

# UNITED NATIONS HUMAN RIGHTS COMMITTEE

104<sup>th</sup> Session, New York, New York

March 13–30, 2012

---

## REPORT ON VIOLATIONS OF WOMEN'S HUMAN RIGHTS



IN RESPONSE TO THE

THIRD PERIODIC REPORT OF GUATEMALA

**UNITED NATIONS HUMAN RIGHTS COMMITTEE**  
104<sup>th</sup> Session, New York, New York  
March 13–30, 2012

---

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

**In response to the  
Third Periodic Report of Guatemala**

---

*Submitted by:*

**MADRE**

New York, New York

**International Women's Human Rights Clinic  
City University of New York School of Law**

Clinical Professor Lisa Davis  
Clinic Fellow Bradley Parker

Student Attorneys 2010-2011:

Kadog Abdullah  
Natasha Bannan  
Adam Durbin  
Amanda Heikkinen  
Eduardo Jimenez

Student Attorneys 2011-2012:

Lauren Dasse  
Blakeley Decktor  
Kelly Fay Rodríguez  
Rebecca Pendleton

**Muixil**

Guatemala City, Guatemala

**Bárcenas Women's Workers Committee**

Guatemala City, Guatemala

**Colectivo Artesana**

Guatemala City, Guatemala

**Women's Link Worldwide**

Bogotá, Colombia and Madrid, Spain

**Guatemala Human Rights Commission**

Washington, D.C.

## TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. WOMEN’S HUMAN RIGHTS VIOLATIONS IN GUATEMALA UNDER ICCPR ....</b>	<b>3</b>
A. ARTICLES 2 AND 26: STATE RESPONSIBILITY TO PREVENT, ENFORCE AND REDRESS .....	3
B. ARTICLES 6, 7 AND 9: WOMEN’S RIGHT TO BE FREE OF VIOLENCE .....	12
RECOMMENDATIONS .....	16
C. ARTICLE 10: RIGHT TO HUMANE TREATMENT OF WOMEN DEPRIVED OF THEIR LIBERTY .....	18
RECOMMENDATIONS .....	20
D. ARTICLES 6, 7 AND 26: GUATEMALA’S FAILURE TO ENSURE INDIGENOUS WOMEN’S RIGHT TO BE FREE FROM VIOLENCE .....	21
RECOMMENDATIONS .....	26
E. ARTICLE 14: RIGHT TO BE SEEN AND TREATED EQUALLY BY THE LAW .....	27
RECOMMENDATIONS .....	30
F. ARTICLE 17, 19, 22, 25 AND 27: RIGHT TO FULLY PARTICIPATE IN SOCIETY WITHOUT FEAR OF REPERCUSSIONS OR VIOLENCE .....	31
RECOMMENDATIONS .....	34
RECOMMENDATIONS .....	40
<b>III. APPENDIX A: SIGNATORIES TO THE SHADOW REPORT .....</b>	<b>42</b>

## **List of Acronyms**

ACHR	American Convention on Human Rights
CAT	Committee Against Torture
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CUNY	City University of New York
IWHR	International Women's Human Rights Clinic (City University of New York)
HRC	United National Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally displaced persons
ILO	International Labour Organization

## I. INTRODUCTION

This report is intended to supplement, or “shadow,” the report of the government of Guatemala to the Human Rights Committee (“the Committee”). As Committee members have expressed, NGOs can play an essential role in providing credible and reliable independent information regarding the legal status and the real-life situation of reporting countries. Reports such as this may also assess efforts made by the ratifying governments to comply with the provisions of the International Covenant on Civil and Political Rights (“ICCPR”). Thus, the Committee’s recommendations may focus on the most pressing issues confronted by the population of a given country. These recommendations also provide NGOs with valuable tools to help raise awareness and educate their governments to enact or implement legal and policy changes.

Guatemala’s international obligations to protect women and girls’ rights are reiterated year after year by Treaty Bodies and UN agencies. In addition to ratifying the ICCPR and its two Optional Protocols, Guatemala is also a State party to most of the principal international human rights treaties including the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), the Convention on the Rights of the Child (“CRC”) and the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”). Despite the continued efforts to ensure compliance with Guatemala’s international human rights obligations, the situation of women and girls remains critical with a persistent lack of accountability for continuous violations and impunity.

At the regional level, Guatemala has ratified several conventions relevant to the eradication of torture and other violence against women, including the American Convention on Human Rights (“ACHR”), the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Prevention, Sanction and Eradication of Violence Against Women (the “Belém do Pará” Convention). These treaties, taken together, impose an obligation on Guatemala to guarantee the enjoyment of the equal rights of women, as well as to protect women from discrimination of any kind and them from sexual and gender based violence.

Under Article 46 of the Guatemalan Constitution, international human rights treaties and conventions that are accepted and ratified by Guatemala have preeminence over domestic law. Thus all human rights treaties ratified by Guatemala automatically become part of domestic law and can be used in enforcing rights.

Despite these Constitutional protections, violence and discrimination against women in Guatemala remains rampant. This shadow report highlights the main areas of concern including femicide (the killing of women because of their gender); violence and political discrimination against indigenous women; violence against women in prisons and human rights violations within the *maquilas* or sweatshops. 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 Covenant, to ensure effective remedies in cases of violations and to prevent rampant impunity.

The information contained in this report was gathered through interviews, field visits and

documentation of personal testimonies gathered in Guatemala. From March 7–12, 2011 MADRE led student attorneys from the International Women’s Human Rights (“IWHR”) Clinic at City University of New York (“CUNY”) School of Law on a fact-finding mission to Guatemala in order to supplement this report. The student attorneys met with the Women’s Workers Committee/Comité de Bárcenas, in Guatemala City, and the indigenous women’s rights organization, Muixil, in the three indigenous communities of Nebaj, Cotzal and Chajul in the Department of El Quiche. They conducted interviews, collected testimonies and co-led a training on international human rights and Guatemala’s obligations under the ICCPR treaty. Student attorneys also met with the Guatemala Human Rights Commission in Washington, D.C. and Colectivo Artesana, a women’s rights organization in Guatemala that advocates around prison conditions. We hope that the findings in this report will be useful to the Human Rights Committee, as a catalyst for future advocacy efforts.



MADRE human rights investigators and International Women’s Human Rights (IWHR) Clinic Students from the City University of New York (CUNY) School of Law meet with members of Muixil, a Guatemalan organization that focuses on the political, economic, and cultural rights of Ixil Mayan and other indigenous women in Guatemala (March 2011). (Photo by Lisa Davis).

## II. WOMEN'S HUMAN RIGHTS VIOLATIONS IN GUATEMALA UNDER ICCPR

### A. ARTICLES 2 AND 26: STATE RESPONSIBILITY TO PREVENT, ENFORCE AND REDRESS

Articles 2 and 26 of the Convention require states to protect specific classes of persons, including women, by implementing and enforcing legislation. Article 26 adds that *de jure* discrimination based on other status is equally prohibited because all persons are equal before the law. The Committee distinguishes between the two articles by noting:

Article 26 does not merely duplicate the guarantees already provided for in article 2. It derives from the principle of equal protection of the law without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibits discrimination in law or in practice in any field regulated and protected by public authorities. Article 26 is thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.<sup>1</sup>

While differential treatment does not necessarily equate to discrimination, the differentiation must be based on reasonable and objective criteria under article 26.<sup>2</sup> As the Committee has pointed out before, “being treated differently merely on the basis of sex...is not reasonable.”<sup>3</sup> The Committee has added, “[E]quality is antithetical to arbitrariness. Article 26 is therefore intended to strike against arbitrariness in State action.”<sup>4</sup>

General Comment No. 3 explains that merely passing laws in name only is insufficient to meet treaty obligations and instead legislation must be given full effect through implementation. States must take affirmative steps to make individuals aware of their rights and to ensure those rights are fully enjoyed and protected. For example, in the Concluding Observations for Germany related to article 26, where the Committee recommended the State undertake an educational campaign to dismantle stereotypes of certain communities, namely Arabs and Muslims, where latent stereotypes targeting these groups had created an atmosphere of hostility.<sup>5</sup> States must also enforce the laws, provide competent remedies and provide access to a fair and impartial tribunal.

In Guatemala, the State should be commended for its passage of the Law Against Femicide and Other Forms of Violence Against Women, which criminalizes femicide. However, the law remains severely underfunded, resulting in ineffective implementation of the legislation. Although the law Against Femicide officially recognizes femicide as a punishable crime by the

---

<sup>1</sup> Broeks v. The Netherlands, Commc'n No. 172/1984, ¶ 12.3, U.N. Doc. CCPR/C/29/D/172/1984 (Apr. 9, 1987).

<sup>2</sup> *Id.* ¶ 13.

<sup>3</sup> Pauger v. Austria, Commc'n No. 415/1990, ¶ 7.4, U.N. Doc. CCPR/C/41/D/415/1990 (Mar. 26, 1992).

<sup>4</sup> Love et al. v. Australia, Commc'n No. 983/2001, at Individual Opinion of Mr. Prafullachandra Natwarlal Bhagwati, U.N. Doc. CCPR/C/77/D/983/2001 (Mar. 25, 2003).

<sup>5</sup> Concluding Observations of the Human Rights Committee, Germany, ¶ 20, U.N. Doc. CCPR/CO/80/DEU (May 4, 2004).

State, since passing the law, the number of women murdered continues to rise and the State's failure to investigate and prosecute continues unabated.<sup>6</sup>

The Guatemalan State Report acknowledges that the Law Against 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, include sexual assault as a crime, the statute is not intended to address violence against women or femicide per se.<sup>7</sup>

Under article 2, the State violates the Convention when military officials are directly responsible for the deaths of women. State actors may not discriminate against citizens because of their protected class status, such as gender. Violence against women has been recognized as discrimination, and when committed by law enforcement or military personnel, violates the Convention.

However, most cases of femicide are committed by private actors. Regardless of the perpetrator, the State has a responsibility to act with due diligence when there is information that populations with protected status under the treaty are being targeted and discriminated against. Under the due diligence standard, states must affirmatively protect such classes by passing and enforcing legislation and punishing perpetrators. States may additionally bear the responsibility of providing redress when they fail to meet this standard.<sup>8</sup>

---

<sup>6</sup> THE GUATEMALA HUMAN RIGHTS COMMISSION/USA, GUATEMALA'S FEMICIDE LAW: PROGRESS AGAINST IMPUNITY? 2, (2009), available at [http://www.ghrc-usa.org/Publications/Femicide\\_Law\\_ProgressAgainstImpunity.pdf](http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf).

<sup>7</sup> *Examen de los informes presentados por los Estados partes en virtud del artículo 40 del Pacto, Guatemala, [Consideration of Reports submitted by States parties under Article 40 of the Covenant, Guatemala]* ¶¶ 62–64, U.N. Doc. CCPR/C/GTM/3 (Mar. 31, 2009).

<sup>8</sup> *Maria Da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. at 704 (2001) (holding that the State must provide redress when it fails to protect a woman).

### **The Case of Rosemary González**

Rosemary González was a teenager when she was kidnapped and found dead and decomposed wearing only her bra in 2008. Rosemary had asked her cousin, Oscar Manuel Romero Alvarado (“Manolo”), to help her get a job at his place of employment, a nearby agricultural school. Manolo met privately with Rosemary to “prepare” her for her interview. He made Rosemary promise not to tell her mother, Elizabeth. However, Rosemary confided in her mother about her meetings with Manolo. Part of Rosemary’s “preparation” included Manolo blindfolding her and tying her feet to a chair ostensibly to see if she could find her way around an office. On another occasion, Manolo asked Rosemary to bring him 2,500 Quetzales so he could use it to show Rosemary how to manage money, promising to return it within a few days.

