



Con el apoyo de:



Human Rights Situation of *Travesti*, Transgender and Transsexual Persons in Guatemala

**List of Issues submitted to the Working Group
on the Guatemala Report.
Human Rights Committee
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This Report is submitted by:

- **OTRANS – Organización Trans Reinas de la Noche**
- **Heartland Alliance for Human Needs & Human Rights**
- **Akahatá – equipo de trabajo en sexualidades y géneros**

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Organización Trans Reinas de la Noche; Heartland Alliance for Human Needs & Human Rights and Akahatá – equipo de trabajo en sexualidades y géneros, are honoured to submit the following issues to the Human Rights Committee with an aim to assist its drafting of the

List of Issues for the review of the implementation of the International Covenant on Civil and Political Rights by the State of Guatemala.

Suggested issues

Gender-identity based violence. Violations of the right to life. Hate crimes, forced disappearances, torture and cruel treatment against trans persons.

Right to life; Right to live free from torture; Right to non-discrimination (Articles 2, 6 and 7)

1. One way in which gender-based violence, resulting from a social, economic and political context in which power relationships between and among genders are established, affects trans women is transphobia, whose most extreme expression is hate crimes¹.
2. In Guatemala, safety and justice systems are inefficient to address gender-based violence and gender identity or sexual orientation based hate crimes. No structural changes to dismantle those cultural, social and economic factors that create and perpetuate violence, particularly male-chauvinistic violence, have been implemented to address these issues in Guatemala.
3. These situations affect trans women but because they are not acknowledged as such, this violence in its multiple forms is rendered invisible: for instance, health and justice systems do not record these incidents, and they are not included in the security forces' statistics.
4. Between 2009 and 2010, at least 30 trans persons were murdered. A few examples are the three trans women murdered between late October and early November 2009, two in Guatemala City and one in the North of the country. One of them was repeatedly run over by a car, while another one was lapidated². These figures do not

¹ With regard to acts of discrimination and violence against the trans population, in 2011 OTRANS-RN published the report called *Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007.2011*¹ compiling 35 cases, most of them already reported to the relevant authorities, that shows the hostile environment faced by trans women in Guatemala. Informe Guatemala: Trasfobia, Agresiones y Crímenes de Odio 2007.2011

<https://www.dropbox.com/home/Informaci%C3%B3n%20de%20soporte%20OTRANS-RN?preview=InformeTransfobia+crimienes+de+odio.pdf>

² KenyaMaili (Billy Guillermo Mansilla Barrera) case, Attorney General Office file MP001-2009-122561 and Human Rights Ombudsman file ORD GUA 7608-2009/US.

include those persons whose gender identity was not correctly recorded at the time of their murder being reported.

5. Attacks and murders of trans people have increased in an alarming manner in recent years. Security forces do not protect trans people and have often perpetrated those attacks themselves.
6. Attacks against trans activists follows a pattern of growing attacks against human rights defenders in Guatemala that, in these cases, is expressed in conjunction with transphobia. Johana Esmeralda Ramírez, Organización Trans Reinas de la Noche's Executive Director, was arbitrarily arrested in Quetzaltenango (Western Guatemala) on March 17, 2012, and taken to a male detention facility where she was abused. The Court intervening in this case acknowledged that the authorities have committed abuses against this human rights defender and is taking legal measures against the police personnel at Police Station 41³.
7. The prohibition of torture — held by the State of Guatemala — is not related only to physical abuses but also to actions causing emotional pain, including intimidation. In Guatemala, the trans community lives under the constant threat of being physically attacked. In 2010, Johana Ramírez⁴ suffered an attempted murder by a group of men, in a public place. After realizing that one of the attackers had a gun and was about to shoot her, Johana managed to flee.
8. In 2010, trans women sex workers in Zona Uno (Guatemala City) were intimidated by men driving an unidentified vehicle, with their faces covered with balaclavas, who urged them to abandon the streets to avoid being murdered⁵. Some of the women were hurt by rubber bullets, but one of them was hit by gunfire.
9. In Coatepeque, trans women sex workers received death threats from unknown persons,⁶ and in Retalhuleu, the local Focal Point for trans organization Reinas de la Noche was beaten up because of her gender identity and for engaging in sex work.⁷
10. Trans women have been subjected to forced disappearances that constitute torture. For instance: on February 23, 2010, a witness saw how a young man traveling in a

³ Guatemala's Judicial System, File No. 09034-2012-00172.

⁴ File MP001/2010/3169 Agence 1, Crimes Against Activists Unit, General Attorney Office.

⁵ Ordinary File Gua 395-2010/US Guatemala Ombudsman Office.

