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**VIOLATIONS OF WOMEN'S HUMAN RIGHTS
IN GUATEMALA**

Recommendations for the List of Issues to the Guatemalan Government

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Introduction

This memorandum is submitted by MADRE and the International Women's Human Rights Clinic (IWHR) at the City University of New York (CUNY) School of Law as well as MUIXIL and Barcenas Women's Working Committee, in Guatemala. This memorandum provides a brief summary of the Guatemalan government's systematic failure to meet obligations both internationally and domestically to respect and protect the human rights of women. We draw the Committee's attention to the following areas of concern that have become systematic problems in Guatemala including (1) femicide, the killing of women because of their gender; (2) Violence and political discrimination against indigenous women; and (3) human rights violations within the *maquilas*. Despite some legal reforms in recent years, the government of Guatemala has failed in its obligation under the ICCPR to take proper measures to give effect to the rights recognized under the treaty and to ensure effective remedies in cases of violations and prevent rampant impunity.

As a country that has signed and ratified numerous human rights treaties, Guatemala has binding obligations under various domestic, regional and international law standards that require them to protect against gender-based violence. Guatemala has ratified the International Covenant on Civil and Political Rights (ICCPR),¹ International Covenant on Cultural, Economic and Social Rights (ICESR),² Convention on the Elimination of all forms of Discrimination Against Women (CEDAW),³ Convention on the Elimination of all forms of Racial Discrimination (CERD)⁴ as well as the Convention Against Torture (CAT).⁵ We hope that these human rights violations are included in the list of issues it adopts for the Human Rights Committee's 100th Session review of Guatemala.

FEMICIDE VIOLATES ARTICLES 2, 3, 6, 7, 12, 16, 17, 19, 26 AND 27 OF THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS.

I. Femicide in Guatemala

Femicide is occurring at alarming rates in Guatemala. The hundreds of deaths that have occurred over the past several years have been labeled femicide because of the systematic pattern of violence against women where killings occur simply because of a woman's gender.⁶ While men

¹ International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

² International Covenant on Cultural, Economic and Social Rights (ICESR), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

³ United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1249 U.N.T.S. 13, *entered into force* Sept. 3, 1981.

⁴ United Nations Convention on the Elimination of all forms of Racial Discrimination (CERD), 660 U.N.T.S. 195, January 18, 1983.

⁵ United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), 1465 U.N.T.S. 85; 8 C.F.R. § 208.18, January 5, 1990.

⁶ Guatemala's State Report defines intent in femicide as one who commits violence upon a woman solely because of her gender. *Examen de los informes presentados por los Estados partes en virtud del artículo 40 del Pacto, Guatemala*, CCPR/C/GTM/3, para. 62, 31 marzo 2009.

are being killed at far higher rates than women, the distinguishing factor in cases of femicide is that women are being targeted for their gender and are killed because of it. Gender also often determines the way in which women are murdered, which may include victims being subjected to rape, torture and dismemberment before death. Femicide violates Articles 2, 3, 6, 7, 12, 16, 17, 19, 26 and 27 of the ICCPR.

While the government of Guatemala passed domestic legislation addressing the crisis, ample documentation of the continued violations warrant an enhanced strategy that includes effective implementation of Guatemala's domestic and international obligations. As a signatory to numerous regional and international human right treaties, Guatemala has mandatory obligations to ensure the safety, dignity and liberty of women and to protect their rights from being violated by private actors.

A. Background on Femicide in Guatemala

Femicide has roots in Guatemala stretching back decades. While the roots of femicide in Guatemala are unclear, the country's 36-year internal armed conflict last century has often been cited as the source of much of the aggression, hatred, rage, and tension that is visible in most cases of killings. "The war irrevocably damaged the family structure, the community, and the nation. The Guatemalan army, paramilitary (civilian defense patrols) and police have used violence against women as a weapon of war."⁷ As in many parts of the world, rape was used as a weapon of war and a means of torture.⁸ The war's devastating impact and legacy of atrocious human rights violations, including genocide, has been documented in numerous reports, even after over a decade has passed since the signing of the peace accords in 1996.⁹

According to the Commission for Historical Clarification (CEH),¹⁰ a U.N.-sponsored truth and reconciliation commission ordered under the Oslo Accords of 1994, 9,411 female victims of gender-based violence (GBV) were identified during the conflict. The Commission explains in their 1999 report that 19% of the women victims of GBV were tortured and 14% suffered sexual assault. While most of the victims were adults, children and the elderly were targeted as well with 35% of the victims being minors under the age of 17. Sexual violence was used as a weapon of war and often took the form of torturing women immediately prior to their murder, which happened in 25% of the cases.

The vast majority who suffered sexual violence (88.8%) was Mayan. Women were frequently gang-raped or forced to have sex with soldiers in front of family members; one interview reports 30 men raping a woman and her daughter in

⁷ The Guatemala Human Rights Commission/USA, *Guatemala's Femicide Law: Progress against Impunity?* 3, http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf.

⁸ *Id.*

⁹ The Recovery of Historical Memory project (REHMI) (includes testimony from thousands of Guatemalan victims, survivors, and witnesses); *Never Again* (1998) (documents the brutality directed against the Mayan people and specifically women); The Commission for Historical Clarification (CEH) (U.N.-sponsored truth and reconciliation commission ordered under the Oslo Accords of 1994).

¹⁰ The CEH was created to issue an unbiased report on the human rights violations that were committed during the civil war.

Quiché. Pregnant women in particular were targeted for violence by the Guatemalan military and civilian patrols (PACs). Survivors of the conflict attested to these atrocities, remembering the fetuses that were cut out of women's bodies and even hung on trees.¹¹

The intentional tactic of targeting indigenous women during the internal war was linked to the strategy of eliminating the guerilla,¹² justifying the brutal attacks on women and systematic misogyny. Rape was seen as a weapon of war, sexual violence committed upon women was seen as a "victory" while the women suffered innumerable consequences as a result of their disposability. During the armed conflict men were trained to treat women as war booty and thus to commit licensed acts of horrific sexual and physical violence upon them.¹³ After the war ended, those same thousands of men were returned to their homes yet no mental or emotional services were provided for them. As a result, domestic violence accounts for the majority of femicide cases in recent years.¹⁴

B. Guatemala's obligation to prevent, punish and redress femicide under regional and international law

During the last Human Rights Committee review of Guatemala in 2001, this Committee was "gravely concerned about reports of human rights violations, particularly gross and systematic violations of the right to life, liberty and security of person."¹⁵

In 2009, the CEDAW Committee welcomed the adoption of the Act on Femicide and Other Forms of Violence Against Women¹⁶ but showed concern that despite the adoption of the Act, "there have been insufficient investigations into reported cases of femicide and violence against women, the climate of impunity has not been eradicated and women are still afraid to report cases."¹⁷ The Committee also urged the State to ensure the provision of financial resource for the implementation of the Act and to "take appropriate measures to ensure that perpetrators of such acts are effectively prosecuted and punished and do not enjoy impunity."¹⁸

In 2006, the CAT Committee acknowledged the failure of the State to remedy the femicide issue in its Concluding Observation. The CAT Committee showed serious concern over the increased

¹¹ *Supra* note 2; for more on the torture of victims see Victoria Sanford, *From Genocide to Femicide: Impunity and Human Rights in Twenty-First Century Guatemala*, 7 JOURNAL OF HUMAN RIGHTS 104, 122 (2008).

¹² Guerillas are armed rebel groups who were one of the actors engaged in the civil war.

¹³ *See supra* note 2.

¹⁴ During the first six months of 2008, 61% of the murders of women were a result of domestic violence. "During this same period, 45% of the 238 femicides took place at the home of the victim." *Id.* at 5.

¹⁵ International Covenant on Civil and Political Rights, Conclusions and Recommendations, CCPR/CO/72/GTM, August 27, 2001.

¹⁶ According to the Act, the crime of femicide receives a 25 to 50 year prison term, physical and sexual violence receives a 5 to 12 year prison term (in accordance with the gravity of the crime) and psychological abuse and economic violence receives a 5 to 8 year prison term. *See supra* note 2.

¹⁷ CEDAW, *Conclusions and Recommendations*, CEDAW/C/GUA/CO/7, February 12, 2009.