On July 3, 2008, Rosemary told her mother not to wait for her because Manolo had told her she would have a “long lesson” that day. Rosemary didn’t return home that afternoon. Instead, Elizabeth received a call that Rosemary had been kidnapped. She was told not to call the police. After searching for her daughter, Elizabeth reported her kidnapping to the local authorities that evening. The police dismissed her complaint and said that Rosemary was likely with her boyfriend. Elizabeth pointed out that Rosemary’s boyfriend was in fact accompanying her to search for Rosemary. The police then responded that investigations could not commence until 24 hours after Rosemary was reported missing; despite the threatening call Elizabeth received.

The next day, the investigatory unit of the local police precinct did in fact visit the home of the suspected murderer, Manolo, to question him before going to visit Elizabeth at her home. By the time the police arrived at Elizabeth’s house, she realized that the police had already formulated their theory of Rosemary’s disappearance based on their conversation with Manolo. The police told Elizabeth that Manolo could not have kidnapped Rosemary because he looked “too calm.” They police officers laughed and told her the more likely possibility was that Rosemary was pregnant and took the money to pay for an abortion. Elizabeth, infuriated with the authorities’ statements about her daughter, asked them to leave.

After Rosemary’s remains were found, Elizabeth went to the Public Ministry to identify her clothes. After identifying the clothes, the Public Ministry did not further investigate Rosemary’s death nor attempt to prosecute any suspects.

One year after Rosemary’s decomposed body was found, forensic personnel performed an exhumation. Rosemary’s mother, Elizabeth, questioned why it took so long for the exhumation to be performed, knowing valuable evidence could have been gathered. Despite evidence suggesting Rosemary had been drowned, the medical personnel at the morgue insisted the cause of death could not be determined during the exhumation. When Rosemary’s body was found, she still had all of her hair, yet during the exhumation her hair was missing. Elizabeth requested DNA testing be done

based on Rosemary's teeth. The forensic director took two of Rosemary's teeth; however no testing has been conducted in the past year.

Over one year after her death, a national television station discussing Rosemary's murder interviewed Elizabeth. A few days later, the Public Ministry returned to Elizabeth's house to conduct an investigation, which lasted about seven hours. Officials found items in Manolo's office that linked him to Rosemary's death and he was arrested and charged with her murder. Manolo spent the next several months in jail awaiting a court hearing while rotating judges oversaw three separate attempts to conduct the hearing. These judges were unfamiliar with the facts of the case. At the final hearing on February 6, 2010, a judge decided there was not enough evidence to prove guilt and freed Manolo from prison. The fact that the investigation and exhumation were both conducted one year after Rosemary's death likely contributed to the court's conclusion of insufficient proof.

Interview with the family of a femicide victim by IWHR Clinic, March 2011.

### *Investigation into Reported Cases of Femicide*

While the State has followed the recommendation of article 2 in enacting legislation to protect women's rights to be free from violence, the utter lack of enforcement of the existing Law Against Femicide and Other Forms of Violence Against Women fails to meet the mandate of the Convention. The State's failure to enforce the law is highly problematic. Cases involving femicide and violence against women are not prioritized due in part to held-over beliefs and historic assumptions about what role women play in society.<sup>9</sup>

As in the case of Rosemary, law enforcement personnel and medical examiners fail to engage in the most rudimentary protocols in investigating crimes, and in many cases fail to investigate at all. The ineffectiveness of law enforcement was made visible in 2004 when two women with restraining orders were killed, likely by their partners. In 31% of cases of women murdered they had been threatened beforehand.<sup>10</sup>

The Guatemala National Civil Police ("PNC") is responsible for investigating crimes of violence against women. However, corruption undermines police efficiency. Rampant corruption in the PNC was reflected in the 2010 Guatemala Country Report on Human Rights Practices, in which the U.S. State Department reported that:

---

<sup>9</sup> The Committee recognized the challenges posed when a state fails to recognize violence against women and domestic violence as violations of articles 3 and 26. It has noted in such cases, "information on these matters is not systematically maintained, [and] that women have a low level of awareness of their rights and the remedies available to them, and that complaints are not being adequately dealt with." Concluding Observations of the Human Rights Committee, Azerbaijan, ¶ 17, U.N. Doc. CCPR/CO/73/AZE (Nov. 12, 2001).

<sup>10</sup> See THE CENTER FOR GENDER & REFUGEE STUDIES, GUATEMALA'S FEMICIDES AND THE ONGOING STRUGGLE FOR WOMEN'S HUMAN RIGHTS: UPDATE TO CGRS'S 2005 REPORT GETTING AWAY WITH MURDER 83(2006); [http://cgrs.uchastings.edu/documents/cgrs/cgrs\\_guatemala\\_femicides2.pdf](http://cgrs.uchastings.edu/documents/cgrs/cgrs_guatemala_femicides2.pdf).

The 24,260-member PNC...remained understaffed, inadequately trained, and insufficiently funded, which substantially impedes its effectiveness...Police impunity for criminal activities remained a serious problem. There were credible reports that individual PNC officers and some police units or persons disguised as police officers stopped cars and buses to demand bribes or steal private property, and in some cases kidnapped, assaulted, and raped victims. Police and immigration officials reportedly extorted and mistreated persons attempting to enter the country illegally. The PNC routinely transferred officers suspected of wrongdoing rather than investigating and punishing them.<sup>11</sup>

The Office of Professional Responsibility (ORP) for the PNC received 1,009 complaints of PNC criminal activity in 2010, including three forced disappearances, five kidnappings, 34 illegal detentions, 46 thefts, five rapes, 60 threats and 224 cases of abuse of authority. During 2010, 787 officers were investigated by the ORP; and 10 of those investigations involved murder cases. Although cases with sufficient evidence of criminal activity were forwarded to the Public Prosecutor's Office for further investigation and prosecution, no officer has been fired, and few cases have gone to trial.<sup>12</sup> Strong gender bias within the police force often results in lack of enforcement in cases of domestic violence. Victims of sexual violence have routinely been subject to re-victimization at police stations, from psychological violence due to poor interview techniques by police, to repeated physical abuse, including rape, by the officer taking the report.<sup>13</sup>

### *Enforcement and Evidence-Gathering*

“It took them [the Guatemalan authorities] one year to conduct the exhumation of my daughter's body. Why did they wait so long to find out how she died?”  
- Elizabeth Chacón, mother of Rosemary González, victim of femicide (Mar. 8, 2011).  
Interview by IWHR Clinic, March 2011.

Training of police officers and medical personnel remains insufficient. This Committee found that after an excessive use of force in Sweden, the State was responsible for “guarantee[ing] better human rights training of police officers.”<sup>14</sup> The Committee issued a similar observation about Hungary's frustrated criminal justice system in which victims of violence against women were left without redress:

---

<sup>11</sup> UNITED STATES DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, WESTERN HEMISPHERE, GUATEMALA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES 8 (Apr. 8, 2011), <http://www.state.gov/documents/organization/160166.pdf>.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> Edda Gaviola Artigas, INFORME DE SISTEMATIZACIÓN: SOLO SE HACE JUSTICIA, EL CASO DE DOÑA JUANA MÉNDEZ RODRÍGUEZ VS. EL AGENTE DE LA POLICÍA NACIONAL, ANTONIO RUTILO MATÍAS LÓPEZ, 28 [SISTEMATIZATION REPORT: JUSTICE IS DONE ALONE, THE CASE OF MRS. JUANA MÉNDEZ RODRÍGUEZ V. THE NATIONAL POLICE AGENT, ANTONIO RUTILO MATÍAS LÓPEZ] (Instituto de Estudios Comparados en Ciencias Penales de Guatemala – ICCPG ed., 2008) [Guatemalan Institute of Comparative Studies of Criminal Sciences – ICCPG].

<sup>14</sup> Concluding Observations of the Human Rights Committee, Sweden, ¶ 10, U.N. Doc. CCPR/CO/74/SWE (Apr. 24, 2002).

[T]he State party should take more vigorous measures to encourage the development of a culture of human rights and to ban violence against women; in this context, *training and education in human rights* are essential at all levels and in all sectors of society. In particular, the State party should take measures to encourage women to report domestic violence to the authorities, and to make police officers more sensitive in their handling of allegations of rape and its psychological effects on the victim.<sup>15</sup>

Where law enforcement personnel are abusive or cause harm to civilians, the Committee has determined that the State is responsible for curbing such abuse. In Hungary, the Committee stated its concern over “the high number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated.”<sup>16</sup> In such instances, the Committee recommended the State party should adopt “measures to educate law enforcement officials and judges with a view to preventing such treatment and, when it occurs, should ensure careful investigation and prosecution where necessary.”<sup>17</sup>

In 2004 the National Coordinator for the Prevention of Domestic Violence Against Women (CONAPREVI)<sup>18</sup> embarked on a 10-year mission to end violence against women. This plan, entitled the National Plan for the Prevention of Intra-Family Violence and Violence against Women (PLANOVI),<sup>19</sup> establishes guidelines, policies and concerted actions to prevent, address, punish and reduce domestic violence.<sup>20</sup> However, more than five years after this plan was implemented families and victims who report gender-based violence are still confronted with “corrupt or indifferent police, strong gender bias, and a dysfunctional judicial system.”<sup>21</sup>

### *Lack of Prosecution for Femicide*

“The judge did not have the courage to tell me on the first day that he [the perpetrator] would be released, because he knew that what he was doing was in violation of constitutional law.”  
- Elizabeth Chacón, mother of Rosemary González, victim of femicide (Mar. 8, 2011).  
Interview by IWHR Clinic, March 2011.

<sup>15</sup> Concluding Observations of the Human Rights Committee, Hungary, ¶ 10, U.N. Doc. CCPR/CO/74/HUN (Apr. 19, 2002); *see also* Concluding Observations of the Human Rights Committee, Uganda, ¶ 11, U.N. Doc. CCPR/CO/80/UGA (May 4, 2004)(finding the State’s failure to train law enforcement officials, and “in particular police officers,” in dealing with cases of domestic violence contributed to the perpetuation of violence against women).

<sup>16</sup> Concluding Observations of the Human Rights Committee, Hungary, ¶ 12, U.N. Doc. CCPR/CO/74/HUN (Apr. 19, 2002).

<sup>17</sup> *Id.*

<sup>18</sup> Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y contra las Mujeres.

<sup>19</sup> Plan Nacional de Prevención y Erradicación de la Violencia Intrafamiliar y Contra las Mujeres.

<sup>20</sup> UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL (ECOSOC), *Development Strategies That Work, National Plan for the Prevention of Domestic Violence and Violence Against Women (PLANOVI)*, <http://webapps01.un.org/nvp/indpolicy.action?id=2465#>.

<sup>21</sup> GUATEMALA HUMAN RIGHTS COMMISSION (GHRC), *GUATEMALA’S FEMICIDE LAW: PROGRESS AGAINST IMPUNITY?* 6 (2009), [http://www.ghrc-usa.org/Publications/Femicide\\_Law\\_ProgressAgainstImpunity.pdf](http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf).

In 2010, alone 630 women were killed.<sup>22</sup> From January through November of 2011, 651 women were killed in Guatemala and 41,000 reports of abuse or domestic violence were filed.<sup>23</sup> Prosecution of femicide remains anemic, with only 2% of all cases between 2005–2007 resolved, many without convictions.<sup>24</sup> Of the cases of femicide reported, 98% of them remain in impunity with little to no state reaction, investigation, documentation, prosecution or reparations.<sup>25</sup> Prosecutors do not search for witnesses, conduct ample interviews, examine inconsistencies in reports and in many cases won't even prosecute.<sup>26</sup> The High Commissioner for Human Rights in Guatemala noted that “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 [Against Femicide].”<sup>27</sup>

The Committee has previously condemned the failure to effectively investigate, prosecute and convict where appropriate.<sup>28</sup> In a related case, the Committee expressed its deep frustration where it found that “a considerable time after murders of persons (including human rights defenders)...have occurred, a significant number of such instances have yet to receive fully

---

<sup>22</sup> Guatemala Human Rights Commission, For Women’s Right to Live Program, <http://www.ghrc-usa.org/Programs/ForWomensRighttoLive.htm> (last visited Dec. 13, 2011).

