femicides in crimes against life in the police; the creation of SEPREM, mentioned in the State's report: the main policy agency for women created to monitor and strengthen laws related to women's issues; and the intrafamily violence law of 1996.

34. It is important to note that despite the symbolic victories of women's rights defenders in legislative matters and in the creation of institutions in charge of their implementation, the State's capacity to respond to gender-based violence remains weak, a fact that has real consequences for the safety of the women in the country. On the other hand, in recent years there has been a tendency of regression in these advances and furthermore, there are practical problems in their implementation; for example, during the presidency of Otto Pérez Molina (2012-2015), funding for Presidential Secretariat for Women – SEPREM- was reduced and many feminists were removed from their posts (Drysdale & Menjivar, 2016: 35). Likewise, the dismissal of the Secretary General of SEPREM, Ana Leticia Aguilar in August of the current year in the context of the discussions in the Congress of two initiatives: the initiative 5395 which provides for the approval of the "Gender Identity Law" and the 5376 initiative that provides for the approval of the "Law for the Comprehensive Protection, Access to Justice, Dignified and Transformative Reparation for Girls and Adolescents Victims of Sexual Violence, Sexual Exploitation and Trafficking Of people" is highly disturbing.

35. On August 21st, a meeting convened by the Women's Commission of the Congress of the Republic was held, in which representatives of the state institutions participated, in order to issue an opinion in favor or against the law initiative 5376 “Ley Para La Protección Integral, Acceso a la Justicia, Reparación Digna y Transformadora a las Niñas y Adolescentes Víctimas de Violencia Sexual, Explotación Sexual y Trata De Personas” (Law for the Comprehensive Protection, Access to Justice, Dignified and Transformative Reparation for Girls and Adolescents Victims of Sexual Violence, Sexual Exploitation and Trafficking of People). In this meeting the Secretary General of SEPREM, Ana Leticia Aguilar in August posicioned herself in favor of the initiative, arguing that the State of Guatemala had committed to international obligations, such as the Convention on the Elimination of All Forms of Discrimination against Women.

36. Following her intervention, Aguilar Theissen was threatened by Congress Member Aníbal Rojas who stated that the statements made by the Secretariat, as a member of the executive branch, should respond to the stance of the President, Jimmy Morales. In this instance, Aguilar Theissen declared that besides personal opinions, her statement reflected the international commitments that the State of Guatemala has assumed. On August 22nd, Ana Leticia Aguilar Theissen, who has realized broad and solid work in the framework of women's rights, was dismissed from her post for making public her support in the search for a dignified and transforming reparation for girls and adolescents, victims of sexual violence, as part of her institutional work as a guarantor of the compliance with women's rights.

37. It is evident that this action cannot be understood as an isolated event but rather it is part of an agenda, which seeks to deny the State obligations to guarantee the exercise of human rights, particularly the rights of women. Moreover, it demonstrates that the Guatemalan State does not view the protection of human rights as a priority, on the contrary, it denies the possibility to act in favor of them from State institutions. It is worrisome that the State itself, which should ensure the protection of the basic rights of the citizens, is hindering the possibility of decision makers to speak out in favor of the necessity to ensure a dignified life for girls, adolescents and women.

38. This action taken by the State, should be understood as an attack against those who defend the basic rights of women, as well as a manifestation of the conditions of insecurity, the prevalence of machismo, and the devaluation of the voices of the women themselves. In addition, it demonstrates the vulnerability that demanding and expressing disagreement with the Guatemalan patriarchal system implies. In this sense, it is worth highlighting that the State has the obligation to protect and ensure the rights of all its citizens, including girls, adolescents and women.

39. Drysdale and Menjívar analyze the persistent impunity in cases of violence against women in Guatemala in a context where the State has ratified several international human rights conventions, treaties and agreements, as well as the existence of a legal framework designed to protect women against violence. The authors conclude that Guatemala lacks sufficient rule of law to transform laws into legal action, since the broad context in the country that shapes the justice system creates obstacles to their implementation. Ideally, when the rule of law operates efficiently, laws are implemented uniformly, regardless of social class, age, gender, etc. In other words, the burden of implementation falls on the State, not on the victims or the families of the victims. However, in countries like Guatemala with high levels of impunity, there are "legal tolls" for victims who try to advance their cases in the justice system. As the system extracts tolls from victims / families throughout the process, the cases are dropped since people, especially those with limited resources, do not have the capacity to pay them, which contributes to the systematic impunity.

40. These "tolls" may include bribes in cash, favors, high-priced legal representation and less tangible means of exchange, such as a certain social status or personal connections. Drysdale and Menjívar find that in Guatemala there are two types of "tolls" that are especially prevalent: the toll of fear in a context of non-existent protection and the "toll" of time and effort given that the legal system in the country is a bureaucratic and discriminatory labyrinth. The "legal tolls" in Guatemala have a class character but they are also more severe for women due to the normalization of the violence against them (Drysdale and Menjívar, 2015). In this sense, the impunity in cases of violence against women can be understood in the context of norms that disparage the lives of women and place them as property of the men of the society. These norms, together with other

inequalities, inform the justice system and therefore the legal tolls are higher for women, especially for young and poor women.