⁶ Orientation File ORD GUA 76-2010/A

⁷ Procedure No. 6965-2010, reference CEHM BC. Sub-station No. 34-11, National Civilian Police.

blue jeep kidnapped a trans woman called Catherine Mitchell Barrios in Guatemala City's Historical Downtown. Five years later, Catherine has not appeared.⁸ The State has taken no steps to find Catherine or to investigate what happened to her.

Suggested questions

11. How will the Guatemalan State strengthen its judicial system to be able to advance investigations on hate crimes against trans women in the country?
12. What laws and policies does the State have to fight against trans persons' forced disappearances?
13. Which mechanisms is the State willing to implement to investigate forced disappearances of trans persons and to guarantee that the disappeared will be found alive?

Violations to trans (transsexual, *travesti* and transgender) persons' civil rights

The right to enjoy all civil and political rights without discrimination: to not be subjected to abuse, degrading treatment and/or violence; equality before the law without any discrimination; right to freedom of expression (Articles 2, 3, 19 and 26)

14. Article 4⁹ of the Guatemalan Constitution forbids discrimination on different grounds but gender identity and gender expression are not specifically mentioned in any national laws or jurisprudence.
15. At the First Meeting of the Regional Conference on Population and Development for Latin America and the Caribbean (December 2013), Guatemala justified its discriminatory policies introducing a reservation to the references to "sexual diversity groups", "sexual orientation", "sexual diversity" and "gender identity" in the outcome

⁸ File ORD GUA 1275-2010/DCP Guatemala Human Rights Ombudsman Office.

⁹ Constitution of the Republic of Guatemala, 1985 amended in 1993. Article 4 - Freedom and equality. In Guatemala, all human beings are free and equal in dignity and rights. Men and women, regardless of their civil status, have equal opportunities and responsibilities. Nobody can be subjected to servitude or to any other status that undermines their dignity. Human beings must treat each other as brothers. (*Artículo 4.- Libertad e igualdad. En Guatemala todos los seres humanos son libres e iguales en dignidad y derechos. El hombre y la mujer, cualquiera que sea su estado civil, tienen iguales oportunidades y responsabilidades. Ninguna persona puede ser sometida a servidumbre ni a otra condición que menoscabe su dignidad. Los seres humanos deben guardar conducta fraternal entre sí.*)

document¹⁰ invoking the argument that in Guatemala "gender" is only used in reference to men and women.

16. According to existing laws in Guatemala, a person's legal personhood is determined by her/his gender as assigned at the time of birth, that is consistent with her/his biological sex¹¹ and it remains set for the rest of his/her life.
17. The gender with which trans persons identify and perceive themselves is not recognized. This poses not only significant legal and administrative challenges for them, as they have identity papers that do not represent their identities, but also leads to violence, discrimination and marginalization in their daily lives, causing serious damage to their personal integrity and health.
18. By not being able to obtain identity papers that reflect their self-perceived gender, trans persons are completely deprived of protection for exercising their rights when they have been subjected to violence or need to access healthcare, among other situations.

Suggested questions

19. What policies and practices will Guatemala implement to avoid impunity in cases of gender identity or gender expression-based human rights violations, to properly investigate those cases and duly sanction those found responsible for them?
20. What legislative measures will Guatemala undertake to allow trans persons to change the sex and gender noted in their identity papers without resorting to practices that involve stigma and discrimination?

Lack of adequate services guaranteeing trans women's right to health. Exclusionary and arbitrary actions by the health system that jeopardize trans persons' health.

¹⁰ Montevideo Consensus on Population and Development. Page 31. LC/L.3697. September 5, 2013.

http://www.cepal.org/celade/noticias/documentosdetrabajo/9/50709/2013-596-montevideo_consensus_pyd.pdf.

¹¹ Civil Code, Guatemala Republic, Decree 106, First Book: "On persons and family", Title 1 "On persons", Chapter 1 "On individuals, personality". Article 1: Civil personhood starts at birth and ends with death. However, the unborn is considered as born for everything favourable to her/him, provided he/she is born in a condition of viability. (*De las personas individuales, personalidad. Artículo 1. La personalidad civil comienza con el nacimiento y termina con la muerte; sin embargo, al que está por nacer se le considera nacido para todo lo que le favorece, siempre que nazca en condiciones de viabilidad.*)

Right to non-discrimination; to life; to integrity; to not be subjected to cruel, inhuman or degrading treatment (Articles 3, 6 and 7)