<sup>23</sup> Sandra Valdez, *Mujeres Protestan Pidiendo Cese a la Violencia [Women Protest for an End to Violence]*, PRENSA LIBRE (Guat.), Nov. 25, 2011, [http://www.prensalibre.com/noticias/justicia/protesta-marcha-mujeres-violencia-Guatemala\\_0\\_597540408.html](http://www.prensalibre.com/noticias/justicia/protesta-marcha-mujeres-violencia-Guatemala_0_597540408.html)

<sup>24</sup> Maria Eugenia Morales de Sierra v. Guatemala, Case 11.625, Report No. 4/01, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. ¶ 44 (2001).

<sup>25</sup> *Id.* (citing Coralia Orantes, *CICIG Ve Impunidad en Casos de Femicidio [CICIG See Impunity in Femicide Cases]*, NACIONAL PRENSA LIBRE, (Guat.) (May 23, 2008).

<sup>26</sup> A specific example includes the case of Maria Eugenia Morales de Sierra where gender inequality and government deference to domestic matters as “private” resulted in the murder of a young woman with no response by the State. *See supra* note 24, ¶ 44.

<sup>27</sup> The U.N. High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*, ¶ 22, delivered to the U.N. Human Rights Council, U.N. Doc. A/HRC/13/26/Add.1, (Mar. 3, 2010).

<sup>28</sup> In its Concluding Observations for Hungary, the Committee expressed its concern “at the high number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated.” The Committee recommended, “the State party...take measures to educate law enforcement officials and judges with a view to preventing such treatment and, when it occurs, should ensure careful investigation and prosecution where necessary.” Concluding Observations of the Human Rights Committee, Hungary, ¶ 12, U.N. Doc. CCPR/CO/74/HUN (Apr. 19, 2002). The Committee similarly condemned the lack of a culture of prosecution in Yemen where it expressed concern “at the general lack of investigations into such practices [of torture], punishment of those responsible, and reparation for the victims.” Concluding Observations of the Human Rights Committee, Yemen, ¶ 13, U.N. Doc. CCPR/CO/75/YEM (July 26, 2002); *see also* Concluding Observations of the Human Rights Committee, Benin, ¶ 14, UN Doc. CCPR/CO/82/BEN (Dec. 1, 2004); Concluding Observations of the Human Rights Committee, Egypt, ¶ 13, U.N. Doc. CCPR/CO/76/EGY (Nov. 28, 2002); Concluding Observations of the Human Rights Committee, Russian Federation, ¶ 13, U.N. Doc. CCPR/CO/79/RUS (Nov. 6, 2003) (mandating the State to “ensure that abuse and violations are not committed with impunity *de jure* or *de facto*...[and that] all cases of extrajudicial executions, enforced disappearances and torture, including rape, should be investigated, their perpetrators prosecuted and victims or their families compensated”).

independent and comprehensive investigations, and the persons responsible to be prosecuted.”<sup>29</sup> The Committee recognized the State’s obligation to properly investigate and prosecute, and stressed, “as a matter of particular urgency given the passage of time, the measures required to ensure a full, transparent and credible accounting of the circumstances surrounding violations of the right to life.”<sup>30</sup> Failure to prosecute results in a climate of impunity, made evident by the increasing numbers of women being murdered since the law’s implementation.

In Guatemala, evidentiary concerns prohibit effective prosecution in many cases. Often 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 determining the time of death.<sup>31</sup> Medical examiners’ reports for femicide cases contain inconsistencies and are often bogged down in procedural details that impede or delay any investigation. A barrier to prosecution also exists due to the high evidentiary standard women must bear to prove physical assault, namely by showing proof of a scar or wound. If her scar has healed then the “evidence” of violence is lost.<sup>32</sup> Poor evidentiary standards are rampant throughout local Guatemalan police stations, where several months may pass before a crime scene is visited.

Hospital staff does not provide proper medical attention to victims of rape and sexual violence, such as administering rape kits, documenting cases or providing services such as psychosocial support. In 2008, the Association of Women Doctors (AMM)<sup>33</sup> began monitoring the medical care provided to victims in the hospital of Puerto Barrios, Izabal, and found that cases of rape and sexual violence were severely underreported. In the previous six years, only eight cases of

---

<sup>29</sup> Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland, ¶ 8, U.N. Doc. CCPR/CO/73/UK (Dec. 6, 2001).

<sup>30</sup> *Id.* ¶ 8; *see also* Concluding Observations of the Human Rights Committee, Colombia, ¶ 14, U.N. Doc. CCPR/CO/80/COL (May 26, 2004) (finding that the State “should strengthen existing measures aimed at protecting women against all types of violence, especially domestic violence. Furthermore, it is recommended that the State party should periodically monitor the number of investigations and convictions for such crimes compared to the number of complaints received.”).

<sup>31</sup> Conclusions and Recommendations of the Committee on the Elimination of Discrimination Against Women, Guatemala, ¶ 21, U.N. Doc. CEDAW/C/GUA/CO/7 (Feb. 10, 2009). Victoria 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 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.

VICTORIA SANFORD, BURIED SECRETS: TRUTH AND HUMAN RIGHTS IN GUATEMALA 116–17 (2003).

<sup>32</sup> An Inter-American Commission on Human Rights report states that in practice only physical evidence of abuse is treated as the sole proof of violence. INTER-AM. C.H.R., ACCESS TO JUSTICE FOR WOMEN VICTIMS OF THE AMERICAS, OEA/Ser.L/V/II. doc. 68, ¶ 146 (2007);

<http://www.cidh.org/women/Access07/Report%20Access%20to%20Justice%20Report%20English%20020507.pdf>.

<sup>33</sup> La Asociación de Mujeres Médicas.

sexual violence were documented. After a workshop with the AMM, 22 cases were reported within six months.<sup>34</sup>

### *Remedies*

“I want everyone to know that I am telling the truth, and for him [the perpetrator] to spend the rest of his life in jail for what he did. I want justice for my daughter, the only one I had.” – Elizabeth Chacón, mother of Rosemary González, victim of femicide (Mar. 8, 2011). Interview by IWHR Clinic, March 2011.

Lastly, under article 2 the State is required to provide *effective* remedies when one of the above obligations has not been met.<sup>35</sup> The Guatemalan government has not properly implemented structures to keep women safe from violence and harm committed by private actors. In Colombia, the Committee found that the government was failing to provide adequate social and economic services to internally displaced persons (IDP), prohibiting IDPs from fully accessing available state-sponsored services.<sup>36</sup> When the State fails to meet its due diligence obligations, remedies may be provided in various forms, including creation of safe spaces for women and public education campaigns to disseminate information about the rights of protected classes and reparations.

Women in parts of Guatemala report that while restraining orders may be issued, they are often not enforced and sometimes police send women back to the homes of their aggressor because of a lack of shelters. This Committee has previously recommended that the State make available safe spaces for women victims of violence.<sup>37</sup>

The State has attempted to meet this need by creating some shelters for women victims of violence. However, the existing State shelters are inadequate and severely underfunded. The Government Minister, Mr. Carlos Menocal, recently announced an increase in budget for 2012 for domestic violence intake centers (Centers for Comprehensive Support for Female Survivors of Violence, or CAIMU.) He said this budgetary increase is in reaction to a rise in reports of domestic violence, citing that such violence makes up 40% of the present overall crime rate;

---

<sup>34</sup> Melissa Vega, *Monitorearán nivel de atención de víctimas sobrevivientes de violencia sexual [Level of Attention to Victims of Sexual Violence is Monitored]*, NOTICIAS DE GUATEMALA, June 1, 2010, <http://noticias.com.gt/departamentales/20100601-monitorearan-nivel-de-atencion-de-victimas-sobrevivientes-de-violencia-sexual.html>.

<sup>35</sup> See Concluding Observations of the Human Rights Committee, Colombia, ¶ 15, U.N. Doc. CCPR/CO/80/COL (May 26, 2004) (“The State party should ensure that [these cases of human rights violations] are investigated, whoever the alleged perpetrators may be, and guarantee to the victims the full exercise of the right to an effective remedy, as stipulated in article 2 of the Covenant.”); see also *Fábryová v. Czech Republic*, Comm’n No. 765/1997, ¶ 11, U.N. Doc. CCPR/C/73/D/765/1997 (Jan. 17, 2002) (“In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including an opportunity to file a new claim for restitution or compensation.”).

<sup>36</sup> Concluding Observations of the Human Rights Committee, Colombia, ¶¶ 17, 19, U.N. Doc. CCPR/CO/80/COL (May 26, 2004).

<sup>37</sup> Concluding Observations of the Human Rights Committee, Poland, ¶ 11, U.N. Doc. CCPR/CO/82/POL (Dec. 2, 2004) (recommending training of police officers and the issuing of temporary restraining orders).

meaning that four out of ten cases of violence in Guatemala are domestic violence cases.<sup>38</sup> CAIMU has five domestic violence shelters in Guatemala.<sup>39</sup> However, none of the shelters are located in the departments that, according to Minister Menocal, have the highest levels of domestic violence, namely Totonicapán, Izabal, Huehuetenango, Quiché and Alta Verapaz.<sup>40</sup>

Protection for the women living and working in CAIMU's domestic violence shelters is severely lacking. For example, women within the shelters have reported receiving threatening phone calls in the early morning hours and of seeing men in vehicles without license plates parked in front of these centers.<sup>41</sup>

As the Committee has observed in other cases, a concerted public education campaign to inform victims of their rights and to change attitudes towards women is also appropriate.<sup>42</sup> Widespread sexual violence in Kenya prompted the Committee to recommend that the State "sensitize society as a whole to this matter, ensure that the perpetrators of such violence are prosecuted and provide assistance and protection to victims."<sup>43</sup> Other forms of remedies, such as reparations, have also been recommended by the Committee for states responsible for redressing harm as a result of a failure to exercise due diligence. The Committee has found that in such cases, the State "should take action against those held responsible and make reparation to the victims"<sup>44</sup> where appropriate.

#### B. ARTICLES 6, 7 AND 9: WOMEN'S RIGHT TO BE FREE OF VIOLENCE

Articles 6, 7 and 9 of the Covenant require the protection and respect of women's rights to be free from violence. Article 6 protects every human being's inherent right to life and prohibits any arbitrary deprivation whether by a state or an individual. This Committee stated that article 6 is

---

<sup>38</sup> *Gobernación continúa apoyo a Centros de Atención para Mujeres Sobrevivientes de Violencia [Government continues to support Attention Centers for Women Survivors of Violence]*, Guatemalan Government Ministry, Aug. 24, 2011, available at

[http://www.mingob.gob.gt/index.php?option=com\\_content&view=article&id=2226:gobernacion-continua-apoyo-a-centros-de-atencion-para-mujeres-sobrevivientes-de-violencia&catid=55:conferencias&Itemid=57](http://www.mingob.gob.gt/index.php?option=com_content&view=article&id=2226:gobernacion-continua-apoyo-a-centros-de-atencion-para-mujeres-sobrevivientes-de-violencia&catid=55:conferencias&Itemid=57).

<sup>39</sup> Centros de Apoyo Integral para Mujeres Sobrevivientes de Violencia, CAIMUS [Centers for Comprehensive Support for Female Survivors of Violence, CAIMUS], available at <http://www.conaprevi.org.gt/caimus.html>.