4. Pregnancies of girls and adolescents and reproductive violence

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. (Article 1)

41. Gender-based violence has both physical and psychological consequences, which include among others, sexually transmitted infections, depression, post-traumatic stress and anxiety (Cosgrove & Lee, 2015: 311). One of the manifestations of the different forms of the violations of the human rights of girls and adolescent women in the country is the elevated number of unwanted pregnancies. Between January and June of the current year, 51,110 pregnancies of girls and adolescents between the ages of 10 and 19 were reported by the Observatory of Sexual and Reproductive Health (Observatorio en Salud Sexual y Reproductiva -OSAR-). The previous year, in 2017 the Observatory registered 92,259 pregnancies of girls and adolescents, out of which 4,240 were girls between 10 and 14 years of age. (OSAR 2018).

42. In the past years, there has been an increasing effort to address the problem and to reduce the amount of unwanted pregnancies by the State and the civil society organizations, however, the number of these pregnancies has not reduced, on the contrary, there has been a constant increase: in 2009 there were 41,529 registered pregnancies of girls and adolescent women between 10 and 19 years of age, nine years later, the number has duplicated.

43. The National Plan for the Prevention of Pregnancies of Adolescents 2018-2022,- PLANEA- (El Plan Nacional de Prevención de Embarazos en Adolescentes 2018-2022) states that the factors that contribute to the high amount of adolescent and child pregnancies include a social pressure to get married and have children at a young age, low expectations for education or work in the future, unawareness of how to avoid

pregnancy or obtain contraceptive methods and limitations in the ability to refuse unwanted sexual relations (PLANEA, 2017: 9).

Pregnancies of girls and adolescents are considered as one of the problems of public health that most affects women, however, it is important to mention that they are not merely a challenge for the health sector, but also for the ability of women, girls and adolescents to exercise their human rights (Vidas Robadas, 2015: 6). The violence against women and the unwanted pregnancies, which are often a consequence of the different forms of violence, should be understood as a form of discrimination and they require an intersectional analysis because persons do not experience discrimination in a vacuum, but rather within a specific social, economic and cultural context where privileges and disadvantages are constructed and reproduced. Studies on pregnancies of girls and adolescents have frequently found that those most affected tend to live in a context that places them in a position of vulnerability, among others, due to the lack of access to education, and the persistent poverty in the country (Vidas Robadas, 2015: 62-63).

44. There is a connecting link between sexual violence and the pregnancies of girls and adolescents; it is estimated that 90 percent of pregnancies of girls under the age of fourteen are directly the product of sexual violence (Vidas Robadas, 2015: 14) and according to the data of the Human Rights Ombudsman's Office - PDH - in most cases, the aggressors are family members of the girls (Mujeres Transformando el Mundo, 2014: 9).

45. In the case of the pregnancies that are not directly a result of rape, it should be mentioned that "sexual coercion exists as a continuum, from rape to other forms of pressure that push girls and adolescents to have sexual relations against their will. Maybe a child or adolescent affected does not identify their experience as a violation, even if it was a situation against their will but "accepted" because they could not oppose it." (Vidas Robadas, 2015: 14) This is a common situation in Guatemala due to the systemic normalization of the oppression of the women in the country.

46. In Guatemala, the theme of sexuality is a taboo, particularly the sexuality of adolescents and the youth. In a context of high levels of sexual violence, there are contradictions in the political and social discourse due to the fact that the culture of silence surrounding the infringement of the rights of the population makes the existing problems invisible. On the other hand, the public policies tend to ignore or deny the sexuality of adolescents (Richardson y Birn, 2011:184). The little or inexistent investment in the sexual and reproductive health by the State has had the consequence

of a wide spread unfamiliarity regarding sexual and reproductive health. In Guatemala, 55 percent of 15- to 19-year-old, sexually active, adolescent women who have never been married have an unmet need for contraception; that is, they do not want to have a child in the next two years, but they are not using any contraceptive method (Guttmacher Institute 2014). Furthermore, according to studies, knowledge about fertility in relation to the menstrual cycle is scarce among Guatemalan women, with only 15% of them knowing at what moment of their menstrual cycle they have more possibilities to get pregnant (Richardson & Birn, 2011: 184).

47. As a consequence of the policies that do not address the reality in which the youth of the country live in, in the country 1 in 5 adolescent women between 15 and 19 years of age have already had children or are currently pregnant; 21 percent have once been pregnant, 16 percent are already mothers and 5 percent are Currently pregnant (ENSMI 2014-2015).