21. An epidemiological study¹² has defined trans (*travesti*, transgender and transsexual) women as a population with high levels of exclusion and limited human development, even when compared to other population groups that are equally excluded in society and whose human rights are being violated. Their life expectancy is approximately 35 years.
22. In the same study, 35% of the sample said they had been forced to have sex at least once in their lifetime, and 11% reported that their first sexual relationship was forced. 43% of those surveyed started having transactional sex (sexual relationships in exchange for favours) when they were between 15 and 17 years old.
23. Most trans women surveyed had been engaged in street sex work for 5 years or more, which places them at a higher risk of and makes them more vulnerable to contracting HIV and this is consistent with theirs being the highest HIV prevalence reported in the country. The Central American Behavioural Surveillance Survey¹³ shows that 23.8% of trans women are living with HIV and 13.5% of them have syphilis.
24. In Guatemala, trans women suffer from lack of proper access to health services as they are usually subjected to rejection and arbitrary treatment from health facilities of all levels making up the national health system. This is why they use a clinic based at the OTRANS-RN premises: 80% of consultations at that clinic are for common illnesses.
25. Since 2008, trans women have promoted the adoption of a Comprehensive and Differentiated Health Care Strategy for Trans Persons in Guatemala, through a technical health roundtable bringing together representatives from the State, civil society and the UN system¹⁴. The Guatemalan government has deliberately delayed

¹² Encuesta Centroamericana de Vigilancia de Comportamiento Sexual y Prevalencia del VIH e ITS en poblaciones vulnerables y en poblaciones clave (ECVC) Capítulo Guatemala, Page 125 (in Spanish). <http://hivos.org.gt/wp-content/uploads/2015/03/Informe-de-LM-y-ECVC.pdf>

¹³ Encuesta Centroamericana de Vigilancia de Comportamiento Sexual y Prevalencia del VIH e ITS en poblaciones vulnerables y en poblaciones clave (ECVC) Capítulo Guatemala, Page 143. (in Spanish) <http://hivos.org.gt/wp-content/uploads/2015/03/Informe-de-LM-y-ECVC.pdf>

¹⁴ The Strategy (updated up to December 17, 2013) can be found (in Spanish) at: <https://www.dropbox.com/s/ne1hf0mrpfvefo5/Estrategia%20de%20Salud%20Final.pdf?dl=0>

the adoption of this document, placing obstacles for effective care of trans women by the health system, even though it had committed to implement it.¹⁵

26. **Suggested questions**

27. What concrete measures will the Guatemalan State take to increase access to comprehensive health care services and rights for all, paying particular attention to trans women given their vulnerable situation?

28. When will the Guatemalan State own and make effective its expressed commitment to implement the Comprehensive and Differentiated Health Care Strategy for Trans persons as a core public policy for trans people to access adequate health care?

Discrimination and inequality against trans persons in enjoying the rights to education and work.

The right to live free from discrimination, and equality in the enjoyment of rights (Articles 2, 3 and 26)

29. The Guatemalan State guarantees access to education by making primary education free and compulsory. However, 23% of the trans population is illiterate and only 33% of trans women have achieved at least a certain level of formal education.

30. Discrimination against trans students is not limited to primary or secondary education but is present throughout the education system. In 2009, Lisbeth López Juárez¹⁶ passed the entry test for Guatemala's key technical training institution (Instituto Técnico de Capacitación y Productividad INTECAP), but when the principal identified her gender identity, Lisbeth's application was rejected on the grounds of internal norms of the Institute.

31. According to data provided by an OTRANS¹⁷ survey, access to employment is one of trans women's main concerns and is also perceived as the way to achieve greater

¹⁵ Guatemala also ratified this commitment before the Inter-American Commission on Human Rights at the thematic hearing on "Information about discrimination based on sexual orientation and gender identity in Guatemala", 146th session, November 4, 2012.

¹⁶ Legal name: Sergio Oswaldo López. Ref. Exp. Ord. Gua 447-2011/DE Human Rights Ombudsman. January 24, 2011.

¹⁷ Informe Guatemala: Trasmofobia, Agresiones y Crimenes de Odio 2007.2011 Page 10.

<https://www.dropbox.com/home/Informaci%C3%B3n%20de%20soporte%20OTRANS-RN?preview=InformeTrasmofobia+crimenes+de+odio.pdf>

social inclusion. It is worth mentioning that 15% of this population is currently unemployed. The average monthly income for this group is lower than the Guatemalan minimum wage for 2012.

32. According to the survey results, 23% of trans women refer to have been subjected to stigma and discrimination when attempting to find employment. 21% of them had no doubt that the denial of employment they faced was due exclusively to their gender identity.

33. This lack of access to employment, added to their exclusion from the educational system, to their lack of legal protection and to the fact that the State neither recognizes their gender identity nor provides them with adequate identity papers, force a large number of trans women to engage in sex work as their only means of survival.

Suggested questions

34. What actions will the State undertake to guarantee access to formal education and to vocational training for trans persons in a manner that avoids stigma and discrimination?

35. What policies will the State implement to guarantee trans persons' social inclusion and their access to the formal labour sector without any kind of discrimination?