¹⁸ *Id.*

“violent killings of women, which often involve sexual violence, mutilations and torture.” The committee added, “The fact that these acts are not investigated exacerbates the suffering of relatives seeking justice, who, in addition, complain of gender discrimination by the authorities in the course of investigatory and judicial proceedings.”¹⁹

As a result of the Committee’s findings, the CAT Committee set out several recommendations for the State to follow including taking “urgent measures to ... prevent and punish [acts of torture] when carried out by private individuals; (b) Ensure prompt, impartial and thorough investigations... and to [c]arry out campaigns and training activities for police officers and members of the judiciary to make them duly aware of the existing social violence, in order to enable them to receive complaints and investigate them properly.”²⁰

Regionally, the Inter-American Court of Human Rights has chided the government of Guatemala for its outright refusal to properly investigate cases of murder and torture.²¹ The Court also recognized the State’s role in allowing conditions that lead to torture to be created and failing to uphold the rights of victims.²² In 2007, the Inter-American Commission on Human Rights stated that investigations led by law enforcement into incidents of violence against women were biased and incompetent.²³ The two offices charged with initiating investigations, the national civil police and the public prosecutor’s office, do not collaborate or share information,²⁴ which severely impairs their ability to carry out their duties effectively.

Domestically, policies and plans have been established including the PLANNOVI, National Plan for the Prevention and Eradication of Violence in the Family and Violence Against Women,²⁵ the National Policy for the Promotion of Development of Guatemalan Women²⁶ and the Equal Opportunities Plan.²⁷ In 2008, the State adopted the Act on Femicide and Other Forms of

¹⁹ Convention against Torture, Conclusions and Recommendations, CAT/C/GTM/CO/4, July 25, 2006.

²⁰ *Id.*

²¹ Guatemala has ratified the American Convention on Human Rights. American Convention on Human Rights, November 22, 1969, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25, 1144 U.N.T.S. 123 (1992), *ratified on 27 April 1978.*

²² *Maritza Urrutia v. Guatemala*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 91, ¶ 40 (Feb. 22, 2002). The Court stated that it:

Understands that the State made a declaration whereby it partially acknowledged international responsibility for failing to respect and ensure the rights embodied in the American Convention, owing to non-compliance with Article 1(1) thereof to the detriment of Maritza Urrutia; and, in both the answer to the application and the final oral arguments, it accepted that “the facts that gave rise to the application had occurred.

²³ *Supra* note 7, at 63.

²⁴ *Id.*

²⁵ Plan Nacional para la Prevención y Erradicación de la Violencia Intrafamiliar y Contra las Mujeres, Amnesty International, *Guatemala: No Protection, no Justice: Killings of Women in Guatemala*, 9 June 2005, <http://www.unhcr.org/refworld/docid/45bf6e4d2.html>.

²⁶ Política Nacional de Promoción de Desarrollo de las Mujeres Guatemaltecas 2001 – 2006 (Guatemala).

²⁷ Plan de Equidad de Oportunidades (Guatemala).

Violence Against Women in order to address this violence against women.²⁸ The adoption of the Act made femicide a punishable crime.²⁹

Furthermore, the State has also established institutions in an attempt to address this issue including the National Coordination to Prevent, Punish and Eradicate Violence in the Family and Violence Against Women (CONAPREVI, i.e. Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y contra las Mujeres) as well as the Presidential Secretariat for Women (Secretaría Presidencial de la Mujer). The goal of CONAPREVI is to “inform and train government officials, women's organizations, and society in general about the objectives of the follow-up mechanism for the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.”³⁰ However, these institutions have not been effectively implemented, monitored or reviewed and have not prevented women from suffering such violence.³¹

Although, Guatemala has taken some positive steps in addressing the issue of femicide including the ratification of international human rights treaties, establishing legislation and creating state institutions, the government has failed to eradicate and protect women from violence as they are required to under their international human rights obligations. Femicide persists, not only because of private acts, but also because of lack of adequate protections and responses by the government as well.³²

C. State Perpetuated Impunity

The Guatemalan government has failed to uphold the standard of due diligence in protecting, preventing and prosecuting cases of femicide. The ineffectiveness of law enforcement was made visible in 2004 when two women carrying restraining orders were killed, likely by their partner. In 31% of the cases of women who were murdered they had been threatened beforehand.³³

In many cases, law enforcement personnel and medical examiners do not engage in the most basic of investigatory mechanisms, including gathering evidence at the sight of a crime or where a body was found, identifying marks or wounds on the body as associated with the cause of death, or even determining the time of death.³⁴ The IACHR's 2003 country report on

²⁸ Concluding observations of the Committee on the Elimination of Discrimination against Women, February 12, 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/236/32/PDF/N0923632.pdf?OpenElement>.

²⁹ *Supra* note 2.

³⁰ *Responses to the list of issues and questions with regard to the consideration of the seventh periodic report*, CEDAW/C/GUA/Q/7/Add.1 Dec. 2, 2008, available at http://www.bayefsky.com/issuesresp/guatemala_cedaw_2008.pdf.

³¹ Amnesty International, *Guatemala: No Protection, no Justice: Killings of Women in Guatemala*, 9 June 2005.

³² *See* GUATEMALA'S FEMICIDES AND THE ONGOING STRUGGLE FOR WOMEN'S HUMAN RIGHTS: UPDATE TO CGRS'S 2005 REPORT GETTING AWAY WITH MURDER; The Center for Gender & Refugee Studies (Sept. 2006); available at http://cgrs.uchastings.edu/documents/cgrs/cgrs_guatemala_femicides2.pdf.

³³ *Id.* at 83.

³⁴ Sanford, *supra* note 3, at 116-117. Sanford notes:

The prosecutor's office did not even interview [a victim's] family members until one month after her murder... [they] never sought out the friends and acquaintances that were last with [the victim] to get their versions of what happened the night of her murder. No search was ever conducted of

Guatemala³⁵ highlights how domestic violence is not considered a crime unless the woman can show that she has scars³⁶. However, often times by the time she goes to report the crime the scars have healed and thus the “evidence” of violence is lost, meaning the case is without grounds for investigation.

Specific instances include the case of Maria Eugenia Morales de Sierra where the inequality of sexes and the deference to domestic matters as private resulted in the murder of a young woman with the state silent in its response.³⁷ The medical examiners’ reports contain inconsistencies and bogged down in procedural details designed to slow down any investigation. Prosecutors do not search for witnesses, conduct ample interviews, examine inconsistencies in reports and in many cases won’t even prosecute.

Of the cases reported, 98% of them remain in impunity³⁸ with little to no state reaction, investigation, documentation, prosecution or reparations paid. “Between 2005 and 2007 only 2% of 2,000 cases involving the violent deaths of women were resolved,” not all with convictions.³⁹ Women have been killed in the thousands in Guatemala, mainly in rural indigenous lands, partly because law enforcement and the judicial system have yet to appreciate the severity of the crimes, resulting in a de facto state of misogyny.

Although the Act on Femicide and Other Forms of Violence against Women officially recognizes femicide as a punishable crime by the State, since the law’s passage the number of women being murdered continues to rise and the pervasive practice of the failure to investigate and prosecute continues widespread throughout the country.⁴⁰ The implementation of the law remains weak the State should take steps to strengthen their efforts in making the law effective. For example, since the law’s passage the number of women being murdered continues to rise, in part due to the pervasive practice on the part of law enforcement to fail to investigate and prosecute cases of femicide.⁴¹

the vehicles in which [the victim] is known to have traveled in the last 24 hours of her life. The only statements taken by the MP were those of individuals who voluntarily and randomly presented themselves to the MP to make a declaration...No joint meetings have ever been held among investigators who have been involved in this case to develop strategic lines of investigation. Thus, all statements have simply been recorded and taken at face value. No analysis of contradictions has ever been conducted. [Additionally] the MP has made no effort to locate any potential witnesses at the crime scene where [the victim’s] body was found... Searches of the homes of primary suspects did not take place until three months after [the victim’s] murder.

³⁵ Country Report of the Inter-Am. Comm’n H.R., *Justicia E Inclusión Social: Los Desafíos De La Democracia En Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 1 (29 diciembre 2003), available at <http://cidh.org/countryrep/Guatemala2003sp/capitulo5.htm#Violencia>.

³⁶ An Inter-American Commission on Human Rights reports that only physical evidence of abuse is treated as the sole proof of violence. Inter-Am. Comm’n H.R., *Access to Justice for Women Victims of the Americas*, OEA/Ser.L/V/II., doc. 68, p. 65 (2007).