<sup>40</sup> *Gobernación continúa apoyo a Centros de Atención para Mujeres Sobrevivientes de Violencia [Government continues to support Attention Centers for Women Survivors of Violence]*, Guatemalan Government Ministry, Aug. 24, 2011, available at

[http://www.mingob.gob.gt/index.php?option=com\\_content&view=article&id=2226:gobernacion-continua-apoyo-a-centros-de-atencion-para-mujeres-sobrevivientes-de-violencia&catid=55:conferencias&Itemid=57](http://www.mingob.gob.gt/index.php?option=com_content&view=article&id=2226:gobernacion-continua-apoyo-a-centros-de-atencion-para-mujeres-sobrevivientes-de-violencia&catid=55:conferencias&Itemid=57).

<sup>41</sup> Diana Choc, *La vida de 120 mujeres de los Caimus corre peligro [The Lives 120 Women at the Caimus are in Danger]*, EL PERIODICO, (Guat.) June 14, 2010, <http://www.elperiodico.com.gt/es/20100614/pais/157468/>.

<sup>42</sup> The Committee told Azerbaijan that, "[T]he State party should also organize an effective information campaign to address all forms of violence against women...." Concluding Observations of the Human Rights Committee, Azerbaijan, ¶ 17, U.N. Doc. CCPR/CO/73/AZE (Nov. 12, 2001); see also Concluding Observations of the Human Rights Committee, Sri Lanka, ¶ 20, U.N. Doc. CCPR/CO/79/LKA (Dec. 1, 2003).

<sup>43</sup> Concluding Observations of the Human Rights Committee, Kenya, ¶ 11, U.N. Doc. CCPR/CO/83/KEN (Apr. 29, 2005).

<sup>44</sup> Concluding Observations of the Human Rights Committee, Egypt, ¶ 13, U.N. Doc. CCPR/CO/76/EGY (Nov. 28, 2002).

the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation.

This Committee has stated that the purpose of article 7 is to protect the integrity and dignity of the individual. Even in situations of public emergency this provision is non-derogable and no justification or extenuating circumstances may be invoked to excuse a violation. While the Committee has not limited by definition the precise manifestations of torture, it did state that the “distinctions depend on the nature, purpose and severity of the treatment applied.”<sup>45</sup>

Under both articles 6 and 7, states have obligations to issue positive measures that will protect against violations of any of these rights. The states have the obligation to investigate human rights violations and identify and punish those that are responsible, including their own security forces.<sup>46</sup> In its Concluding Observations on Mexico in 2010, the Committee observed that the “prevailing impunity in many cases of disappearance and homicide of women” is in violation of article 6 of the Covenant.<sup>47</sup>

Under article 7, it is the duty of the State to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by the article. The article applies to people acting in their official capacity or in a private capacity. Additionally, the Committee has requested that states inform them of the legislative, administrative, judicial and other measures that the State takes to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction. The state has a special responsibility to report to the Committee on special protections taken for particularly vulnerable populations, such as rural indigenous women (also see page Section D).

Furthermore, the State has the obligation to effectively investigate complaints of torture, or cruel and inhumane treatment, and those found guilty must be held responsible. The victims of such crimes must have effective remedies, including the right to obtain compensation.<sup>48</sup> The Committee has added that States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.<sup>49</sup>

Article 9(1) states, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The article protects the right to personal security; the interpretation of article 9 does not allow the State to ignore threats to personal security of non-detained persons subject to its jurisdiction. It is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example,

---

<sup>45</sup> UN Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), ¶ 4, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (Mar. 10, 1992).

<sup>46</sup> See UN Human Rights Committee, General Comment No. 6: Article 6 (Right to Life), U.N. Doc. HRI/GEN/1/Rev.6 at 127 (Apr. 30, 1982).

<sup>47</sup> Concluding Observations of the Human Rights Committee, Mexico, ¶ 9, U.N. Doc. CCPR/C/MEX/CO/5. (May 17, 2010).

<sup>48</sup> See UN Human Rights Committee, General Comment No. 28: Article 3 (Equality of Rights between Men and Women), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

<sup>49</sup> *Bondarenko v. Belarus*, Commc’n No. 886/1999, U.N. Doc. CCPR/C/77/D/886/1999 (Apr. 28, 2003); Concluding Observations of the Human Rights Committee, Azerbaijan, ¶ 10, U.N. Doc. CCPR/CO/73/AZE (Nov. 12, 2001).

mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. The Committee has also noted that the persistence of violence against women raises an article 9 concern.<sup>50</sup> The State has an obligation to protect an individual whose life is threatened, even when that person is not being detained. In *Vaca v Colombia*, the Committee held that the Colombian government had a positive duty to investigate threats made against the life of the petitioner and to provide him protection.<sup>51</sup>

The killing of women in Guatemala, particularly the way in which they are killed, is a violation of articles 6 and 7 of the ICCPR. While the primary perpetrators are private citizens, the overall failure to investigate, prosecute and remedy the harm has created a climate of impunity that perpetuates violence against women. During its last 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.”<sup>52</sup>

In General Comment No. 6 of article 6, the Committee noted, “States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life...the most important condition and guarantee for the safeguarding of the right to life.”<sup>53</sup> Additionally, the Committee has required the State to give special priority to investigating and bringing to justice the perpetrators of human rights violations, including police and military personnel.<sup>54</sup>

Although the Government of Guatemala has taken positive measures in passing domestic legislation addressing the issue, it 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 failed responses by the government as well.<sup>55</sup>

In violation of both articles 6 and 7, women are being killed in ways that rise to the level of torture. The thousands of deaths that have occurred over the past several years have been labeled as femicide because of the systematic pattern of violence against women where killings occur simply because of a woman’s gender.<sup>56</sup> Gender also often determines the way in which women are murdered, including rape, torture and dismemberment before and after death.

---

<sup>50</sup> Concluding Observations of the Human Rights Committee, El Salvador, ¶ 15, U.N. Doc. CCPR/CO/78/SLV (July 22, 2003).

<sup>51</sup> *Jiménez Vaca v. Colombia*, Comm’n’c No.859/1999, ¶ 9, U.N. Doc. CCPR/C/74/D859/1999 (Apr. 15, 2002).

<sup>52</sup> Concluding Observations of the Human Rights Committee, Guatemala, ¶ 13, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001).

<sup>53</sup> UN Human Rights Committee, General Comment No. 6: Article 6 (Right to Life), ¶ 2, U.N. Doc. HRI/GEN/1/Rev.6 at 127 (Apr. 30, 1982).

<sup>54</sup> Concluding Observations of the Human Rights Committee, Guatemala, U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001).

<sup>55</sup> See CENTER FOR GENDER & REFUGEE STUDIES, GUATEMALA’S FEMICIDES AND THE ONGOING STRUGGLE FOR WOMEN’S HUMAN RIGHTS: UPDATE TO CGRS’S 2005 REPORT GETTING AWAY WITH MURDER (2006), [http://cgrs.uchastings.edu/documents/cgrs/cgrs\\_guatemala\\_femicides2.pdf](http://cgrs.uchastings.edu/documents/cgrs/cgrs_guatemala_femicides2.pdf).

<sup>56</sup> 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 [Consideration of Reports Presented by Member States in Response to Article 40 of the Convention, Guatemala]*, ¶ 62, U.N. Doc. CCPR/C/GTM/3 (Mar. 31, 2009).

The Convention Against Torture (“CAT”) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...for any reason based on discrimination of any kind, when such pain or suffering is inflicted.”<sup>57</sup> In General Comment No. 2, the CAT Committee applied this standard to a state’s failure to prevent and protect victims from “gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.”<sup>58</sup> The Committee stated, “[t]he contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes.”<sup>59</sup>

In 2006, the CAT Committee acknowledged the failure of the Guatemalan government to remedy the femicide issue in its Concluding Observation. The CAT Committee showed serious concern over the increased “violent killings of women, which often involve sexual violence, mutilations and torture.”<sup>60</sup> 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.”<sup>61</sup>

The CAT Committee also showed the same concern over the femicide of more than 400 women in Ciudad Juarez, Mexico. The Committee urged the Mexican government to “step up its efforts to find and properly punish the persons responsible for these crimes.” When voicing concern over femicide in Honduras, the CAT Committee urged the State to ensure that efficient protection is put in place to “prevent, combat and punish perpetrators of violence against women, including sexual abuse, domestic violence and femicide.”<sup>62</sup>

Additionally, other Treaty Bodies have determined that gender based violence, such as femicide, is a form of torture. According to the Convention on the Elimination of Discrimination Against Women (“CEDAW”) General Recommendation 19, the CEDAW Committee defined gender-based violence as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>63</sup> The CEDAW Committee further explains that gender based violence includes “[t]he right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>64</sup>

---

<sup>57</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Art. 1.1, A/RES/39/46 (Dec. 10, 1984).

<sup>58</sup> Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, ¶ 18, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).

<sup>59</sup> *Id.* ¶ 3.

<sup>60</sup> Conclusions and Recommendations of the Committee Against Torture, Guatemala, ¶ 16, U.N. Doc. CAT/C/GTM/CO/4 (July 25, 2006).

<sup>61</sup> *Id.*

<sup>62</sup> Conclusions and Recommendations of the Committee Against Torture, Honduras, ¶ 21, UN Doc. CAT/C/HND/CO/1 (June 23, 2009).

<sup>63</sup> Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 19: Violence Against Women, ¶ 6, U.N. Doc A/47/38 (Jan. 29, 1992).

<sup>64</sup> *Id.* ¶ 7.

The CEDAW Committee has also chided Guatemala for its insufficient investigations into reported cases of femicide and violence and perpetuating a climate of impunity that have kept women from reporting such cases.<sup>65</sup> In 2009, the CEDAW Committee showed concern over “cases of extreme violence against women manifested by the murder of women motivated by gender-specific causes.”<sup>66</sup> The Committee urged the Guatemalan government to “take appropriate measures to ensure that perpetrators of such acts are effectively prosecuted and punished and do not enjoy impunity.”<sup>67</sup> Similarly, in 2006 the Committee voiced its concern over the crimes against and disappearances of women in Ciudad Juarez. The Committee chided the Mexican government’s efforts as “insufficient to successfully complete investigations of cases and prosecute and punish the perpetrators as well as to provide access to justice, protection and compensation to victims and their families.”<sup>68</sup> The Committee has also urged the Honduran government to redress and protect victims of gender based violence and femicide and to prosecute and punish the perpetrators.<sup>69</sup>

## RECOMMENDATIONS

- Guatemala should fully fund domestically established institutions whose purported goal is to address rampant corruption, confront official impunity, and strengthen law enforcement.
- Law enforcement personnel should receive proper and comprehensive training in evidentiary issues and in the 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 need not return to their potential abuser(s). At a minimum, this should include increased funding for the Immediate Attention Centers for Women Survivors of Violence to create centers in all departments and ensure that these have the resources to sufficiently meet the needs of survivors. The increased funding that Minister Mr. Menocal references for the Centers for Comprehensive Support for Female Survivors of Violence should be used to create centers in all departments and ensure that centers have the resources and security measures to sufficiently meet the needs of survivors.
- The State should implement UN Special Rapporteur Philip Alston’s and the UN High Commissioner of Human Rights in Guatemala’s recommendation to end the climate of

---

<sup>65</sup> Concluding and Recommendations of the Committee on the Elimination of Discrimination Against Women, Guatemala, ¶ 21, U.N. Doc. CEDAW/C/GUA/CO/7 (Feb. 10, 2009).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* ¶ 22.