48. In Guatemala the pregnancies of girls and adolescents intersect with other socioeconomic components: girls and adolescents without education are seven times more vulnerable to face an unwanted pregnancy than those with higher education. Likewise, the risk of an unwanted pregnancy is three times higher for women in the lower wealth quintile, than those in the upper quintile (PLANEA, 2017: 13). These figures demonstrate that the structural violence and the existing inequality contribute to the problem, evidently these are factors that are a responsibility of the State of Guatemala and it is the State's obligation to address them. However, the incapacity and lack of will by the State to resolve the problems places girls and adolescent women at risk of suffering unwanted pregnancies and maternities, which constitutes ill-treatment, even torture since their lives and well-being are in danger.

49. A cualitativa study by Planned Parenthood on pregnancies of girls under the age of 14 in four countries in the region (including Guatemala) found that the majority of the participants suffered some complication during the pregnancy, among others anemia, nausea, urinary or vaginal infections, ruptures of membranes and premature births. Other risks associated with pregnancies of adolescents and girls include increased risk of maternal death as well as neonatal mortality and morbidity (Vidas Robadas, 2015, 6 y 13).

50. In the case of Guatemala, the study found that none of the pregnancies were desired and 55 percent of the girls had a cesarean delivery, which is worrisome because at their age, it presents "serious risks immediately after surgery, late complications, and risks during the subsequent surgery, as well as a high probability of having to have deliveries

by caesarean section with their future pregnancies.” Moreover, it should be mentioned that a significant proportion of the girls and adolescents had symptoms of depression, anxiety, post-traumatic stress, fear, restlessness and crying, especially in the case of girls who had suffered sexual violence (Vidas Robadas, 2015: 28, 13 y 27).

51. Furthermore, the study found that the majority of the girls had not returned to their studies in the moment of the follow-up interview, despite the fact that the interviews were conducted months after they had given birth (Vidas Robadas, 2015, 6-7). A mere 2 out of the 20 Guatemalan girls interviewed had gone back to school and the rest at the moment of realizing that they were pregnant had abandoned their studies all together. After giving birth, only 4 of the participants in the study manifested that they were constructing a life-plan, and 12 out of the 20 had no economic activity (Vidas Robadas, 2015: 27). On the other hand, the study *Me Cambió la Vida (It Changed My Life)*, realized by FLACSO and UNFPA in 2015 states that nine out of the ten participants abandoned their studies due to the pregnancy.

52. It is evident that facing a pregnancy in childhood or adolescence implies a drastic life change, including ending the educational cycle, provoking health problems including the risk of death, their opportunities in the labor market reduce and they face a situation of higher vulnerability to poverty, exclusion, violence and dependency (Vidas Robadas, 2015: 13). It is important to highlight that the consequences of an unwanted pregnancy vary depending on the context in which they occur. In Guatemala, all of the State institutions face serious deficiencies to address the problem, including providing access to sexual and reproductive health services. In this sense the situation of pregnant girls and adolescents is aggravated by the social conditions in which they live in and by the absence of the State. Additionally, the Planned Parenthood study found that none of the girls, victims of sexual violence, had had access to emergency oral contraception and abortion was not presented as an option for them (Vidas Robadas, 2015: 68). It is also worth mentioning that the responses that girls and adolescents receive from the institutions are conditioned by the attitudes and beliefs of the providers of the services. The MTM study found that the personnel in charge of the care and accompaniment of pregnant girls and adolescents demonstrated stereotyped attitudes, prejudices and their personal beliefs affected the way they dealt with girls' cases (*Mujeres transformando el Mundo*, 2014: 84). The situation of children and adolescents in Guatemala is alarming and it is evident that the State's responses have been neither adequate nor sufficient.

53. Girls and adolescent women are in a position of greater vulnerability in the society due to conditions of age, gender and often socio-economic conditions in which they live in and therefore, it is troubling that the Periodic Report of the State of Guatemala to the

Committee does not address the problem in spite of the cruel and inhuman treatment that is often at the root of these pregnancies and the serious consequences for mental and physical health that carrying out an unwanted pregnancy implies, especially in adolescence and childhood.

54. Unwanted pregnancies of girls and adolescents, the persistence of sexual violence; the lack of opportunities and the failure to implement Comprehensive Sexuality Education, as well as other measures of prevention, attention and investigation by the State clearly represent a violation of the state obligations established in the Convention. The General Comment 3, in paragraph 13 clearly states that in order to fulfill their obligations in providing victims of torture or ill-treatment the means for the most complete rehabilitation possible, States parties must adopt an integrated and long-term approach and ensure that specialized services for victims of torture are available, appropriate and easily accessible. On the other hand, paragraph 25 of General Comment 2 highlights that the articles 3 to 15 of the Convention provide for specific preventive measures that States Parties considered essential to prevent torture and ill-treatment, particularly against detainees or prisoners. The Committee emphasizes that the obligation to take effective preventive measures goes beyond the aspects specifically enumerated in the Convention or the imperatives of the general comment. Lastly, paragraph 10 of General Comment 3 emphasizes that the right to a prompt, fair and adequate compensation for torture or ill-treatment referred to in Article 14 has multiple dimensions and the compensation awarded to a victim must be sufficient to compensate the damages to which an economic value can be assigned and which are the result of torture or ill-treatment, whether or not they are pecuniary. In this sense, the living conditions of pregnant girls and adolescents should be considered as torture and the lack of response from the State as a violation of its obligations as it does not prevent the mistreatment, violence and torture, does not attend and does not investigate or provide reparation to the victims .