³⁷ Inter-Am. Comm’n H.R., Merits, Report N° 4/01, *María Eugenia Morales de Sierra (Guatemala)*, January 19, 2001, para. 44.

³⁸ *Id.* (citing Coralía Orantes, *CICIG Ve Impunidad en Casos de Femicidio*, Nacional Prensa Libre, May 23, 2008).

³⁹ *Id.* at 5.

⁴⁰ *Supra* note 2, at 2.

⁴¹ *Id.*

In March 2010, the High Commissioner of Human Rights in Guatemala stated that since the implementation of the Act, the number of complaints has increased significantly.⁴² The High Commissioner explains, “the State’s capacity to respond has neither been proportionate nor effective enough in terms of investigation, sanction and reparation. Of the 166 complaints of femicide in 2009, only 11 cases were prosecuted and 10 sentences were dictated in the application of the recent Law.” The High Commissioner adds that the programs lacked both technical and practical components as well as inter-institutional coordination. There is duplication of actions due to absence of specific, homogeneous and specialized instructions on femicide and violence against women. According to the Commissioner, The establishment of a specialized justice system as well as the implementation of the National Information System on Violence against Women are still pending.⁴³

In 2009, Special Rapporteur Alston highlighted the creation of the International Commission Against Impunity in Guatemala (CICIG) and the optimism surrounding its work, however since the report’s release the Special Prosecutor leading CICIG, Carlos Castresana, has since resigned from his post due to his perceived lack of political will by the government to actually pursue corruption and organized crime and prosecute perpetrators of acts of gender based violence.⁴⁴

While the government has adopted of legislation outlawing femicide in 2008, implementation of the act remains weak at best.⁴⁵ The Guatemalan State Report acknowledges that the Act on Femicide and Other Forms of Violence against Women does not attempt to regulate sexual assault on women, and while reforms in the domestic penal code, via El Decreto N° 9-2009 del Congreso de la República de Guatemala, have resulted in the inclusion of sexual assault as a crime, the statute is not intended to address violence against women or femicide per se.⁴⁶ Similarly Guatemala states in its State Report in paragraph 83 that the National Civil Police (Policía Nacional Civil) receives on-going training regarding women’s human rights violations, however the lack of investigation and poor evidence-gathering mechanisms suggest a diminished importance given to violence against women.

As their State Report suggests, we commend the government for considering proposed measures before the legislature that would modify the penal code to criminalize domestic violence, sexual

⁴² UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*, A/HRC/13/26/Add.1, March 3, 2010. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/117/14/PDF/G1011714.pdf?OpenElement>.

⁴³ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*, A/HRC/13/26/Add.1, March 3, 2010. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/117/14/PDF/G1011714.pdf?OpenElement>.

⁴⁴ UN Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston: Addendum: follow-up to country recommendations - Guatemala*, 4 May 2009, A/HRC/11/2/Add.7, available at <http://www.unhcr.org/refworld/docid/4a0932270.html> [accessed 9 September 2010].

⁴⁵ The 2009 CEDAW committee’s Closing Observations on Guatemala showed concern that despite the adoption of the Act, “there have been insufficient investigations into reported cases of femicide and violence against women, the climate of impunity has not been eradicated and women are still afraid to report cases.” <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/236/32/PDF/N0923632.pdf?OpenElement>.

⁴⁶ *Examen de los informes presentados por los Estados partes en virtud del artículo 40 del Pacto, Guatemala*, CCPR/C/GTM/3, paras 62 - 64, 31 marzo 2009.

abuse and sexual assault against women, as well as recognize women's human rights to be free from violence.⁴⁷ However there is no indication as of yet that these measures have passed.

The failure of the State to adhere to the standard of due diligence or to abide by both domestic and international law resulted in impunity for perpetrators of violence.⁴⁸ The State has undertaken various steps to address the systemic and pervasive occurrence of femicide, for which they should be commended. However Guatemala has not succeeded in fully implementing their treaty obligations and committee recommendations, resulting in perpetrators continuing to commit crimes with impunity.

Recommendations

We ask that the Committee address this continued and systematic violation of women's human rights, including the right to live and be free from torture, discrimination and violence, and offer the following recommendations.

- Guatemala should fully fund domestically established institutions whose purported goal it is to address rampant corruption, official immunity, and strengthen law enforcement.
- Law enforcement personnel should be properly trained in evidentiary issues and proper means of gathering evidence for the purpose of documenting a crime.
- Women who report abuse or threats of abuse and seek to flee their environment should be provided with alternate means of shelter so that they do not have to return to their potential abuser(s).
- The State should implement Special Rapporteur Philip Alston's and the High Commissioner of Human Rights in Guatemala's recommendation to end the climate of impunity by fully and properly prosecuting cases of violence. When violence is reported, investigations should occur immediately and such crimes should be seen as meriting the highest level of professionalism and respect with regard to how such investigations are carried out. The Convention Against Torture (CAT) Committee echoed this recommendation by asking the state to ensure prompt, impartial and thorough investigations, free of any discrimination on gender, race, social origin or any other grounds, and bring alleged perpetrators to justice.

⁴⁷ *Id.* at para. 70(b) – (c). Decretos No. 2630 and No. 3612.

⁴⁸ See UN Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston: Addendum: follow-up to country recommendations - Guatemala*, 4 May 2009, A/HRC/11/2/Add.7, available at <http://www.unhcr.org/refworld/docid/4a0932270.html> [accessed 9 September 2010].

- The State should follow the CAT Committee's Concluding Observations⁴⁹ that urgent measures to ensure that no persons within its jurisdiction are subjected to torture, or to inhuman or degrading treatment, and fully comply with its duty to prevent and punish such acts when carried out by private individuals.
- The State should implement the CAT Committee's recommendation to implement campaigns and training activities for police officers and members of the judiciary to make them duly aware of the existing social violence, in order to enable them to receive complaints and investigate them properly.
- The State should follow the CEDAW Committee's Concluding Observations⁵⁰ to ensure the provision of financial resource for the implementation of the Act on Femicide and Other Forms of Violence Against Women and to take appropriate measures to ensure that perpetrators of such acts are effectively prosecuted and punished and do not enjoy impunity.

Suggested Questions

- How much funding has Guatemala dedicated to investigating, prosecuting and redressing crimes of femicide? What percentage increase is this over the allocated budget the State had set aside at the last Committee's review of Guatemala, and what is the State's plan to fully fund the recommended measures?
- How are civil police officers in rural areas and military police being trained to recognize violence against women as a serious and egregious crime and to investigate it properly? What does the training consist of, and who provides the training?
- How are police and military officials being trained in evidentiary concerns and proper means of gathering, documenting and preserving evidence of violence against women?
- How are prosecutors being trained to utilize the recent Law Against Femicide in order to strengthen its use and effect?
- What training do prosecutors receive to understand the full implications of femicide and its effect on the lives of women and their families?
- What means of protection are provided women when they seek assistance or shelter to flee a violent or potentially violent situation, including domestic violence?
- How are officers who fail to assist or investigate cases of femicide brought to justice as a means of ending the culture of impunity?

⁴⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Consideration Of Reports Submitted By States Parties Under Article 19 Of The Convention, Conclusions and recommendations of the Committee against Torture, July 25, 2006, CAT/C/GTM/CO/4.

⁵⁰ CEDAW, *Conclusions and Recommendations*, CEDAW/C/GUA/CO/7, February 12, 2009, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/236/32/PDF/N0923632.pdf?OpenElement>.

- How are judges being trained on domestic and international legal standards regarding violence against women and femicide?
- What reparations has the state provided victims of femicide in order to redress their families' loss?
- What assistance and services are provided survivors of gender-based violence in Guatemala on a short-term and long-term basis?
- What educational or informational actions is the State undertaking to radically shift perceptions of acceptable norms or gender roles for women, which when not obeyed often led to femicide?

VIOLENCE AND POLITICAL DISCRIMINATION AGAINST INDIGENOUS WOMEN IN GUATEMALA VIOLATE ARTICLES 2, 3, 6, 7, 8, 9, 14, 16, 20, 24, 25, 26, 27, AND 31 OF THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS.