<sup>68</sup> Conclusions and Recommendations of the Committee on the Elimination of Discrimination Against Women, Mexico, ¶ 16, U.N. Doc. CEDAW/C/MEX/CO/6 (Aug. 25, 2006).

<sup>69</sup> Conclusions and Recommendations of the Committee on the Elimination of Discrimination Against Women, Honduras, ¶ 19, U.N. Doc. CEDAW/C/HON/CO/6 (Aug. 10, 2007).

impunity by fully and properly prosecuting cases of violence.<sup>70</sup> 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 conducted. The CAT Committee echoed this in recommendation 16 of July 25, 2008 (CAT/C/GTM/CO/4) by asking the State to ensure prompt, impartial and thorough investigations, free of any discrimination based on gender, race, social origin or any other grounds, and to bring alleged perpetrators to justice.

- The State should follow the CAT Committee's Recommendation 16(a) of July 25, 2006 (CAT/C/GTM/CO/4) requesting urgent measures to ensure that no persons within its jurisdiction are subjected to torture, or to inhumane or degrading treatment, and to fully comply with its duty to prevent and punish such acts when carried out by private individuals.<sup>71</sup>
- The State should implement the CAT Committee's Recommendation 16(d) of July 25, 2006 (CAT/C/GTM/CO/4) 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.<sup>72</sup>

---

<sup>70</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Mission to Guatemala, ¶ 63, U.N. Doc. A/HRC/4/20/Add.2 (Feb. 19, 2007).

<sup>71</sup> Conclusions and Recommendations of the Committee Against Torture, Guatemala, ¶ 16, U.N. Doc. CAT/C/GTM/CO/4 (July 25, 2006).

<sup>72</sup> *Id.*

### C. ARTICLE 10: RIGHT TO HUMANE TREATMENT OF WOMEN DEPRIVED OF THEIR LIBERTY

Article 10 of the Convention requires the State to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person. States are also required to segregate accused persons from convicted persons, save in exceptional circumstances, and accused persons shall be subject to separate treatment appropriate to their status. Furthermore, Paragraph 3 states that penitentiary systems shall treat those deprived of liberty with the essential aim of reformation and social rehabilitation. General Comment No. 21 elaborates the reason for separate treatment between accused and convicted persons being to protect the presumption of innocence required by article 14. The Committee also considers education, vocational training and useful work to be examples of the required reformation and social rehabilitation. Allowing family visits is also normally a measure required for humane treatment. Similarly, General Comment No. 28 requires reporting on whether men and women are held together; whether women are guarded by only female guards; and that pregnant women receive humane treatment and respect for their inherent dignity at all times surrounding the birth and while caring for their newly-born children.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) establish the minimum standard of conditions States must ensure for women deprived of liberty.<sup>73</sup> For example, women prisoners must receive gender-specific health care screening and medical treatment. In addition, searches must be conducted by women staff that have been properly trained in appropriate search methods and be conducted in accordance with established procedure.<sup>74</sup> Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid harmful psychological and possible physical impact of invasive searches and prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners. All untried prisoners must be kept separate from convicted prisoners.<sup>75</sup> Similarly, prisoners must be protected from all forms of discrimination, including gender discrimination. To this extent, the Inter-American Court of Human Rights has found that forcing women inmates to remain undressed while being observed by male guards constitutes an act of sexual violence, which violates the treaty of Belem do Para.<sup>76</sup> Though gender discrimination permeates the entire judicial criminal process in Guatemala, this section will focus on prison conditions faced by women deprived of liberty.

---

<sup>73</sup> G.A. Res. 65/229, Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), U.N. Doc. A/RES/65/229 (March 16, 2011).

<sup>74</sup> *Id.*

<sup>75</sup> U.N. ECOSOC Res. 663 C (XXIV), ¶¶ 84–85, Standard Minimum Rules for the Treatment of Prisoners (July 31, 1957); U.N. ECOSOC Res. 2076 (LXII), Standard Minimum Rules for the Treatment of Prisoners (May 13, 1977).

<sup>76</sup> *Penal Miguel Castro Castro v. Peru*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 306 (Nov. 25, 2006) (holding that forced observation by armed men of naked women detainees constituted “[S]exual violence [which] consists of actions with a sexual nature...,[and which] may include acts that do not imply penetration or even any physical contact whatsoever.”).

The State has continually failed to ensure humane treatment of women deprived of their liberty in Guatemala. The State infrastructure for ensuring humane treatment is weak and severely under-resourced. Currently, there are approximately 900 women and 10,500 men deprived of liberty in Guatemala. The Public Ministry has only five attorneys assigned to the “Execution Unit,” which is responsible for receiving and processing requests and complaints by all persons deprived of liberty. These requests include circumstances where detainees require outside medical attention or ask for permission to attend a funeral, as well as requests for anticipated liberty or forensic medical investigations. The five attorneys in the Unit are responsible for representing all persons deprived of liberty for their requests.

Guatemala also uses preventive imprisonment, which authorizes deprivation of liberty for people who have been accused of committing a crime but whose cases have not yet been reviewed. People may remain in prison between two and six years during this preventive period before a court determines their guilt or innocence.<sup>77</sup> Women held in preventive deprivation of liberty may be accompanied by their children aged four years of age or younger. Once their children turn five, the women lose custody of their children to the State, even if a court has not yet found them guilty or innocent. Because of difficulties tracking a child’s placement through the state system, mothers who lose custody of their children may not retrieve their children, even if they are subsequently found innocent or released.

The National Civil Police enforce criminal laws and function as guards in state prisons. Abuses against women by police are frequent. The treatment of women who have entered the criminal justice system is characterized by patterns of gender bias and abuse. A study conducted by the Guatemala Institute of Comparative Studies on Penal Sciences (“ICCPG”) in 2005 found that 84% of women were detained without an arrest warrant.<sup>78</sup> Despite contradicting Guatemalan law, 72% of women underwent a physical search by a male officer and almost half were victims of verbal or physical abuse by a police officer.<sup>79</sup> Ninety percent of women reported police abuse at the time of their detention, and 75% of those abuses included sexual violence.<sup>80</sup> Almost half of these occurred in the police station and sometimes during transit between detention facilities.<sup>81</sup> For example, a woman prisoner was found to have been raped by PNC officers during transit from the Izabál prison to Guatemala City in October 2010. She was transferred to a psychiatric hospital in Guatemala City, and upon arrival, a doctor examined her reported evidence that she was recently raped. An investigation is still pending against the three police officers.<sup>82</sup>

---

<sup>77</sup> Gustavo Villagrán y Alejandro Pérez, *Información del Sistema Penitenciario evidencia saturación en centros carcelarios del país* [Evidence shows Overpopulation in the Country’s Detention Centers and Penitentiary System], NOTICIAS DE GUATEMALA, Sept. 7, 2010, <http://noticias.com.gt/nacionales/20100907-informe-del-sistema-penitenciario-evidencia-saturacion-en-centros-carcelarios-del-pais.html>.

<sup>78</sup> Edda Gaviola Artigas, INFORME DE SISTEMATIZACIÓN: SOLO SE HACE JUSTICIA, EL CASO DE DOÑA JUANA MÉNDEZ RODRÍGUEZ VS. EL AGENTE DE LA POLICÍA NACIONAL, ANTONIO RUTILO MATÍAS LÓPEZ, 28 [SYSTEMATIZATION REPORT: JUSTICE IS DONE ALONE, THE CASE OF MRS. JUANA MÉNDEZ RODRÍGUEZ V. THE NATIONAL POLICE AGENT, ANTONIO RUTILO MATÍAS LÓPEZ] (Instituto de Estudios Comparados en Ciencias Penales de Guatemala – ICCPG ed., 2008) [Guatemalan Institute of Comparative Studies of Criminal Sciences – ICCPG] (2008) (Citing the report, CIFRAS DE IMPUNIDAD DEL CRIMEN POLICIAL CONTRA MUJERES [Rates of Impunity of Police Crimes Against Women] published by ICCPG in 2005).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* ¶ 21.

<sup>82</sup> Interview with member of Colectivo Artesana by IWHR Clinic (Nov. 9, 2011) (on file with IWHR Clinic).

Some women also experience sexual violence in prison. Male guards search women detained in prison facilities, since most PNC officers are men. In prisons the PNC conducts regular searches for contraband such as illicit substances, drugs, or weapons.<sup>83</sup> These searches can occur up to three times per week and frequently include vaginal or rectal searches. In January of 2011 at the Zacapa detention center the PNC conducted a search of twenty women prisoners in which the women were forced to undress and squat in front of the guards.<sup>84</sup> The guards uncovered two grenades that were hidden in prisoners' vaginal cavities. Despite this discovery, these searches constitute sexual violence under Belem do Para. They also violate the principles of humane treatment and respect for dignity established in article 10. Another specific incident of violence occurred in 2010, where the director of the same prison facility hit a female prisoner in her face. She subsequently required five stitches.<sup>85</sup> Women also do not receive a minimum of medical care services, and the State fails to provide gender-specific health care to women prisoners. In November 2009, a woman died of pneumonia because she was not given adequate medical attention in the prison facility and was not taken to the hospital.<sup>86</sup> Women deprived of liberty also do not receive services for disabilities. In November 2011, there was a female prisoner who could not properly feed her newborn child because of a disability, and she lacked the presence and support of her family to properly care for her child.<sup>87</sup>

## RECOMMENDATIONS

- The State should comply with Bangkok Rule 19 (A/RES/65/299) by ensuring that police and prison guards who conduct searches of women deprived of liberty are women guards who have been properly trained in appropriate search methods and in accordance with established procedure. Furthermore, alternative screening methods should be developed to replace strip searches and invasive body searches, in order to avoid harmful psychological and possible physical impact. Significantly, women police should conduct searches at police stations and transport all women prisoners between facilities, as these instances tend to create the highest risk for sexual or physical assault by guards.
- The State should implement new programs and finance existing services for women deprived of liberty, such as education, vocational training and useful work programs. These programs should be supported by the State in accordance with article 10 of the Convention. The State should also strengthen the mechanisms, such as the Public Ministry's unit that processes requests and cases for persons deprived of liberty.
- The State should reduce the amount of time accused persons are required to remain in prison before a court determines their innocence or guilt by implementing less invasive

---

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

tracking measures, such as regular reporting. This will also permit mothers to remain actively involved with their children and families.<sup>88</sup>

D. ARTICLES 6, 7 AND 26: GUATEMALA'S FAILURE TO ENSURE INDIGENOUS WOMEN'S RIGHT TO BE FREE FROM VIOLENCE

Guatemala's internal armed conflict began in 1960 and lasted for thirty-six years, officially ending with the signing of the Peace Accords in 1996. The War resulted in 150,000 deaths, 47,000 disappearances, 300,000 orphans, more than 1,000,000 internally displaced persons, and more than 200,000 refugees.<sup>89</sup> The state was found responsible for 93% of the arbitrary executions and 91% of the forced displacements.<sup>90</sup> The rape and torture of women as a weapon of war has been used worldwide. Rape, when used as a weapon of war, is systematically employed for a variety of purposes, including intimidation, humiliation, political terror, extracting information, rewarding soldiers, and "ethnic cleansing."<sup>91</sup> In Guatemala, this form of abuse and torture was used also as a counterinsurgency tactic.

During the internal armed conflict, Mayan women suffered various forms of persecution and sexual violence. Thus, more than 1,400 cases of rape, mutilations, sexual slavery, femicide, and other humiliating crimes were documented. This widespread and systematic practice carried out by agents of the State and members of the Civil Defense Patrols (AUC)<sup>92</sup> was a significant feature of the counterinsurgency strategy.