5. Forced Pregnancy as a form of torture

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation (Article 14).

55. As the article 1 of the Convention clearly states;

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

56. It is clear that unwanted pregnancies present serious physical and psychological suffering for girls and adolescents, as their bodies have not developed to go through the process of pregnancy and childbirth, and therefore represent a danger to their physical health, as well as for their plans and life opportunities. Moreover, the consequences of sexual violence should not be underestimated: sexual violence leaves permanent traumas. In Guatemala, abortion is only permitted in cases where a woman's life is in danger, therefore, women who become pregnant as a result of rape do not have access to a legal and safe abortion; As a result they are forced to assume unwanted maternity or to seek an abortion in clandestine conditions, which puts their lives and health at risk. Therefore, the traumatic experience of sexual violence becomes reproductive violence and the traumatic experience of rape becomes an event that defines the rest of their lives.

57. In this way, by penalizing abortion, the State is *de facto* punishing the victim, an aspect that is found in the definition of torture. On the other hand, the definition highlights that acts committed *for any reason based on any type of discrimination* constitute torture. It is evident that the discrimination suffered by the women in the country is at the root of these unwanted pregnancies and the criminalization of abortion negatively affects only women and therefore is a discriminatory law.

58. The life conditions; the lack of response from the State; legislative actions that seek to reverse human rights and the criminalization of abortion create the context in which unwanted pregnancies of girls and adolescents should be considered in Guatemala. Therefore, they fit into the definition of torture provided by the Convention since the

State not only creates the conditions that place the vulnerable segments of society at risk of suffering sexual violence and unwanted pregnancies, but also actively obligates women, girls and adolescents to carry out the pregnancies that were a result of sexual violence, converting these pregnancies into forced pregnancies, an act that should be considered torture. Although there are no official statistics available, it is estimated that 65,000 clandestine abortions are performed every year in Guatemala and the country has an unsafe abortion rate of 24 per 1,000 women of reproductive age, and up to 30 per 1,000 women in some areas of the country. Furthermore, it is worth mentioning that unsafe abortion is the fourth leading cause of maternal death (Kestler, 2012: 120). Those most affected by this problem are young women living in conditions of poverty and extreme poverty, who do not have the resources to pay for the services of private clinics or to travel abroad to abort in safe conditions. On the other hand, those who oppose the legalization of abortion in Guatemala, are conservative groups with economic and political power, that have the possibility of paying for a private abortion service and, therefore, can ignore the reality of the majority of Guatemalan women (Richardson & Birn, 2011: 189). This also makes it impossible to have a debate on this issue, and therefore the problem of unsafe abortions converts into a real problem that nobody talks about.

59. Forcing a woman to carry out an unwanted pregnancy is reproductive violence that has strong implications for the rest of a woman's life, especially when forced to give birth to a product of sexual violence. Reproductive violence implies the violation of the reproductive autonomy of an individual and the denial of such autonomy is a serious violation of personal dignity, a value of great importance for the whole body of international law (Gray, 2017: 906-907). In this context it is important to remember that in 2016, the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Juan Méndez stressed that in terms of access to safe abortion, highly restrictive laws (which do not allow for access to an abortion in cases of rape, incest, and malfunction of the fetus) violate the right of women to be free of torture, furthermore he stated that unsafe abortions result in unnecessary deaths (A / HRC / 31/57). Therefore, it is essential that the State of Guatemala fulfills its obligations to protect women from torture, revising and modifying its legislation with regards to access to abortion. The Special Rapporteur emphasizes that States have an affirmative obligation to reform their restrictive laws that perpetuate torture by denying women access and safe care (A / HRC / 31/57). In its Concluding Observations for Honduras, the Committee expressed its concern about restrictions in access to abortion, especially for victims of sexual violence due to the fact that Honduras only allows for the voluntary interruption of pregnancy when the life of the mother is in danger. In its observations the Committee recommended that the State of Honduras ensure that women, especially victims of sexual violence, who voluntarily choose to terminate their pregnancy have access to legal and safe abortions (CAT/C/HND/CO/2). These recommendations also apply to the case of Guatemala, and therefore we request that the Committee express its concern about the criminalization of abortion in Guatemala.

60. The Rome Statute understands forced pregnancy as a crime against humanity and defines it as follows:

“the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other violations of international law.” (qtd. In Markovic 2007: 439). It should be noted that in 2016, in the case of Dominic Ongwen, the ICC for the first time explicitly considered the reproductive autonomy of girls and individual women (Grey, 2017: 909).