II. Violence and Political Discrimination against Indigenous Women in Guatemala

The Guatemalan civil war (1960-1996) has been referred to as “the longest-running conflict in Latin America,” a period in which more than 100,000 people were killed and approximately 40,000 disappeared.⁵¹ The overwhelming majority of the women who suffered sexual violence during the Guatemalan civil war were indigenous,⁵² and the cruelty and brutality employed against them were heinous: “The internal armed conflict, classified as genocide by the United Nations, contributed heavily to the legacy of violence in Guatemala, including violence against women. With torture regularly used as a military technique, the torment that women faced was of a particularly sadistic nature. [...] The vast majority who suffered sexual violence were of Mayan descent (88.7%). It has been estimated that 50,000 women and girls were victims of violence.”⁵³ Indigenous women still face extensive race and gender-based violence, as well as being socially underserved and politically underrepresented. The Guatemalan government has an affirmative obligation under domestic and international law to prevent violence and political discrimination against indigenous women, yet the State has failed to ensure the security, welfare and advancement of this historically vulnerable and marginalized population.

A. Guatemala’s Legal Obligations to Prevent, Punish and Redress Violence and Political Discrimination against Guatemalan Indigenous Women

Guatemala has yet to demonstrate that it has met its burden of remedying violence and political discrimination against indigenous women. This Committee has questioned Guatemala about the steps it has taken toward prosecuting intrafamily violence against women and ensuring greater political representation of women under Article 3, as well as the measures it has effectuated to secure the safety of indigenous peoples and end political discrimination against them under Articles 2 and 27, respectively.⁵⁴ Furthermore, the Human Rights Committee has observed that in Guatemala “women do not participate enough in political life, the judiciary and other sectors”

⁵¹ U.S. Department of State: Bureau of Democracy, Human Rights and Labor, *Guatemala—Profile of Asylum Claims and Country Conditions (June 1997)*

⁵² The Report of the Committee for Historical Clarification (*Memory of Silence*) and The Interdiocesan Project to Recover the Historic Memory (*Never Again*) are two comprehensive studies of the Guatemalan civil war which attribute the overwhelming proportion of the violence to state actors, reveal that Guatemalan indigenous peoples were disproportionately affected by the violence and specifically targeted as victims, and document the severe nature of the violence and political discrimination practiced against indigenous women during this period.

⁵³ *Supra* note 1

⁵⁴ *List of Issues (2000)*, http://www.bayefsky.com/issues/guatemala_ccpr_c_71_1_gtm_2000.php.

and “discrimination against the indigenous population, women and the poor contribute to widespread violations of human rights.”⁵⁵

Guatemala also stands in contravention of its duty to prevent, punish and redress violence and discrimination against indigenous women as a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). The CEDAW Committee has expressed concern about “the precarious situation of indigenous women and the lack of information provided by the State party on Maya, Xinca and Garifuna women, who experience multiple and intersectional discrimination based on their sex, ethnic origin and social status.”⁵⁶ The CERD Committee has also noted its concern with the government’s failure to provide statistical data pertinent to violence and discrimination against indigenous peoples.⁵⁷

At the regional level Guatemala is a party to the Belém do Pará, which affirms that “violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men.”⁵⁸ Domestically, Article 4 of the Guatemalan Constitution guarantees the equality of men and women, and Article 66 ensures the protection of indigenous rights.⁵⁹ Moreover, the U.N.-brokered Guatemala Peace Accords of 1996, which ended a thirty-six-year civil war in that nation, include an Agreement on the Identity and Rights of Indigenous Peoples.

Section II-B of that document declares: “It is recognized that indigenous women are particularly vulnerable and helpless, being confronted with twofold discrimination both as women and indigenous people, and also having to deal with a social situation characterized by intense poverty and exploitation.”⁶⁰ The Guatemalan government pledges in this same section to criminalize sexual offenses, establish a special office for indigenous women, engage in media campaigns to raise awareness concerning indigenous women’s rights, and fulfill its obligations under CEDAW. Lastly, in Section II-C of the agreement, the State pledges to incorporate the provisions of CERD into the State penal code.

To its credit, the government has reformed its penal code in accordance with the terms of the 1996 Peace Accords and has established the Office for the Defense of Indigenous Women’s Rights (DEMI), which—in cooperation with the Program for the Prevention and Eradication of Intrafamily Violence (PROPEVI)—is expected to combat violence and discrimination against indigenous women throughout the nation. Despite this, the March 2010 report of the Guatemala Office of the High Commissioner for Human Rights reports widespread violence against women (including the occurrence of threats and attacks against female attorneys employed at DEMI, one

⁵⁵ *Concluding observations adopted December 31, 2003*, http://www.bayefsky.com/pdf/guatemala_t4_ccpr.pdf

⁵⁶ *Concluding observations, Paragraph 41 (2009)*, http://www.bayefsky.com/pdf/guatemala_t4_cedaw_43.pdf.

⁵⁷ *Concluding observations, Section C Paragraph 6 (2010)*.

⁵⁸ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belém do Pará,”

<http://www.cidh.oas.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>.

⁵⁹ República de Guatemala, *Constitución de 1985 con las reformas de 1933*,

<http://pdba.georgetown.edu/Constitutions/Guate/guate93.html>.

⁶⁰ *Agreement on the Identity and Rights of Indigenous Peoples*, <http://www.c-r.org/our-work/accord/guatemala/identity-rights.php>.

of whom received serious lesions in 2009) and persistent restrictions on women's and indigenous peoples' access to the penal system.⁶¹

Major human rights organizations⁶² have made reference to over 3,000 murders of women in Guatemala since the year 2000, only 2% of which have resulted in convictions.⁶³ Moreover, of the 23,721 reported cases of intra-family violence in Guatemala in 2008, 90% of the victims were female and incidences of such violence have been increasing annually.⁶⁴ In fact, conditions in Guatemala with respect to violent crime, including its impact on indigenous women, appear to be worsening rather than improving, as suggested by the March 2010 communiqué of the Guatemala Office of the High Commissioner for Human Rights which exposes the increasing index of violent crime and the extensive persistence of race and gender-based political discrimination.⁶⁵

Indigenous women constitute a substantial portion of the Guatemalan citizenry and they have been disproportionately affected by violence and political discrimination in that nation. According to Angélica Macario, a Guatemalan-Mayan spokeswoman for one of that country's most prominent indigenous rights groups, gender and race-based violence continue to plague Guatemala: "Thirteen years have passed since the signing of the Peace Accords and the indigenous people of Guatemala are virtually in the same situation as before. Today, the violence and the death toll exceed what they were during the period of civil war in Guatemala. Then we were victims of an acknowledged civil war, whereas now we continue to be victimized, while Guatemala claims to be at peace."⁶⁶

Current data on violence against indigenous women in Guatemala are relatively scarce, yet the abundant qualitative evidence from indigenous women is supported in some instances by the government's own empirical studies. For example, the Guatemalan National Institute for Statistics found in 2008 that the vast majority of the victims of intra-familial violence were

⁶¹ *Informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre las actividades de su Oficina en Guatemala*, <http://www.oacnudh.org.gt/actualizacion2010/UPLOAD/InformeAnual2009%28esp%29.pdf>

⁶² The International Crisis Group, *Guatemala: Squeezed between Crime and Impunity*, <http://www.unhcr.org/refworld/country,,,GTM,4562d94e2,4c2847a72,0.html>; Virginia Commonwealth University Capital News Service, *Violence against Women Goes Unpunished in Guatemala*, http://www.groundreport.com/Business/Violence-Against-Women-Goes-Unpunished-in-Guatemala_1/2919581; Oxfam International, *Fighting Violence against Women: Guatemala*, http://www.oxfam.org/en/programs/development/camexca/guatemala_violence; Center for Gender and Refugee Studies, *Help End Violence against Women in Guatemala*, <http://cgrs.uchastings.edu/campaigns/femicide.php>; Third World Network, *Gender Violence in Guatemala*, <http://www.twinside.org.sg/title/gender-cn.htm>; Guatemala Human Rights Commission, *Three Thousand and Counting: A Report on Violence against Women in Guatemala*, <http://www.ghrc-usa.org/Programs/ForWomensRighttoLive/ThreethousandandCounting,AReportonViolenceAgainstWomeninGuatemala.pdf>

⁶³ *Guatemala's Femicide Law, Progress against Impunity*, http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf

⁶⁴ Instituto Nacional de Estadística, *Violence Intrafamiliar*, <http://www.ine.gob.gt/index.php/sociedad/44-sociedad/132-violenciaintrafamiliar>