The Commission for Historical Clarification (CEH)<sup>93</sup> identified 9,411 female victims of human rights violations and documented a total of 1,465 reported sexual assaults against women in its report, *Guatemala: Memory of Silence*. However, it is estimated that the total number of sexual assaults is even higher.<sup>94</sup> This type of violence was inflicted mainly against Mayan women, who made up 88.7% of the cases.<sup>95</sup> Similarly, the practice of rape was taught in military trainings. Thus, the massive and systematic way in which rape was perpetrated constituted a violent practice that was part of the strategic planning by the military.<sup>96</sup> Ninety-nine per cent of rape victims during the armed conflict were women. Nearly two-thirds, or 62%, were adult victims between the ages of 18 and 60; approximately one-third, or 35%, of the victims were girls under the age of 17 years old; and 3% of the victims were elderly women.<sup>97</sup>

---

<sup>88</sup> *Id.*

<sup>89</sup> See COMMISSION FOR HISTORICAL CLARIFICATION, GUATEMALA: MEMORY OF SILENCE, Ch. I (1999).

<sup>90</sup> *Id.*

<sup>91</sup> Amnesty Int'l, Women, Peace and Security, <http://www.amnestyusa.org/our-work/issues/women-s-rights/women-peace-and-security> (last visited Dec. 14, 2011).

<sup>92</sup> Patrullas de Autodefensas Civil.

<sup>93</sup> Comisión para el Esclarecimiento Histórico.

<sup>94</sup> COMMISSION FOR HISTORICAL CLARIFICATION, GUATEMALA: MEMORY OF SILENCE, Ch. II, Vol. 3, ¶¶ 38–39 (1999).

<sup>95</sup> *Id.* ¶¶ 41–44.

<sup>96</sup> *Id.* ¶¶ 48–49.

<sup>97</sup> CONSORCIO ACTORAS DE CAMBIO, ROMPIENDO EL SILENCIO. JUSTICIA PARA LAS MUJERES VÍCTIMAS DE VIOLENCA SEXUAL DURANTE EL CONFLICTO ARMADO EN GUATEMALA 15 (2007).

It is also important to note that in the context of the massacres women were subjected to sexual slavery. For example, in cases where the army remained in communities for several days after an attack, they held women captive and committed sexually violent acts against them. Some women were taken to barracks and military bases where they were submitted to prolonged sexual slavery.<sup>98</sup> 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 Quiché.<sup>99</sup>

Violence against women was intended to destroy the social fabric of indigenous communities, attacking women for their central role as caretakers and pillars of their families. Moreover, such violence was designed to destroy marital and social ties, socially isolating women and resulting in ostracism that continues to this day. This would not only diminish reproduction within the group, but would also prevent the transmission of Mayan culture, the intended consequence of which would have been the elimination of the Maya indigenous group.

The analysis of the situation of Mayan women requires the application of an discrimination approach. Mayan women face discrimination because of their gender, indigenous identity, poverty, and marginal social status within Guatemalan society. These must all be considered when investigating violence suffered by Mayan women.<sup>100</sup>

The U.N.-brokered Guatemala Peace Accords of 1996, which ended the nation's prolonged civil war, 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."<sup>101</sup> In addition, article 4 of the Guatemalan Constitution guarantees the equality of men and women, and article 66 ensures the protection of indigenous rights.<sup>102</sup> Despite having formally recognized the human rights of indigenous women, Guatemala remains noncompliant with its international duties to safeguard indigenous women's right to be free from violence based on social origin, race and gender, to the fair administration of justice, and to be free from political discrimination.<sup>103</sup>

---

<sup>98</sup> COMMISSION FOR HISTORICAL CLARIFICATION, GUATEMALA: MEMORY OF SILENCE, Ch. II, Vol. 3, ¶ 132 (1999).

<sup>99</sup> Human Rights Office of the Archdiocese of Guatemala, *Guatemala, Never Again! (Nunca Más)*. REMHI: Recovery of Historical Memory Project. The official report of the Human rights Office, Ch. 5, Case 7906 (1999).

<sup>100</sup> Santiago Bastos & Aura Cumes, MAYANIZACIÓN Y VIDA COTIDIANA: LA IDEOLOGÍA MULTICULTURAL EN LA SOCIEDAD GUATEMALTECA 156 [MAYANIZATION AND DAILY LIFE: THE MULTI-CULTURAL IDEOLOGY IN GUATEMALAN SOCIETY], (FLACSO eds., 2008).

<sup>101</sup> *Agreement on the Identity and Rights of Indigenous Peoples*, <http://www.c-r.org/our-work/accord/guatemala/identity-rights.php>.

<sup>102</sup> República de Guatemala, *Constitución de 1985 con las reformas de 1933*, <http://pdba.georgetown.edu/Constitutions/Guate/guate93.html>.

<sup>103</sup> "[T]he inclusion of Indigenous women's perspectives in the Guatemalan [Peace] Accords has not materialized in policies that protect Indigenous women's rights." FORO INTERNACIONAL DE MUJERES INDÍGENAS (FIMI), *INDIGENOUS WOMEN STAND AGAINST VIOLENCE: A COMPANION REPORT TO THE UNITED NATION'S SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST WOMEN* (2006), <http://www.un.org/esa/socdev/unpfii/documents/vaiwreport06.pdf>.

In order to properly contextualize the problem of violence based on social origin, race and gender, it is important to recall that the vast majority of the women who suffered sexual violence during the Guatemalan civil war were indigenous.<sup>104</sup>

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.<sup>105</sup>

Indigenous peoples comprise the majority of the Guatemalan citizenry, and they have been historically underprivileged and marginalized.<sup>106</sup> Guatemalan indigenous women face the triple threat of discrimination based on social origin, race and gender.<sup>107</sup> Perhaps the most glaring example of the State's failure to protect them from such discrimination can be found in the culture of impunity that has arisen with respect to the extensive violence being practiced against women based on their status as indigenous.<sup>108</sup> Violence against Indigenous women in Guatemala arises in the context of the country's alarmingly high rates of violence based on social origin, race and gender, intra-family violence and femicide.<sup>109</sup>

Even where third-party actors are found to be committing the widespread acts of brutality against indigenous women, the right of Guatemalan indigenous women to be free from social origin,

---

<sup>104</sup> 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.

<sup>105</sup> U.S. Department of State: Bureau of Democracy, Human Rights and Labor, *Guatemala—Profile of Asylum Claims and Country Conditions* (June 1997).

<sup>106</sup> See Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, available at <http://www.unhcr.org/refworld/docid/49749d163c.html>.

<sup>107</sup> “[T]he inclusion of Indigenous women’s perspectives in the Guatemalan [Peace] Accords has not materialized in policies that protect Indigenous women’s rights.” FORO INTERNACIONAL DE MUJERES INDÍGENAS (FIMI), *INDIGENOUS WOMEN STAND AGAINST VIOLENCE: A COMPANION REPORT TO THE UNITED NATION’S SECRETARY-GENERAL’S STUDY ON VIOLENCE AGAINST WOMEN* (2006), <http://www.un.org/esa/socdev/unpfii/documents/vaiwreport06.pdf>.

<sup>108</sup> “In Guatemala, the effects of neoliberalism and its resulting rural-to-urban migration merge with the legacy of the country’s 36-year armed conflict in a grisly epidemic of violence against women. Since 2001, over 2,200 women have been murdered, including many Indigenous migrants ... [T]he methods used in these murders are reminiscent of employed against the guerrillas and the residents of Indigenous villages the 1960-1996 war.” FORO INTERNACIONAL DE MUJERES INDÍGENAS (FIMI), *INDIGENOUS WOMEN STAND AGAINST VIOLENCE: A COMPANION REPORT TO THE UNITED NATION’S SECRETARY-GENERAL’S STUDY ON VIOLENCE AGAINST WOMEN* (2006), <http://www.un.org/esa/socdev/unpfii/documents/vaiwreport06.pdf>.

<sup>109</sup> “Women continue to fall victim to gender-based violence in Guatemala in a phenomenon known as femicide ... Women’s corpses are found with signs of sexual abuse and torture. Many victims are left in public places for family and community members to find—a practice that is meant to spread public fear.” Guatemala Human Rights Commission/USA, *Guatemala Human Rights Review* (2007), <http://www.ghrc-usa.org/Publications/GHRCHumanRightsReviewJan-Sept2007.pdf>.

race and gender-based violence is protected by article 6,<sup>110</sup> the right to life, article 7,<sup>111</sup> the prohibition against torture or cruel, inhumane and degrading treatment, and article 26,<sup>112</sup> the right to be free from discrimination based on social origin, race or sex. General Comment No. 28, Equality between Men and Women, the Committee referred explicitly to the non-derogable duty of governments to adequately protect women from gender-based violence and to recognize the social origin and racial biases that tend to inflame such violence.<sup>113</sup>

No derogation from articles 6 and 7 is permitted, even in time of public emergency that threatens the life of the nation.<sup>114</sup> Additionally, articles 6<sup>115</sup> and 7<sup>116</sup> place an affirmative obligation on the State to take measures to prevent, punish and redress violent acts that rise to the level of deprivation of life, torture, and cruel, inhuman and degrading treatment or punishment. Lastly, insofar as the State has failed to adopt affirmative measures to prevent, punish and redress the extensive violence practiced against indigenous women based on their status as indigenous women, violations of due diligence under article 2 obligations are discernible.

The jurisprudence on articles 6 and 7 establishes that where the State has failed to remedy the violative acts of third parties, due diligence requirements under article 2 should be triggered: “Under article 2, paragraph 3 (a), of the Covenant, the State party has an obligation to ensure that the author has an effective remedy available... The State party is also under an obligation to take effective measures to ensure that similar violations do not occur in future.”<sup>117</sup> Gender equality guarantees under article 3 come into play in this scenario,<sup>118</sup> due to the gender-based nature of the violence against Guatemalan indigenous women.

---

<sup>110</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 6 (1), G.A. Res. 2200A (XXI), 999 UNTS 171 (Dec. 16, 1966).

<sup>111</sup> *Id.* art 7.

<sup>112</sup> *Id.* art. 26.

<sup>113</sup> UN Human Rights Committee, General Comment No. 28: Article 3 (Equality between Men and Women), ¶¶ 2, 4, 10, 11, 30, U.N. Doc. C/21/Rev.1/Add.10 (Mar. 29, 2000).

<sup>114</sup> UN Human Rights Committee, General Comment No. 6: Article 6 (Right to Life), ¶¶ 1, 5, U.N. Doc. HRI/GEN/1/Rev.6 at 127 (Apr. 30, 1982); UN Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), ¶¶ 8, 14, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (Mar. 10, 1992).

<sup>115</sup> General Comment No. 6 establishes that “[t]he expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.” Human Rights Committee, General Comment No. 6: Article 6 (Right to Life), ¶¶ 1, 5, U.N. Doc. HRI/GEN/1/Rev.6 at 127 (Apr. 30, 1982).

<sup>116</sup> General Comment No. 20 states, “it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.” It further advises that “[c]omplaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.” Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), ¶¶ 8, 14, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (Mar. 10, 1992).

<sup>117</sup> *Mulezi v. Democratic Republic of the Congo*, Comm’n’c No. 962/2001, ¶ 7, U.N. Doc. CCPR/C/81/D/962/2001 (July 23, 2004).