61. According to the afore mentioned definition found in the Rome Statute, it is clear that the crime of forced pregnancy is not the act of rape, since this would be forced penetration. Rather, forced pregnancy is about the *illicit confinement*, meaning that the perpetrator of the crime is the person or entity that forces the woman to carry out the pregnancy (Markovic, 2007: 442). Therefore, the State of Guatemala, by penalizing abortion, is the perpetrator of the crime of forced pregnancies and must modify its legislation and recognize the fundamental right of women to interrupt a pregnancy and to make decisions on their bodies and their lives. As the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment emphasizes, States have an obligation to prevent torture and ill-treatment, and they fail in their duty to do so whenever their laws, policies or practices perpetuate harmful gender stereotypes in a way that permits or authorizes explicitly or implicitly that prohibited acts are committed with impunity. The Rapporteur stresses that States are accomplices in the violence against women when they create or implement discriminatory laws that trap women in abusive circumstances (A/HRC/31/57). In this way, the State of Guatemala is an accomplice to the endemic violence perpetuated against women for the failure to prevent, investigate and punish the acts of violence.

62. Furthermore, the State does not provide reparation to the victims because girls, adolescents and women are discriminated against by laws that do not allow them to decide on their bodies and condemns them to carry out unwanted pregnancies, in this sense, the State of Guatemala is guilty of the crimes of forced pregnancies, violating its international obligations and putting at risk the lives of women in the country.

6. Case studies:

Case Studies: The Law Initiative 5272 and The Tragedy of the Childrens home Virgen de la Asunción

63. Despite the creation of laws and policies mentioned in the Periodic Report of the State, there has been no improvement in the *de facto* guarantee of the fundamental rights of Guatemalans, on the contrary, the current government has proposed regressive laws that clearly violate both its international human rights obligations, as well as the Constitution of the Republic. Moreover, the State has not implemented its commitments to protect the population against torture and ill-

treatment. The following section introduces two case studies that exemplify the violations of the obligations of the State of Guatemala. The first case is the tragedy that occurred in the children's home Virgen de la Asunción, where 41 adolescent women lost their lives due to the inability and unwillingness of the State to provide them protection. The second case presents the Law initiative 5272, that illustrates the influence of religious groups in the State institutions and the power that these groups have to propose laws that clearly violate the fundamental rights of the Guatemalan population.

The case Children's home Virgen de la Asunción:

64. The Children's Home "Virgen de la Asunción" located in the municipality of San José Pínula, in the department of Guatemala, was created in 2010 under the responsibility of the Secretaría de Bienestar Social de la Presidencia (Social Welfare Secretariat of the Presidency) -SBS-, to attend to children and adolescents from 0 to 18 years of age, victims of physical, psychological, sexual violence, with minor disabilities, abandonment, street children, children with problems with addictions, victims of trafficking for commercial, labor or economic purposes, victims of sexual exploitation and irregular adoptions. (<http://www.sbs.gob.gt/hogares-de-proteccion-y-abrigo/>). However, despite the fact that the function of the SBS was to provide comprehensive care to adolescents, there were situations of vulnerability and constant violations of the human rights of adolescents within the establishment. Furthermore, it should be mentioned that many of these violations were reported to the international community and the justice system in Guatemala by various sectors of Guatemalan society.

65. Between the years 2012 and 2016, the Office of the Human Rights Ombudsman (Oficina del Procurador de los Derechos Humanos) -PDH- received approximately 45 complaints regarding the violations of the rights of the adolescents in the Children's Home, these complaints were transferred to the Public Ministry -MP-, which is the entity responsible for investigating such cases, however there was no follow-up by the MP (Goldman, New Yorker, 2017).

66. Before this negligence by the State of Guatemala, several international bodies expressed their concern to Guatemala, providing various recommendations on how to improve the living conditions of the adolescents in the Virgen de la Asunción Children's Home: (i) The Committee on the Rights of the Child in 2010 expressed its concern regarding the overpopulation of children under the protection of the State, as well as the lack of the application of minimum standards, and the deficiencies in the supervision system of children's homes <http://www.acnur.org/fileadmin/Documentos/BDL/2012/8547.pdf> ; (ii) the United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Use in Pornography, in her report following a visit to the Children's Home in 2013, expressed her concern about the

diversity of profiles of the institutionalized girls, boys, and adolescents, since many were victims of physical abuse, sexual abuse, abandonment cases, children who lived or worked in the street, as well as some cases of conflict with the law and victims of human trafficking <http://www.acnur.org/fileadmin/Documentos/BDL/2012/8547.pdf>. Furthermore, the Rapporteur noted the limited human and financial resources, as well as the location of the Children's Home that did not allow access to necessary education and social services in the process of recovery and reintegration of the children and adolescents (paragraph 16) <https://www.oas.org/es/cidh/decisiones/pdf/2017/8-17MC958-16-GU.pdf>; (iii) the Office of the High Commissioner for Human Rights in its report on its activities in the country, presented to the Human Rights Council in 2017 its "deep concern for the 55 girls who allegedly disappeared in September, October and November 2016 from the center under the charge of the State " (Oficina del Alto Comisionado de los Derechos -OACNUDH-, 2017).