⁶⁵ *Supra* note 11

⁶⁶ Speaking on behalf of Organización Consejo de Comunidades Étnicas Runujel Junam (CERJ) at La Universidad de los Andes in Bogotá, Colombia on September 21, 2009. [author's translation from the Spanish]

women and more than a quarter of the female victims were indigenous.⁶⁷ Concerning political discrimination against indigenous women, moreover, the government has neglected to disaggregate the relevant data to reflect the intersection of race and gender, an indication of the State's blindness to the particularized challenges facing Guatemalan indigenous women in key areas such as literacy and political representation.⁶⁸ The government's failure to disaggregate significant data by the intersection of race and gender contravenes the explicit mandate of CERD's General Recommendation No. 25.⁶⁹

While the perpetrators of violence and discrimination against indigenous women in contemporary Guatemala may be largely classified as private actors, the State's systematic failure to protect indigenous women from such violence and discrimination and its poor documentation of these violations constitute a breach of the obligation of due diligence imposed on the government under General Comment No. 19, paragraph 9, of CEDAW,⁷⁰ and under Article 7 Subdivision b of the Convention of Belém do Pará.⁷¹ Despite having initiated certain institutional reforms (such as the establishment of the Office for the Defense of Indigenous Women's Rights), Guatemala has failed to abide by the terms of the Declaration on the Rights of Indigenous Peoples, which (in Paragraph 2 of Article 22) affirm that "States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women [...] enjoy the full protection and guarantees against all forms of violence and discrimination."⁷²

Guatemalan government has taken ineffective measures in response to the gravity of the violence and discrimination practiced against indigenous women. The State continues to be grossly non-compliant with its obligations under the ICCPR, CEDAW, CERD, other instruments of international law to which it is a party and its own Constitution, which would collectively compel it to safeguard the rights of Guatemalan indigenous women to be free from violence and discrimination.

As recently as March of 2010, the Guatemala Office of the High Commissioner for Human Rights described that nation's institutions for the prevention and prosecution of violence as utterly failing to assume their protective functions.⁷³ Guatemala's limited institutional reforms have been patently insufficient, unaccompanied by the monetary and human resources and the political willpower to achieve substantive compliance with the binding domestic and international laws that commit the State to the advancement of indigenous women's rights.

⁶⁷ *Supra* note 14.

⁶⁸ Instituto Nacional de Estadística, *Mujeres y hombres en cifras (2008)*, <http://www.ine.gob.gt/index.php/gepu/62-genpu/188-muyho2008>.

⁶⁹ *General Recommendation No. 25: Gender Related Dimensions of Racial Discrimination (03/20/200)* <http://www.unhchr.ch/tbs/doc.nsf/0/76a293e49a88bd23802568bd00538d83?Opendocument>.

⁷⁰ Committee on the Elimination of Discrimination against Women, *General Recommendations: The Convention on the Elimination of All Forms of Violence against Women* <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

⁷¹ *Supra* note 8.

⁷² *United Nations Declaration on the Rights of Indigenous Peoples (2007)*, <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

⁷³ *Supra* note 11.

The Guatemalan government has an affirmative obligation to prevent violence and political discrimination against indigenous women, yet the State has neglected to ensure the security, welfare and advancement of this historically vulnerable and underserved population. Guatemala must take vigorous and urgent measures to prevent violence and discrimination against indigenous women within its borders.

Recommendations

We recommend that Guatemala take the following measures toward achieving compliance with its obligations under domestic and international law to prevent violence and discrimination against indigenous women:

- Strengthen government institutions such as the Office for the Defense of Indigenous Women, the National Committee for the Prevention of Intrafamily Violence against Women, the Presidential Secretary for Women, Female Survivors of Violence, the National Commission against AIDS, Advocates for Indigenous Women, the National Commission against Racism and Discrimination, the Presidential Secretary for Peace, the Program for the Prevention of Domestic Child Labor in Indigenous Populations, the Unit for the Modernization of the Judiciary, the Criminal Public Defense Institute's Indigenous Advocates and the Unit of Indigenous Peoples in the Ministry of Labor, whose mission consists in whole or in part of preventing, punishing and redressing violence and political discrimination against indigenous women and girls.
- Promote indigenous women's participation in public and political life by implementing training programs for current and future female indigenous leaders and undertaking awareness-raising campaigns about indigenous women's human rights
- Provide specific information on the numbers and levels of violence and discrimination against indigenous women and girls.
- Ensure the implementation of current labor legislation to protect the rights of indigenous women in the workforce by increasing the authority of inspection bodies and actively investigating violations and promoting stronger private sector codes of conduct
- Ensure substantial dissemination of the Human Rights Committee's findings to the indigenous women and girls of Guatemala and the population at large

Suggested Questions

- Does Guatemala plan to situate its increases in personnel, budget or other forms of assistance for such programs against the backdrop of government spending or other forms

of support for similarly situated agencies in order to allow interested parties to evaluate the comparative value of its affirmative measures?

- How does Guatemala plan to adequately protect, prevent and redress violence and political discrimination against indigenous women and girls, given the assessment that existing institutional support has proved inadequate?
- Does Guatemala plan to render objective assessments of the efficacy of such programs that do exist and the extent of their financial support and human resources relative to similarly situated programs?
- Does Guatemala plan to provide more comprehensive quantitative and qualitative analyses of violence and political discrimination against indigenous women and girls, disaggregating the data by the intersection of race and gender?
- Does Guatemala's National Institute for Statistics plan to account for sexual homicides and disaggregate such figures by the intersection of race and gender?
- Does Guatemala's National Institute for Statistics plan to analyze the political underrepresentation of women (and related issues, such as illiteracy) by the intersection of race and gender?
- Does Guatemala plan to provide more comprehensive data about the enforcement of domestic labor laws against violators of the human rights of indigenous women?
- Does Guatemala intend to take a more proactive stance with respect to prosecuting violations of labor laws against indigenous women?
- Does Guatemala plan to publish the findings of the National Institute for Statistics and other governmental agencies concerning violence and political discrimination against indigenous women and girls in the indigenous languages of the nation?

**THE HUMAN RIGHTS VIOLATIONS IN THE *MAQUILAS* OF GUATEMALA
VIOLATE ARTICLES 1, 3, 7, 17, 22, 23 AND 26 OF THE OF THE INTERNATIONAL
CONVENTION ON CIVIL AND POLITICAL RIGHTS.**

III. Human Rights Violations Within the *Maquilas* of Guatemala.

Unventilated workrooms, unsafe workshops, verbal abuse, sexual harassment and abuse, firings for pregnancy, arbitrary dismissals, forced overtime, and an inability to unionize are just some of the issues women workers face in Guatemalan *maquilas*.⁷⁴ Women make up over 80 percent of Guatemala's 70,000 *maquila* workers.⁷⁵

Many workers experience poor working conditions in the *maquilas* of Guatemala. The quality and stability of these jobs are generally poor for two main reasons. First, there is a failure to observe basic labor rights. Second, there is a high turnover of labor. This turnover is made possible by the existence many women willing to work in precarious conditions.⁷⁶ These women work in the precarious conditions as a survival strategy to avoid the impoverishment of themselves and their families.⁷⁷

In the *maquiladora* sector, there is widespread sex discrimination. Women are often required to reveal whether they are pregnant as a condition of employment, either through questions on job applications, in interviews, or through physical examinations, including invasively prodding the women's stomach by in-house medical personnel.⁷⁸ Some *maquilas* require the applicant to supply a certificate, at her own cost, to prove she is not pregnant.⁷⁹ Finally, *maquilas* routinely deny a woman's right to access the employee health care system, either by not enrolling her, or if she is enrolled, denying her the necessary certificate and time-off to visit a health facility.⁸⁰ This obstructed access to health care has a direct impact on working women's health.

⁷⁴ "The Maquila in Guatemala: Facts and Trends" <http://www.stitchonline.org/archives/maquila.asp> (last visited September 15, 2010). A *maquila* is a factory contracted by corporations to perform the final assembly and packaging of products for export. Transnational corporations (TNC's) supply maquilas with the pre-assembled material, such as cloth and electronic components, and maquilas employ workers to assemble the material into finished or semi-finished products. The maquilas then export 100% of their products back to the TNC's.