<sup>118</sup> “The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights. This is obvious in a number of articles (e.g. art. 3 which is

In recent years, numerous agents of the Office for the Defense of Indigenous Women's Rights have reported being frequently intimidated and threatened, and, in some instances, they have been the victims of outright physical assault.<sup>119</sup> Additionally, the government's statistics demonstrate that women constitute the overwhelming majority of the victims of intra-family violence in Guatemala, and approximately a quarter of such victims are indigenous women.<sup>120</sup> Violence against indigenous women must be understood within the larger context of the femicide epidemic in Guatemala, a country in which 4,867 women were murdered between 2000 and 2009 and 99% of femicide cases remain in impunity.<sup>121</sup>

The State has failed to adequately prosecute sexual crimes against indigenous women as aggravated criminal offenses.<sup>122</sup> Moreover, it has also failed to disaggregate the data on femicides according to race and social origin to allow for a fuller appreciation of the extent to which indigenous women are being victimized.<sup>123</sup> The Committee has expressed its regret that "many States parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact."<sup>124</sup> The Committee has also expressed its desire "to know if there remain any problems of discrimination in fact, which may be practiced either by public authorities, by the community, or by private persons or bodies" and "to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination."<sup>125</sup>

The CEDAW Committee has specifically 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,

---

dealt with in General Comment No. 4 below), but in principle this undertaking relates to all rights set forth in the Covenant." Human Rights Committee, General Comment No. 3: Article 2 (Implementation at the National Level) ¶ 1, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (July 29, 1981).

<sup>119</sup> UN High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Activities of Her Office in Guatemala*, ¶ 53, delivered to the UN Human Rights Council, U.N. Doc. A/HRC/13/26Add.1 (Mar. 3, 2010).

<sup>120</sup> Instituto Nacional de Estadística, *Violencia Intrafamiliar* [National Institute of Statistics, *Intrafamiliar Violence*], <http://www.ine.gob.gt/index.php/sociedad/44-sociedad/132-violenciaintrafamiliar>.

<sup>121</sup> THE GUATEMALA HUMAN RIGHTS COMMISSION/USA. FACT SHEET: FEMICIDE AND FEMINICIDE, <http://www.ghrc-usa.org/Programs/ForWomensRighttoLive/femicide.pdf>.

<sup>122</sup> "[T]he Accord on the Identity and Rights of Indigenous Peoples recognizes some of the abuses perpetrated against women during the armed conflict and obliges the State to prosecute sexual crimes against Indigenous women as aggravated criminal offenses." FORO INTERNACIONAL DE MUJERES INDÍGENAS (FIMI), INDIGENOUS WOMEN STAND AGAINST VIOLENCE: A COMPANION REPORT TO THE UNITED NATION'S SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST WOMEN (2006), <http://www.un.org/esa/socdev/unpfii/documents/vaiwreport06.pdf>.

<sup>123</sup> "[T]here is no data disaggregated by Indigenous status, making it impossible to know the proportion of Indigenous women who have been the victims of these attacks." FORO INTERNACIONAL DE MUJERES INDÍGENAS (FIMI), INDIGENOUS WOMEN STAND AGAINST VIOLENCE: A COMPANION REPORT TO THE UNITED NATION'S SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST WOMEN (2006), <http://www.un.org/esa/socdev/unpfii/documents/vaiwreport06.pdf>.

<sup>124</sup> UN Human Rights Committee, General Comment No. 18: Non-Discrimination, ¶ 9, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Nov. 10, 1989).

<sup>125</sup> *Id.*

ethnic origin and social status.”<sup>126</sup> The culture of impunity in which violence against indigenous women occurs and the State’s failure to provide disaggregated data on femicides are indicative of its neglect of the rights of indigenous women.

Guatemala’s failure to ensure indigenous women’s right to be free from violence constitutes a breach of articles 6, 7 and 26, as stated above. Moreover, the due diligence obligations of article 2 and the gender equality guarantees of article 3 are also implicated here due to the government’s failure to adopt effective measures to prevent, punish and redress the extensive violence directed at indigenous women based on their status as indigenous women.

## **RECOMMENDATIONS**

- The State of Guatemala should 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 against indigenous women and girls.
- The State of Guatemala should provide 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.
- The Guatemala National Institute for Statistics should provide more comprehensive quantitative and qualitative analyses of violence against indigenous women and girls, disaggregating the data by the intersection of gender, race and social origin.
- The Guatemala National Institute for Statistics should account for sexual homicides and disaggregate such figures by the intersection of gender, race and social origin.
- The State of Guatemala should initiate affirmative action programs designed to promote the hiring of qualified indigenous women in offices whose mission consists of ending the culture of impunity with respect to violence against indigenous women.
- The State of Guatemala should take stronger measures to protect indigenous women’s rights defenders, particularly those in the employment of the government, from violence and harassment, and to prosecute those responsible for such violations.

---

<sup>126</sup> Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Guatemala, ¶ 41, UN Doc. C/GUA/CO/7 (Feb. 10, 2009).

- The State of Guatemala should publish and disseminate the findings of the U.N. Human Rights Committee, the National Institute for Statistics and other governmental agencies concerning violence against indigenous women and girls in the indigenous languages of the nation.

#### E. ARTICLE 14: RIGHT TO BE SEEN AND TREATED EQUALLY BY THE LAW

##### *Indigenous Guatemalan Women Speak Out on Gender-Based Violence, the Unfair Administration of Justice and Political Discrimination*

“I may not know how to read or write, but I know my rights [with respect to the constitutionally guaranteed equality between men and women].”

—Indigenous woman, member of Muixil, in the Department of El Quiché, Guatemala. Interview by IWHR Clinic, March 2011.

In March 2011, representatives from MADRE and law students in the International Women’s Human Rights Clinic at the CUNY School of Law visited multiple indigenous communities in the Department of El Quiché, Guatemala, where they met with members of an indigenous women’s rights organization known as Muixil.<sup>127</sup> Muixil represents women from three indigenous communities in the Department of El Quiché—Nebaj, Cotzal and Chajul. Its mandate is to make living conditions better for its constituents by supporting local economic and social development projects. It applies financial and human resources to train indigenous women in their political, cultural, economic and social rights, and it engages in mentoring programs that provide indigenous women with practical skills such as those required to produce traditional textiles, raise livestock and engage in small-scale organic farming. The association provides a culturally sensitive forum where indigenous women can express their concerns and seek out solutions in solidarity with one another.

The Muixil women explained that the culture of impunity surrounding contemporary violence against indigenous women stems from patriarchal norms reinforced by the brutal rapes and massacres occurring regularly during the period of the civil war. Moreover, they trace their lack of access to fairly administered justice to the de facto exclusion of indigenous peoples from the judiciary and the dearth of court-appointed translators of indigenous languages—to their mind, signs of the persistence of racism that culminated in the systematic genocide practiced against their people during the period of armed conflict. The Muixil women also explained their estrangement from the political process, in part, by referencing the loss of their birth certificates or other forms of identification to fires and forced displacement associated with the vicissitudes of the civil war.

Recently, the Guatemalan government has taken limited steps to address the concerns of indigenous women, principally with the establishment of SEPREM (*Secretaría Presidencia de la Mujer*) and DEMI (*La Defensoría de la Mujer Indígena*), the former an executive body intended to assist in fully integrating Guatemalan women into the political system, and the latter designed

<sup>127</sup> More information on Muixil is available at <http://www.madre.org/index/meet-madre-1/our-partners-6/guatemala-women-workers-committee--muixil-35.html>.

to protect the legal rights of indigenous women. Yet, the Muixil women consistently highlighted the inadequacy of these agencies in terms of their scope, funding, resources and efficacy. “Can just a few DEMI agents for the entire Department of El Quiché really handle all the violations of human rights indigenous women would report? Of course not,” affirmed Ana Ceto Chávez, coordinator of Muixil.<sup>128</sup>

The Muixil women challenged the government to end impunity in relation to gender-based violence, to ensure the fair administration of justice and to eliminate political discrimination in their communities. To this end, they recommended a more robust system of governmental agencies to address indigenous women’s rights. They also requested more court translators, a greater decentralization of the judicial system so that accessing the courts would require less inconvenience, and strengthening legal aid services to reduce the cost of bringing lawsuits. In addition, more funding for leadership, literacy and job training were suggested. Finally, they would like the government to launch an intensive campaign to document indigenous women whose birth certificates or identification cards were lost during the civil war or were simply never emitted, so that they may register to vote and thereby exercise their constitutional right to participate in the political process.

#### *Guatemala’s Failure to Ensure the Fair Administration of Justice for Indigenous Women*

Indigenous peoples comprise the majority of the Guatemalan citizenry and have been historically underprivileged and marginalized.<sup>129</sup> Guatemalan indigenous women face triple discrimination—based on social origin, race and gender—and, given these conditions, they are especially vulnerable to being denied their due process rights. Indigenous women are disproportionately harmed by the State’s failure to provide them with free legal counsel in criminal and civil contexts, equal access to the judicial system, and free language interpreters in criminal actions and suits at law.

Article 14 requires the State to ensure the right of persons to be equal before tribunals and to receive a fair trial.<sup>130</sup> A State is required to respect the fundamental elements of due process for all individuals in the civil and criminal context under article 14. While the phrasing of article 14 implicates an individual’s right to free counsel “in the determination of any criminal charge against him,” General Comment No. 13 indicates that such due process rights should be equally applicable in the civil context.

In relevant part, the paragraph establishes: “In general, the reports of States parties fail to recognize that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at

---

<sup>128</sup> Interview by IWHR Clinic with Ana Ceto Chávez, Coordinator, Muixil, in the Department El Quiché, Guatemala (March 10, 2011) (on file with IWHR clinic).

<sup>129</sup> See Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, <http://www.unhcr.org/refworld/docid/49749d163c.html>.

<sup>130</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 14, G.A. Res. 2200A (XXI), 999 UNTS 171 (Dec. 16, 1966).

law.”<sup>131</sup> Because indigenous women are disproportionately impoverished and tend to be located far away from urban centers with judicial resources, the due process rights protected under article 14 will remain ineffectual for them unless the State provides effective legal counsel at no cost to indigenous women engaged in criminal and civil litigation.<sup>132</sup>

Additionally, in order to secure fair access to the tribunals for this socially and geographically marginalized population, the State should provide more court forums in underserved indigenous communities.<sup>133</sup> Finally, because Spanish is often a second language for indigenous women or they may not speak it at all, the State has a special obligation under the terms of article 14 to ensure that indigenous women are provided with interpreters at judicial proceedings.<sup>134</sup>

While the jurisprudence on the issue of language interpreters establishes that the norm is not violated where the party’s fluency in the language of the court has been objectively established,<sup>135</sup> substantial numbers of Guatemalan indigenous women are not fluent in Spanish and would be unduly prejudiced by the absence of qualified interpreters. The evidence suggests, moreover, that the State has not met its burden of ensuring the fair administration of justice by adequately providing court interpreters for indigenous women who do not speak Spanish.<sup>136</sup>

In order to achieve genuine compliance with the due process mandates of article 14, Guatemala should provide free legal counsel to indigenous women in the civil and criminal contexts, decentralize its legal aid societies and its judicial forums to better serve indigenous women who tend to be socially and geographically isolated, and provide indigenous women with culturally sensitive language interpreters at criminal actions and suits at law.

---

<sup>131</sup> UN Human Rights Committee, General Comment No. 13: Article 14 (Equality before the courts and the right to a fair and public hearing by an independent court established by law), ¶ 2, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Apr. 13, 1984).

<sup>132</sup> “Free legal counseling is still lacking in non-criminal areas, particularly for women victims of violence and Indigenous peoples.” UN High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Activities of Her Office in Guatemala*, ¶ 39, delivered to the UN Human Rights Council, U.N. Doc. A/HRC/13/26Add.1 (Mar. 3, 2010).

<sup>133</sup> “Access to justice remains limited due to the insufficient geographic coverage of the judicial system.” UN High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Activities of Her Office in Guatemala*, ¶ 39, delivered to the UN Human Rights Council, U.N. Doc. A/HRC/13/26Add.1 (Mar. 3, 2010).