67. Faced with the afore mentioned concerns, in November of 2016, the Office of the Human Rights Ombudsman, -PDH- requested the Inter-American Commission on Human Rights - CIDH- precautionary measures to protect the children and adolescents residing in the children's home, reporting the adverse conditions in which the children and adolescents lived in and which placed them in a position of vulnerability and at risk of human rights violations, moreover the PDH expressed its concern for the severe lack of protection in the Children's Home. However, the CIDH only addressed the measures requested on March 12th, 2017, days after the tragedy (that will be elaborated on in the following section) had already occurred.

68. In December 2016, the Juzgado de Primera Instancia de Niños, Niñas y Adolescentes del Área Metropolitana (Court of First Instance of Children and Adolescents of the Metropolitan Area) issued a ruling indicating numerous concerns regarding the Children's Home and ordered each of the institutions responsible to implement a series of measures to reform the Children's Home, as well as measures for the deinstitutionalization of children and adolescents. The sentence stated that the State of Guatemala, as the guarantor and protector of fundamental rights, must pay due diligence and attention in this matter and not promote the violation of rights through omission (Oficina del Alto Comisionado de los Derechos -OACNUDH-, 2017). It is important to emphasize that despite the existence of this sentence, the State of Guatemala did not react, nor did it improve the living conditions of the adolescents and children living in the Virgen de la Asunción Children's Home.

69. Faced with the situation of poor living conditions, the adolescents of the Children's Home Virgen de la Asunción organized a demonstration on March 7th, 2017 denouncing the mistreatment and sexual violence that they had experienced. Due to a lack of possibility for dialogue and because of fear, the adolescent women and men escaped from the Children's Home.

70. Following the escape, the authorities of the center chased the adolescents in a violent manner, using firearms and pepper spray. After The National Civil Police - PNC - captured them, they

were not returned to their dormitories but were instead held in the custody of the Police outside of the Children's Home for hours and it was not until 1 in the morning that the adolescent men were returned to their dormitories, while the 56 adolescent women were locked in a room called "La Escuela" (The School) of 47 square meters where each adolescent had 80 centimeters to move. Additionally, the room had no bathroom or drinking water; there were 22 mattresses without linen, sheets, or blankets to keep the adolescents warm. (Goldman, New Yorker, 2017 and Ramos, Publinews, 2018).

71 The conditions to which the adolescents of the Children's Home were subjected to, as well as their imprisonment provoked that during the morning of March 8th, they continued to express their indignation because the mistreatment and confinement to which they were subjected to, following which a fire broke out inside the room.

72. As the fire spread, the adolescents cried for help to the police that guarded the room and for them to open the locked door. According to the testimonies of some of the survivors, the police refused to open the door and made comments such as: "que sufran esas desgraciadas, que así como fueron buenas para fugarse, que sean buenas para aguantar el dolor" ("let those wretches suffer, they were good at escaping, now they should be good at enduring the pain"). The testimonies also revealed that the police saw how the adolescent girls were burned alive but did not unlock the door. As a result, 41 adolescent women died and 15 were seriously injured, which amounts to 56 victims of the tragedy (Méndez-Arriaza, Nómada, 2017).

73. The State of Guatemala is therefore directly responsible for the deaths of 41 adolescent girls, as an accomplice to the systematic violence that the girls experienced in the Virgen de la Asunción Children's Home. In addition, it is incomprehensible why it took so long for help to arrive at the scene of the fire, and it is evident that on the day of the tragedy, all basic safety rules established in regulations of the National Coordinator for Disaster Reduction -CONRED- (Coordinadora Nacional para la Reducción de Desastres) were completely violated. (Goldman, 2017).

74. Therefore, it is of vital importance that the Committee Against Torture is aware of this case that is illustrative of the consequences of the failure to respect and guarantee the human rights of the population and of the torture and ill-treatment that the adolescents who resided in the Home Virgen of the Asunción were subjected to. These events demonstrate that "Guidance Guide for Risk Assessment, Security Measures and / Protection Against Women, Sexual Offenses and Maltreatment against Minors" (*"Guía de Orientación para Evaluación de Riesgos, Medidas de Seguridad y/ Protección Contra la Mujer, Delitos Sexuales y Maltrato contra Personas Menores de Edad"*), which the State presents in its report to the Committee, has not been implemented nor has the way that it may work been evaluated. Moreover, the events show that the State does not have an effective system for the care and treatment of physical and

psychological trauma to people who are victims of torture and ill-treatment or a system of prevention and comprehensive assistance to institutionalized children and adolescents.

75. It is of great concern to the civil society that the State is in non-compliance of the article 6 of the Convention, where in paragraph 2 it is clearly established that the States are obligated to investigate cases of torture and prevent impunity in the cases of violence. Moreover, the article 10 in paragraph 1 states that member States must ensure that comprehensive information and education on torture is included in the professional training of law enforcement personnel, whether civilian or military, personnel in charge of implementing laws, of medical personnel, of public officials and other persons who may participate in the custody, in the interrogation or in the treatment of any person subjected to any form of arrest, detention or imprisonment. In this sense it is of vital importance that Guatemala take into account the recommendations that the Committee will elaborate for the State, as well as the recommendations that have already been provided by other United Nations Human Rights Committees.