⁷⁵ Inés Benítez, *Labour Rights Mean Little in Maquila Factories*, Interpress Service New Agency, August 14, 2007, available at <http://ipsnews.net/news.asp?idnews=38886>.

⁷⁶ International Labor Organization, *Managing equality Women Unionization of Factory Workers Gender Equality and Women's Work in Central America*, available at

http://www.oitcinterfor.org/public/spanish/region/ampro/cinterfor/temas/gender/gestion/accsindi/maqui_i.htm.

⁷⁷ *Id.*

⁷⁸ Human Rights Watch, *From The Household To The Factory: Sex Discrimination in the Guatemalan Labor Force*, 12 February 2002, 2696, available at: <http://www.unhcr.org/refworld/docid/45cc6f092.html>.

⁷⁹ *Id.*

⁸⁰ Human Rights Watch, *From The Household To The Factory: Sex Discrimination in the Guatemalan Labor Force*, 12 February 2002, 2696, available at: <http://www.unhcr.org/refworld/docid/45cc6f092.html>.

⁸⁰ *Id.*

Women working in the *maquilas* also experience other forms of discrimination and violations of their labor rights. Wages paid to women are often less than wages paid to men.⁸¹ Women are discriminated against in the hiring process. *Maquilas* are reluctant to employ pregnant women in certain upper-level positions.⁸² Some companies do not hire women because of the high costs associated with providing social protection to women working at night. Other companies do not hire women because of the difficulty of employing women during shift systems that conform to national laws prohibiting night work by women.⁸³ Extreme forms of discriminatory practices against women include corporal punishment and various forms of harassment, including sexual harassment.⁸⁴

Women wanting to unionize in order to change the *maquila* working conditions face many challenges. Women representation within the few existing unions is low.⁸⁵ Women make up 2.3% of the membership.⁸⁶ Employer opposition to union organizing presents another challenge. Employers will dismiss workers who attempt to unionize.⁸⁷ Labor authorities tend to defend and protect multinational corporations instead of controlling the labor violations in the *maquilas*. A worker's attempts at exercising the right to strike are frustrated by weak law enforcement entities unwilling or unable to protect the worker's rights.⁸⁸

A. Sexual Harassment and Workplace Violence

The Human Rights Committee has urged Guatemala to establish violence and acts of discrimination against women, including sexual harassment in the workplace, as “punishable crimes.”⁸⁹ The CESCR Committee also addressed sexual harassment of women in the workplace and urged Guatemala to amend all its relevant legislation in order to define sexual harassment as a crime and to take effective measures to combat it.⁹⁰ Under the CEDAW sexual harassment in the workplace is both sex discrimination and gender-based violence.⁹¹ Under articles 1 and 2(B) of the CEDAW, Guatemala is obligated to adopt a prohibition on all forms of discrimination against women and to issue sanctions against those who discriminate against women.⁹² The

⁸¹ International Labour Office, International Labor Organization, *Discrimination: Targeting migrant workers and women*, Geneva, 16-20 October 2000, available at http://www.ilo.org/public/english/dialogue/sector/techmeet/tmlfi00/tmlfir.htm#_Toc488740560.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ International Trade Union Confederation, *2009 Annual Survey of violations of trade union rights - Guatemala*, 11 June 2009, available at: <http://www.unhcr.org/refworld/docid/4c52caea11.html>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ International Trade Union Confederation, *2009 Annual Survey of violations of trade union rights - Guatemala*, 11 June 2009, available at: <http://www.unhcr.org/refworld/docid/4c52caea11.html>.

⁸⁹ Human Rights Committee, Concluding Observations: Guatemala, ¶6 (1996) UN Doc. CCPR/C/79/Add.63, available at <http://tb.ohchr.org/default.aspx?country=gt>.

⁹⁰ CESCR, Concluding Observations: Guatemala, ¶34 (2003) UN Doc. E/C.12/1/Add.93, available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.93.En?Opendocument>.

⁹¹ CEDAW, General Recommendation No. 19, ¶1 (1992), U.N. Doc. CEDAW/C 1992/L.1/Add.15.

⁹² CEDAW, Articles 1, 2, available at <http://www.bayefsky.com/treaties/cedaw.php>.

CEDAW Committee recommended that the Government of Guatemala adopt relevant national legislation and repeal all remaining legislation that discriminates against women, including the discriminatory provisions in the Labor, Civil and Criminal Codes.⁹³ Furthermore, the Convention of Belém do Pará explicitly includes sexual harassment in the workplace as a form of violence against women.⁹⁴ Under this Convention, Guatemala has an obligation to “pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence.”⁹⁵

Although under international law sexual harassment is a human rights violation, Guatemalan women continue to be subjected to discrimination, harassment and gender-based violence in the workplace. Women are subjected corporal punishment and verbal abuse as a disciplinary tactic.

This Committee has recognized the positive legislative measures adopted by Guatemala on behalf of women and the State’s establishment of various bodies intended to promote and protect women’s rights.⁹⁶ The National Office for Women (ONAM), an arm of the Ministry of Labor and Social Security has initiated a project called "Women and legal reforms" which has proposed amendments to the Criminal Code, Labor Code, and Health Code as well as draft law on sexual harassment.⁹⁷ The CEDAW Committee has welcomed the adoption of the Act against Femicide and Other Forms of Violence against Women that “allows punishment for acts of physical, sexual or psychological violence carried out in public or private against women because of her gender.”⁹⁸ Other bills that seek to amend legislation concerning women and to place women on an equal footing for the adequate protection of their legal rights have been proposed, but have not yet been adopted.⁹⁹

However, as the Government of Guatemala recognizes, the Act Against Femicide “does not cover the crime of sexual harassment,”¹⁰⁰ nor does the proposed legislation specifically address violence or sexual harassment against women within the *maquila* industries. Therefore,

⁹³ CEDAW, Concluding Observations: Guatemala ¶¶ 11, 14 (2009) UN Doc. CEDAW/C/GUA/CO/7, *available at* <http://tb.ohchr.org/default.aspx?country=gt>.

⁹⁴ Convention of Belém do Pará, is a regional instrument developed within the Inter-American system and ratified by Guatemala in 1995. Convention of Belém do Pará, Article 2(b), (1994) OAS/ser.L/II.2.27, CIM/doc.33/94, *available at* <http://www.oas.org/cim/english/convention%20violence%20against%20women.htm#2>.

⁹⁵ *Id.* at Article 7.

⁹⁶ Human Rights Committee, Concluding Observations: Guatemala ¶6 (2001) UN Doc. CCPR/CO/72/GTM; *available at* <http://tb.ohchr.org/default.aspx?country=gt>.

⁹⁷ Guatemala, ICCPR, Second Periodic reports of States Parties due in 1998, ¶¶ 109, 110, 112, U.N. Doc. CCPR/C/GTM/99/2 (2000), *available at* <http://tb.ohchr.org/default.aspx?country=gt>.

⁹⁸ Guatemala, ICCPR, Third Periodic Reports, ¶¶ 61,62 U.N. Doc. CCPR/C/GTM/3 (2010).

⁹⁹ The following bills have been submitted to Congress which seek to modify the existing regulatory framework for women's equal and adequate protection of their legal rights: No. 3566 which proposes the adoption of the Anti-Harassment and Sexual Harassment; No. 2630, proposing to amend the Criminal Code to incorporate as an offense, among others, domestic violence, sexual harassment and sexual abuse; No. 3612 approving the proposed Protection Act of women's human right to live free of violence; No. 3525 proposing reforms of Labour Code, among which is the incorporation of regulation of harassment and sexual harassment at work. Guatemala, ICCPR, Third Periodic Reports, ¶ 69, U.N. Doc. CCPR/C/GTM/3 (2010).

¹⁰⁰ Guatemala, ICCPR, Third Periodic Reports, ¶ 62, U.N. Doc. CCPR/C/GTM/3 (2010).

Guatemala has not fulfilled its international obligations with regards to sexual harassment and violence in the workplace as it has not enacted legislation that combats the situation in the *maquilas*.