The Law Initiative 5272

76. Although Guatemala is officially a secular State, in recent years there has been an increasing interventionism of religion and the Church in public affairs and in the rights wing political parties. Article 36 of the Constitution of the Republic, in reference to the freedom of religion stresses that "The exercise of all religions is free. Everyone has the right to practice their religion or belief, both in public and in private, through education, worship and observance, with no other limits than public order and respect for to the dignity of the hierarchy and the faith of others." Evidently, the State of Guatemala, according to the Constitution, is secular and therefore, legislating on the basis of a specific religion is unconstitutional.

77. The afore mentioned religious and conservative groups tend to use their power to advocate for the regression of themes such as sexual and reproductive rights and one example of their influence is the law initiative 5272 "Ley para la Protección de la Vida y la Familia" (Law for the protection of life and the family). It is highly alarming that the State is proposing actions that violate its national and international obligations, particularly considering the elevated indices of sexual violence and unwanted pregnancies in the country. The following segment will briefly discuss the process of the initiative and the implications that its approval would have for the lives of the Guatemalan population, especially for the lives of women, adolescents, girls and the LGTBI community.

78. On April, 27th in the year 2017, the Congressman Aníbal Estuardo Rojas Espinosa introduced the bill 5272 called "Ley para la Protección de la Vida y la Familia" (Law for the Protection of Life and the Family), which was developed in cooperation with La Coordinadora Evangélica Nacional (the National Evangelical Coordinator). The reasoning provided for the necessity the law was that: "currently in the Guatemalan society there are minority groups that

follow the international agenda and propose currents of thought and practices that are incompatible with the principles of the right to life, and the natural order of marriage and the family.” The Commission of Legislation and the Constitution (Comisión de Legislación y Puntos Constitucionales) was placed as the subgroup of Congress in charge of the bill.

79. An analysis of the bill demonstrated that it contained aspects that violate human rights, especially in regards to the rights of the youth, the LGTBI community, women, different types of families and human rights defenders, especially defenders of sexual and reproductive rights. The Bill 5272 represents a setback to the rights of the Guatemalan population; moreover, it clearly violates the principle of the progressivity of human rights.

80. Currently, the voluntary interruption of pregnancy is classified as a crime in the Guatemalan Penal Code, except in the cases where the life of the mother is in danger. The bill proposes to drastically increase the jail sentences for any form of abortion and make the process difficult even when the life of the mother is danger. Therefore, the Bill ignores several recommendations that have been issued by the international human rights system, urging the State to review its legislation regarding its abortion laws. In this sense, by legitimizing this initiative, the State is ignoring the principle of the progressivity of human rights, the principle of proportionality of penalties, it places the health and the lives of women at risk as well as violates their right to self-determination.

81. Likewise, the Bill defines the family in a discriminatory manner, since it ignores the diversity of families that exist in the Guatemalan society, and therefore it seeks to legitimize and normalize discrimination, and therefore recedes in the advances that have been achieved in terms of protecting women's rights. Moreover, it violates the principle of non-discrimination based on sex, gender, age and sexual orientation under any circumstance. On the other hand, the initiative favors and normalizes hate crimes and trans phobia, since it proposes to recognize only "men and women born that way", excluding in the law the right to gender identity and expression, contributing to reinforce and perpetuate discriminatory behavior towards transgender people.

82. Article 46 of the Constitution of Guatemala states: "The State guarantees the social, economic and legal protection of the family and promotes their organization on the legal basis of marriage." However, the 5272 initiative seeks to define marriage as exclusively between men and women "born as such" but also obliges the State to promote, at an international level, a position consistent with "Christian morality"; This is a conservative definition, which seeks to legislate the prohibition of unions between people of the same sex and to exclude "single parent" families, which are a reality in the Guatemalan society, since they are many families composed of one parent, either father or mother, and children.

83. The State of Guatemala, through the ratification of international, regional and national commitments, has assumed the responsibility of providing Comprehensive Sexuality Education within the National Curriculum. It should be mentioned that the content of such education must be secular and based on evidence, as well as provided within the framework of human rights. While parents are important in providing sexuality education to their children, the Bill 5272

proposes that they are the only ones in charge of providing it to their children. Furthermore, the Bill seeks to ensure that "Public and private educational entities are prohibited from promoting, policies or programs related to sexual diversity and gender ideology or teaching sexual behaviors other than heterosexuality as normal to children and adolescents or (teaching other aspects which are) incompatible with biological and sexual aspects of human beings"(article 15 of the Bill 5272). In this context, it should be mentioned that the Constitution of the Republic, in article 72, regarding the right to education establishes the following: "The freedom of teaching and of teaching criteria is guaranteed. It is the obligation of the State to provide and facilitate education to its inhabitants without any discrimination." An interpretation of the articles 74 and 75 reveals that providing education is not exclusively a responsibility of the parents, because it should be interpreted in harmony with international standards and the responsibility of the State, including organizations that specialize in these issues. It is necessary to take into account that there is a social and public health problem in Guatemala, including the problem of unwanted pregnancies of girls and adolescents. In order to address these problems, it is necessary to create collective solutions based on an education that is adjusted to the progressivity of human rights. Furthermore, the obligation of the State to provide education is clearly stipulated in the Article 74 of the Constitution as follows: "Scientific, technological and humanistic education are objectives that the State should guide and expand permanently. The State will promote special, diversified and out-of-school education. "

84. The article 12 of the proposed law, violates the right of freedom of action and freedom of distribution of thought, through the implementation of prison sentences, stating that "he, who in public or private, directly or indirectly, by itself or through third parties, with or without lucrative purposes, promotes or facilitates means for the accomplishment of abortion, will be sanctioned with prison of six to ten years and a fine of fifty thousand to one hundred thousand quetzals." In this sense, the capacity of the organizations that work in the promotion and defense of sexual rights and reproductive rights would be severely hampered, because working as a defender of these rights would imply an economic punishment or a prison sentence. This constitutes a violation of the right to defend human rights, and endangers the implementation of the human rights of women in Guatemala. On the other hand, this article contravenes the article 5 of the Constitution, which states, regarding to "freedom of action", that "every person has the right to do what the law does not prohibit ", meaning that no person is obliged to abide orders that are not based on the law and issued in accordance with it. In this sense, if approved, the initiative 5272 would deny the ability of people to express themselves and to act freely, especially on issues such as abortion.

85. Finally, the bill proposes that the official stance of the State be in line with what is proposed in the bill, "in matters of life, family, children, adolescents and marriage", moreover, it seeks to make several conventions, treaties and human rights pacts assumed by the State null, stating that "the stances or commitments expressed or acquired in contravention of this provision shall be null and void without prejudice to the criminal, civil and administrative responsibilities that shall be deducted from the offender" (article 19 of the initiative).

86. On the 7th of June, the Commission emitted a favorable resolution with modifications;

however all of the infringements of human rights that the original bill had contained were included. At this time the bill awaits for its final approval in the National Congress, since it has already passed the first two debates. The bill evidences the great influence that conservative groups hold in the different State institutions, including within the maximum authority in legislative issues. It further shows a lack of understanding of basic human rights principles by the Guatemalan State authorities, moreover, the bill itself demonstrates a complete disregard for the national and international commitments of the State.

Recommendations for the State of Guatemala

1. Raise awareness among the authorities and staff of State institutions, especially judges, regarding the laws that protect girls and adolescents, particularly *Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar*, *Ley Contra el Femicidio y Otras Formas de Violencia Contra la Mujer*, y *la Ley de Violencia Sexual, Explotación y Trata de Personas* (the Law for the Comprehensive Protection of Children and Adolescents, the Law to Prevent, Punish and Eradicate Intrafamily Violence, Law Against Femicide and Other Forms of Violence Against Women, and the Law of Sexual Violence, Exploitation and Trafficking of Persons), and to apply these laws without any type of stereotypes that may exist in the social imaginary obstructing justice for girls and teenagers.
2. Carry out long-term and systematic campaigns to eradicate stereotypes and harmful practices that violate the rights of girls and adolescents in schools and raise awareness among students, teachers, parents, and leaders of the community.
3. Implement Comprehensive Sexuality Education in all the schools of the country in a gradual manner, and to ensure the provision of secular, scientific, and human rights based education and to increase the budget of the educational system assigning a percentage to the implementation of Comprehensive Sexuality Education in a manner that is proportional to that assigned to other subjects, in all educational levels in order to guarantee quality education with a gender perspective.
4. Monitor and ensure the transparency of the supply of modern contraceptive methods in all health centers and guarantee access to sexual and reproductive health services that respond to the needs of adolescents and young men and women.
5. Ensure access to therapeutic abortion in order to reduce maternal deaths of adolescents and girls, as well as the rates of unsafe abortions in the country. In addition, it is essential to expand access to abortion in cases of sexual violence, considering the high rates of violence against girls and adolescents and review the current legislation on abortion, as well as open up the debate on the legalization of abortion.
6. The State must give follow-up on the fact that 41 adolescent girls died in the fire of the

Virgen de la Asunción Children's Home, which should be considered the tip of the iceberg of many other situations of violence that occur in this type of homes that threaten the comprehensive development of the Guatemalan youth, in addition it must guarantee the reparation to the affected families and assume its error.

7. The three state branches should consider the prevention of forced pregnancies as a priority in their work plans, and recognize that these pregnancies are linked to the violence against girls and adolescents; and therefore forcing a girl or adolescent to carry out a forced pregnancy and assume a forced motherhood is a form of torture.
8. The State must respect the principle of secularity, as well as prevent and combat the interference of conservative and religious groups in the formulation of public policies. In addition, it is essential that the State respect the autonomy and independence of human rights institutions, such as the Ombudsman –PDH-.

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