B. Labor Rights Violations

Recently, the CEDAW Committee specifically recommended that women working in the *maquiladora* industry be fully protected under the existing labor laws. The Committee requested the State party to include information on the impact of measures taken and results achieved in its next report.¹⁰¹ The Committee recommended that Guatemala adopt legislation guaranteeing equal pay for work of equal value in line with the ILO Convention No. 100.¹⁰² The State was to take all appropriate measures, including temporary special measures and strengthened equality mechanisms to address women's disadvantage in the labor market.¹⁰³ The Committee recommended that Government "adopt legislative, administrative and other measures guaranteeing access to social security, regulate long working hours and eliminate exposure to sexual harassment."¹⁰⁴

Under the CESC, Guatemala must recognize, the right to work (Article 6), the right of everyone to the enjoyment of just and favorable conditions of work (Article 7), and undertake to ensure the right of everyone to form trade unions and to join the trade union of his choice (Article 8).¹⁰⁵ The CESC Committee recommended that Guatemala not only verify but also ensure the fulfillment of labor legislation relating to occupational health and safety conditions through regular inspections.¹⁰⁶ The CESC Committee pushed the Guatemalan government to ensure equality between women and men in all spheres of life, in particular by taking effective measures to combat discrimination in access to employment.¹⁰⁷ According to the CESC Committee "the minimum wage is not sufficient to provide a decent living for the workers and their families and that, in practice, such insufficient salary is not always paid."¹⁰⁸ The CESC Committee recommended, "equal pay for work of equal value" and a regular increase in the minimum wage in proportion to the cost of living so as to guarantee an adequate standard of living, not only on the books but also in practice.¹⁰⁹

The CEDAW Committee has also expressed concern about women's lack of awareness of their labor rights while working in the *maquilas*.¹¹⁰ It recommended proactive measures, such as

¹⁰¹ CEDAW, Concluding Observations: Guatemala ¶30 (2009) UN Doc. CEDAW/C/GUA/CO/7, available at <http://tb.ohchr.org/default.aspx?country=gt>.

¹⁰² ILO Convention No. 100 Equal Remuneration Convention, Article 2 (1951), available at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

¹⁰³ CEDAW, Concluding Observations: Guatemala ¶30 (2009) UN Doc. CEDAW/C/GUA/CO/7.

¹⁰⁴ *Id.* at ¶¶29, 30.

¹⁰⁵ ICESCR, Articles 6, 7, 8, (1966), available at <http://www2.ohchr.org/english/law/cescr.htm>.

¹⁰⁶ CESC, Concluding Observations: Guatemala, ¶33 (2003) UN Doc. E/C.12/1/Add.93, available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.93.En?Opendocument>.

¹⁰⁷ CESC, Concluding Observations: Guatemala, ¶30 (2003) UN Doc. E/C.12/1/Add.93, available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.93.En?Opendocument>.

¹⁰⁸ CESC, Concluding Observations: Guatemala, ¶32 (2003) UN Doc. E/C.12/1/Add.93, available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.1.Add.93.En?Opendocument>.

¹⁰⁹ *Id.*

¹¹⁰ CEDAW, Concluding Observations: Guatemala, ¶11 ((2009) UN Doc. CEDAW/C/GUA/CO/7.

comprehensive legal literacy programs, including programs designed for legal professionals and for the public at large on the Convention, its Optional Protocol, and on women's labor rights.¹¹¹

Under the Declaration on Fundamental Principles and Rights at Work and ILO Convention No. 87 and 111, Guatemala must guarantee freedom of association, the effective recognition of the right to collective bargaining and the elimination of discrimination in respect of employment and occupation.¹¹² These protections include freedom from discrimination in the enjoyment of hours of work, rest periods, annual holidays with pay, and social security measures in connection with employment.¹¹³ Guatemala has similar obligation under Central American Free Trade Agreement (CAFTA) as the State has agreed to "effectively enforce its labor laws."¹¹⁴ Specifically, under CAFTA Guatemala has the obligation to effectively enforce the right of association, the right to organize and bargain collectively; and the right to acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.¹¹⁵

Although the Labor Code was amended by Congressional Decree 64-92, resulting in improvements to working women's situations, specifically sexual discrimination in the hiring process,¹¹⁶ women continue to experience violations of their labor rights. Women working in the *maquilas* continue to be paid less than men. Working more than the mandated eight-hour day is common and working conditions are unventilated and unsafe.¹¹⁷ The freedom to associate through unions is frustrated by the employers violating the freedom to associate and the labor authorities not protecting the right.¹¹⁸

The protections under Guatemalan law and the institutions put in place to implement these protections are present but are not active. Under Guatemalan law, "Both men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to ... any ... condition which impairs his dignity."¹¹⁹ The right to work is both the right of the individual and a social obligation.¹²⁰ Section 8, Article 102(k) of the Constitution specifically protects women workers and requires the regulation of the conditions in which they work.¹²¹

¹¹¹ *Id.* at ¶ 12.

¹¹² ILO Declaration on Fundamental Principles and Rights at Work ¶¶2(a), 2(d), (86th Session, Geneva 1998) available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>; ILO Convention No. 87, Freedom of Association and Protection of the Right to Organize (1948); ILO Convention No.111, Discrimination in Respect of Employment and Occupation, (1958), available at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

¹¹³ ILO Convention No. 111, Discrimination in Respect of Employment and Occupation (1958), available at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

¹¹⁴ Central American Free Trade Agreement, Article 16.2.1(a), available at http://web.archive.org/web/20080312214013/www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/Section_Index.html.

¹¹⁵ *Id.* at Articles 16.2 (1)(a), 16.8.

¹¹⁶ Guatemala, ICCPR, Second Periodic reports of States Parties due in 1998, ¶ 117, U.N. Doc. CCPR/C/GTM/99/2 (April 5, 2000), available at <http://tb.ohchr.org/default.aspx?country=gt>.

¹¹⁷ "The Maquila in Guatemala: Facts and Trends" <http://www.stitchonline.org/archives/maquila.asp> (last visited Sept. 15, 2010).

¹¹⁸ International Trade Union Confederation, *2009 Annual Survey of violations of trade union rights - Guatemala*, 11 June 2009, available at: <http://www.unhcr.org/refworld/docid/4c52caea11.html>.

¹¹⁹ Guatemalan Constitution, Article 4, available at <http://pdba.georgetown.edu/constitutions/guate/guate93.html>

¹²⁰ Guatemalan Constitution, Article 101, available at <http://pdba.georgetown.edu/constitutions/guate/guate93.html>.

¹²¹ Guatemalan Constitution, available at <http://pdba.georgetown.edu/constitutions/guate/guate93.html>.

The Constitution includes the right to free choice of work and to satisfactory economic conditions that will guarantee a dignified existence for the worker and her family.¹²² The Constitution guarantees equal pay for equal work performed under equal conditions, with equal efficiency and equal seniority.¹²³ It also establishes periodic fixing of minimum wages in accordance with the law and an eight-hour workday.¹²⁴ Various articles within the Labor Code prohibit unsanitary or dangerous working conditions¹²⁵ and employment discrimination between married and single women.¹²⁶ The Ministry of Labor has a Working Women's Unit (Sección de Promoción y Capacitación de la Mujer Trabajadora) that is charged with enforcing and educating about women's labor rights, however, the Unit, like the other entities focusing on women's rights, receives inadequate funding to carry out its mandates efficiently and effectively.¹²⁷

Guatemala recognizes that "the practice of equality between men and women has not yet reached the desired levels," and simultaneously claims, "the situation is improving daily."¹²⁸ Until Guatemala adopts a prohibition on all forms of discrimination against women in line with articles 1 and 2 (b) of the CEDAW Convention, the Guatemalan government is falling short of its international obligations.¹²⁹ Furthermore, acknowledgment by the Guatemalan government of women's labor rights at the international and domestic levels is not resulting in protection or enforcement within the *maquilas*.

C. Discrimination Based on Pregnancy

Under the CEDAW, Guatemala must ensure an effective right to work by preventing discrimination against women on the grounds of maternity. Article 11(2) of CEDAW specifically bars dismissal on the grounds of pregnancy.¹³⁰ The Office of the High Commissioner for Human Rights has also drawn particular attention to women's labor rights and discriminatory practices against pregnant women in the *maquiladora* industries.¹³¹

Although the Guatemalan Labor Code was amended by Congressional Decree 64-92 in 1992, resulting in improvements to working women's situations pertaining to maternity leave and working while pregnant,¹³² women continue to be subjected to discrimination in the workplace

¹²² Guatemalan Constitution. Article 102. <http://pdba.georgetown.edu/constitutions/guate/guate93.html>.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Guatemala Labor Code, Article 148, available at <http://www.cosibah.org/codigos%20de%20trabajo%20Guatemala.pdf>.

¹²⁶ Guatemala Labor Code, Article 151, available at <http://www.cosibah.org/codigos%20de%20trabajo%20Guatemala.pdf>.

¹²⁷ UN Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, ¶51 U.N. Doc E/CN.4/2005/72/Add.3 (2005).

¹²⁸ Guatemala, ICCPR, Second Periodic reports of States Parties due in 1998, ¶ 108, U.N. Doc. CCPR/C/GTM/99/2 (2000), available at <http://tb.ohchr.org/default.aspx?country=gt>.

¹²⁹ CEDAW, Concluding Observations: Guatemala, (2009) UN Doc. CEDAW/C/GUA/CO/7, available at <http://tb.ohchr.org/default.aspx?country=gt>.

¹³⁰ CEDAW, Article 11, Para. 2.

¹³¹ General Assembly Human Rights Council, Working Group on the Universal Periodic Review: Guatemala, ¶24 (2008) UN Doc. A/HRC/WG.6/2/GTM/2, available at <http://www.unhcr.org/refworld/docid/4858ef1e0.html>.

¹³² Guatemala, ICCPR, Second Periodic reports of States Parties due in 1998, ¶ 117, U.N. Doc. CCPR/C/GTM/99/2 (April 5, 2000), available at <http://tb.ohchr.org/default.aspx?country=gt>.

based on pregnancy. Women are often required to reveal whether they are pregnant as a condition of employment, either through questions on job applications, in interviews, or through physical examinations, including invasively prodding the women's stomach by in-house medical personnel.¹³³ Some *maquilas* require the applicant to supply a certificate, at her own cost, to prove she is not pregnant.¹³⁴ Finally, *maquilas* routinely deny a woman's right to access the employee health care system, either by not enrolling her, or if she is enrolled, denying her the necessary certificate and time-off to visit a health facility.¹³⁵ *Maquilas* are reluctant to employ pregnant women in certain upper-level positions.

Section 8, Article 102(k) of the Constitution does protect women workers and requires the regulation of the conditions in which they work.¹³⁶ The law regulates the protection of motherhood for working-women in that a pregnant woman should not be required to do any work that requires effort that would endanger her pregnancy. Working mothers get mandatory leave for thirty days preceding the birth and forty-five days after the birth. They are also paid a percent of their salary during that time-off. At the time of breastfeeding a woman is entitled to two extra rest periods within the day. Pre-and postnatal breaks will be extended according to their physical, medical prescription.¹³⁷ Various articles within the Guatemalan Labor Code prohibit firing pregnant women or breastfeeding women unless they are in severe breach of their contract due to their condition, and prohibit exacting physical labor of women in their third trimester.¹³⁸ Other articles govern maternal leave for pregnant women.¹³⁹ Article 153 of the Labor Code governs accommodations for breastfeeding mothers, Article 154 governs the wages for maternity leave or respite periods for breastfeeding mothers, and Article 155 requires adequate daycare of employers with more than 30 female workers.¹⁴⁰

Discrimination by the *maquila* industries against pregnant workers persists despite domestic legislation and international obligations. Therefore, Guatemala has not fulfilled its international obligations with regards to ensuring an effective right to work by preventing discrimination against women on the grounds of maternity.

Recommendations

- Address all of the above mentioned issues specifically in the next State report, including legislation adopted and measures taken to combat sexual harassment, workplace violence, labor rights violations and pregnancy based discrimination.

¹³³ Human Rights Watch, *From The Household To The Factory: Sex Discrimination in the Guatemalan Labor Force*, 12 February 2002, 2696, available at: <http://www.unhcr.org/refworld/docid/45cc6f092.html>.

¹³⁴ Human Rights Watch, *From The Household To The Factory: Sex Discrimination in the Guatemalan Labor Force*, 12 February 2002, 2696, available at: <http://www.unhcr.org/refworld/docid/45cc6f092.html>.

¹³⁵ *Id.*

¹³⁶ Guatemalan Constitution, available at <http://pdba.georgetown.edu/constitutions/guate/guate93.html>.

¹³⁷ *Id.*

¹³⁸ Guatemala Labor Code, Article 151, available at <http://www.cosibah.org/codigos%20de%20trabajo%20Guatemala.pdf>.

¹³⁹ Guatemala Labor Code, Article 152, available at <http://www.cosibah.org/codigos%20de%20trabajo%20Guatemala.pdf>.

¹⁴⁰ Guatemala Labor Code, available at <http://www.cosibah.org/codigos%20de%20trabajo%20Guatemala.pdf>.

- Reform Article 102 of the Constitution and Articles 148 and 151 of the Labor Code to bring them in line with international standards and ensure that women are accorded the same rights as other male workers with respect to the eight-hour workday, the minimum wage and overtime, rest periods, national holidays, vacation, written contracts, and social security.
- Enact legislation that explicitly prohibits any company, public or private, from requiring that women give proof of pregnancy status, contraceptive use (or any other information related to reproductive choice and health) in order to be considered for, gain, or retain employment.
- Adopt legislation that prohibits all forms of discrimination against women in line with articles 1 and 2 (b) of the CEDAW Convention within the workplace. This legislation must take into account different forms of sexual harassment, such as corporal punishment and verbal abuse. It should address varying levels of employer accountability and financial liability. Sexual harassment legislation should also take into account the spectrum of work environments, specifically mentioning sexual harassment within the *maquilas*.
- Enact legislation to establish penalties, including fines, to punish companies, foreign or domestic-owned, that engage in pregnancy-based sex discrimination.
- Conduct timely and periodic unannounced visits to *maquilas* to investigate hiring practices and inspect working conditions.
- Enact legislation that explicitly prohibits any company, public or private, from firing a woman for joining or establishing a trade union.
- Implement a national public education campaign about sex discrimination in the labor force and remedies available to injured parties. Including proactive measures, such as comprehensive legal literacy programs, for legal professionals and for the public at large on the Convention, its Optional Protocol, and on women's labor rights as recommended by the CEDAW committee.

Suggested Questions

- What legislation has been adopted recently to combat sexual harassment, workplace violence, labor rights violations and pregnancy based discrimination? What enforcement mechanisms have been put in place to ensure that women are being accorded these rights? How is the State assessing and tracking progress in this area?
- What legislative reform has taken place to bring Article 102 of the Constitution and Articles 148 and 151 of the Labor Code in line with Article 3 of the ICCPR in order to ensure that women are accorded equal rights with respect to the eight-hour workday, the minimum wage and overtime, rest periods, national holidays, vacation, written contracts, and social security? What enforcement mechanisms have been put in place to ensure that women are being accorded these rights? How is the State assessing and tracking progress in this area?
- How is the State assessing the impact that excessive work hours, overtime and wage discrepancies between men and women have on families where a woman is the sole head of household?
- How is the State satisfying its obligations under Article 7 of the Covenant with regards to sexual harassment in the workplace, pregnancy testing and working conditions?
- Is the State conducting timely and periodic unannounced visits to maquilas to investigate hiring practices and inspect working conditions? How is the State assessing and tracking progress in this area?
- What legislation has been enacted that explicitly prohibits any company, public or private, from requiring that women give proof of pregnancy status, contraceptive use (or any other information related to reproductive choice and health) in order to be considered for, gain, or retain employment? What enforcement mechanisms have been put in place to ensure that these practices have been eradicated? How is the government assessing and tracking reductions in this area?
- What legislation has been enacted to establish penalties, including fines, to punish companies, foreign or domestic-owned, that engage in pregnancy-based sex discrimination? What enforcement mechanisms have been put in place to ensure that these penalties are being issued? How is the government assessing and tracking reductions in this area?
- What legislation has the State adopted that explicitly prohibits any company, public or private, from firing a woman for joining or establishing a trade union?
- What legislation has been adopted that prohibits all forms of discrimination against women within the workplace that is in line with Articles 1 and 2 (b) of the CEDAW Convention. Does this legislation take into account different forms of sexual harassment, such as corporal punishment and verbal abuse? Does it address varying levels of employer accountability and financial liability? Does the sexual harassment legislation take into account the spectrum of work environments? Does the sexual harassment

legislation specifically mention sexual harassment within the *maquilas*? How is the State assessing and tracking progress in this area?

- What steps have the State taken to implement a national public education campaign about sex discrimination in the labor force and remedies available to injured parties?