<sup>134</sup> “Many Maya continue to be tried in Spanish, even though they do not speak the language. This is due to a shortage of both bilingual judges and/or interpreters. In practice, too few interpreters are trained or hired; consequently, in some localities, provisions mandating the presence of a suitably qualified interpreter are ignored.” Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, <http://www.unhcr.org/refworld/docid/49749d163c.html>.

<sup>135</sup> Domukovsky, Tsiklauri, Gelbakhiani and Dokvadze v. Georgia, Comm’n’c No. 623/1995,624/1995, 626/1995, 627/1995, U.N. Doc CCPR/C/62/D/623/1995(May 29, 1998).

<sup>136</sup> “Discrimination also continues in the restrictions on Indigenous rights in judicial proceedings. Many Maya continue to be tried in Spanish, even though they do not speak the language. This is due to a shortage of both bilingual judges and/or interpreters. In practice, too few interpreters are trained or hired; consequently, in some localities, provisions mandating the presence of a suitably qualified interpreter are ignored.” Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, <http://www.unhcr.org/refworld/docid/49749d163c.html>.

## RECOMMENDATIONS

- The State of Guatemala should 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 ensuring the fair administration of justice for Indigenous women and girls.
- The State of Guatemala should provide 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.
- The Guatemala National Institute for Statistics should provide more comprehensive quantitative and qualitative analyses of the substantial challenges to achieving the fair administration of justice for indigenous women and girls, disaggregating the data by the intersection of gender, race and social origin.
- The State of Guatemala should provide more culturally sensitive court translators for indigenous women who need to access the judicial system and the government should also increase the personnel and funding for legal aid societies to increase the affordability of legal services for indigenous women.
- The State of Guatemala should initiate affirmative action programs designed to promote the hiring of qualified indigenous women in judicially relevant positions.
- The State of Guatemala should take further steps to decentralize the judiciary, so as to provide more convenient and accessible courts for indigenous women living in relatively remote communities and who cannot afford to travel regularly to the provincial capitals to access the judicial system.
- The State of Guatemala should take stronger measures to protect indigenous women's rights defenders, particularly those in the employment of the government, from violence and harassment, and to prosecute those responsible for such violations.
- The State of Guatemala should publish and disseminate the findings of the U.N. Human Rights Committee, the National Institute for Statistics and other governmental agencies concerning the challenges to the fair administration of justice for indigenous women and girls in the indigenous languages of the nation.
- The investigation and prosecution of gender crimes is an obligation for States, both in the framework of the International Human Rights Law and under International Criminal

Law. On this basis, the State is obligated to guarantee the investigation and prosecution of crimes committed against women during the internal conflict, which took place between 1963 and 1996. The State must adopt an intersectional approach, without which such crimes would go unprosecuted in cases currently pending before the Guatemalan courts.

F. ARTICLE 17, 19, 22, 25 AND 27: RIGHT TO FULLY PARTICIPATE IN SOCIETY WITHOUT FEAR OF REPERCUSSIONS OR VIOLENCE

Article 17 requires that the State respect a person's privacy, family, correspondence, honor, and reputation. Article 17 protects against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons.<sup>137</sup> A state that engages in or allows persons to engage in arbitrary or unlawful interferences or attacks in these areas would not be fulfilling its obligations under the ICCPR. Article 19 requires that the State respect a person's right to hold an opinion. A State that interferes with the right to hold an opinion is not fulfilling its obligations under the ICCPR. A state is also required to respect all forms of ideas and information and is required to respect the freedom to transfer ideas and information. A state must respect the media that a person may choose in order to express their ideas or information. The media may be oral, in writing, in print, through art or another form. Article 22 requires that the State respect a person's freedom to associate with others, specifically mentioning association through trade unions. Article 25 requires that the State respect a person's right and opportunity to participate in public affairs, voting and public service. General Comment No. 25 states that this includes public assemblies that are seen as direct participation in the government. The Comment also states that no restriction can be placed because of race, gender, etc.

Articles 17, 19, 22 and 25 prohibit the extent to which the State can impose restrictions on the exercise of these rights. Under article 17, a state may provide for unlawful and arbitrary interferences on the basis of law, however, unlawful interferences must comply with the provisions, aims and objectives of the Covenant. Similarly arbitrary interference must accord with the Covenant and be reasonable given the particular circumstances.<sup>138</sup> The State is required to provide the legislative framework prohibiting such acts by natural or legal persons.<sup>139</sup> Under article 19, the State may only impose restrictions on the freedom of expression that are provided for by law and as are necessary to respect the rights or reputation of others or for the protection of national security, public order, public health or morals. Article 22 articulates a similar standard as article 19, hence a State is prohibited from imposing restrictions on the freedom of association, except as provided for by law and as is necessary to respect the rights or reputation of others or for the protection of national security, public order, public health or morals. Article 25 prohibits unreasonable restrictions on a person's right and opportunity to participate in public affairs, voting and public service free from discrimination.

The Guatemalan government has certain positive obligations under articles 17 and 25. Article 17 requires that the State provide protection of the law against arbitrary or unlawful interferences or

---

<sup>137</sup> UN Human Rights Committee, General Comment No. 16: Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation), ¶ 1, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Apr. 8, 1988).

<sup>138</sup> *Id.* ¶¶ 3, 4.

<sup>139</sup> *Id.* ¶ 9.

attacks. This includes adopting legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.<sup>140</sup> A state is required in their reports to indicate the laws and regulations that govern authorized interferences with private life by the State.<sup>141</sup> Article 25 requires that a person's right and opportunity to participate in public affairs, voting and public service is free from discrimination. The State is required to provide elections that are genuine, periodic, universal, equal and by secret ballot. The State is required to guarantee the free expression of the will of the electors. This obligation to guarantee includes both ensuring and protecting the will of the electors.

### *Guatemala's Failure to Ensure the Political Rights of Indigenous Women*

Guatemalan indigenous women face triple discrimination—social origin, race and gender-based—and, given these conditions, they are especially vulnerable to being denied their political rights.<sup>142</sup> Indigenous women are unconscionably harmed by the State's failure to protect organizations that promote the human rights and political empowerment of indigenous women from harassment, intimidation and violence, by its failure to facilitate the political participation of indigenous women in the media, and by its failure to address the gross underrepresentation of indigenous women in the political life of the nation.

The Human Rights Committee has observed that in Guatemala “women do not participate enough in political life, the judiciary and other sectors” and that the State has not adopted “legislation designed to guarantee the full enjoyment of all [Indigenous] rights under the Covenant, including [...] the elimination of discrimination.”<sup>143</sup> The extensive repression of indigenous women's human rights defenders, the practical exclusion of indigenous women's voices from the media, and the gross underrepresentation of indigenous women in the legislature further point to Guatemala's failure to eradicate political discrimination against indigenous women.

Therefore, the State stands in breach article 25,<sup>144</sup> ensuring the individual's right to political participation regardless of social origin, race or sex, article 26, guaranteeing the individual's freedom from discrimination based on social origin, race or sex, and article 27,<sup>145</sup> safeguarding the cultural rights of ethnic and linguistic minorities. Additionally, insofar as the State has failed to adopt affirmative measures to prevent, punish and redress the endemic political discrimination practiced against indigenous women based on their status as indigenous women, violations of article 2's due diligence obligations and article 3's gender equality guarantees are discernable.

---

<sup>140</sup> *Id.* ¶ 1.

<sup>141</sup> *Id.* ¶ 7.

<sup>142</sup> “The return to civilian rule [after the Guatemalan Peace Accords of 1996] created a state with less formal discrimination. However, discriminatory legislation against women still existed and *de facto* discrimination continued to exclude the Mayan communities from the legal, political, economic and social systems of Guatemala.” Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, <http://www.unhcr.org/refworld/docid/49749d163c.html>.

<sup>143</sup> Concluding Observations of the Human Rights Committee, Guatemala, ¶¶ 25, 29 U.N. Doc. CCPR/CO/72/GTM (Aug. 27, 2001).

<sup>144</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 25, G.A. Res. 2200A (XXI), 999 UNTS 171 (Dec. 16, 1966).

<sup>145</sup> *Id.* art. 27.

Guatemalan human rights organizations—including those that advocate for the political empowerment of indigenous women—regularly suffer harassment, intimidation and severe acts of brutality, such as violent attacks against associated or member activists.<sup>146</sup> Given the fact that impunity for attacks against human rights defenders stands at a startling 98% in Guatemala,<sup>147</sup> indigenous women encounter substantial obstacles and real dangers in giving voice to their human rights agenda and promoting their goal of political empowerment for indigenous women.

Furthermore, only one Guatemalan television station broadcasts political information in indigenous languages and the State provides no direct funding for its operations. As a consequence, the producers face severe limitations in terms of geographical coverage and broadcasting time, posing a further barrier for advocates of indigenous women’s political rights to promote their agenda at the national level.<sup>148</sup> Such barriers to the televised promulgation of political speech in indigenous languages defy the Committee’s pronouncement that states must take “positive measures ... to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language.”<sup>149</sup>

Lastly, only a fraction of the Guatemalan legislature is indigenous, and it is mostly male,<sup>150</sup> another indication that Guatemala still has not ensured the equal enjoyment of indigenous women’s right to participate fully and fairly in the political life of the nation. While the State may not be expected to guarantee representative outcomes of elections, it must strive to create the conditions in which indigenous Guatemalans may participate fairly and equally in the electoral process. Nevertheless, reports from respected international non-governmental agencies suggest that the State has failed to discharge its duties in this respect.<sup>151</sup>

---

<sup>146</sup> “In 2002 and 2003 once again there was a rise in death threats and abductions against human and Indigenous rights leaders. This particularly involved activists working to bring government officials and military officers to trial over civil war-related atrocities, and there were scattered reports of murders of Indigenous and human rights leaders.” Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, <http://www.unhcr.org/refworld/docid/49749d163c.html>.

<sup>147</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Guatemala*, ¶ 41, U.N. Doc. A/HRC/8/38 (May 29, 2008).

<sup>148</sup> “TV Maya which calls itself ‘Guatemala’s multi-cultural station,’ broadcasts for 30 minutes, three times a day, disseminating programs that teach Mayan culture, views of the world and language. The service—which receives no direct government support is funded by the Guatemalan Academy of Mayan Languages (ALMG) and its programs are broadcast in Indigenous languages with Spanish subtitles. TV Maya currently reaches four departments of Guatemala and plans are for it to eventually cover the entire country with three hours of programming a day.” Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, <http://www.unhcr.org/refworld/docid/49749d163c.html>.

<sup>149</sup> UN Human Rights Committee, General Comment No. 23: Article 27 (Rights of Minorities), ¶ 6.2, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (Apr. 26, 1994).

<sup>150</sup> “In the 2003 elections there was a very slight increase in Indigenous representation. Of the 331 municipalities, 105 now have Indigenous mayors, including one Indigenous woman mayor in the municipality of Sololá. However, out of a total of 158 deputies elected to the National Assembly, only 15 are Indigenous, of whom one is a woman.” Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, <http://www.unhcr.org/refworld/docid/49749d163c.html>.

<sup>151</sup> Historical social practices and apathy in the government continue to result in political exclusion of Indigenous people, including limited access to the civil service and high public office. While constitutional law permits universal suffrage, Indigenous people’s voting rights are still constrained by exclusionary social practices. These involve tedious voter registration requirements, elections scheduled during harvest season and inadequate

Drawing upon Martin Scheinin's concurrence in *Diergaardt et al. v. Namibia*,<sup>152</sup> for instance, one may argue that the extensive de facto restraints on the voting privileges of Guatemalan indigenous peoples violate their article 25 political rights. To date, however, Guatemala has failed to adopt effective measures to combat widespread political discrimination against indigenous peoples or to safeguard the political rights of indigenous women.

In order to achieve genuine compliance with the political rights guaranteed under article 25, as supported by articles 2, 3, 26 and 27, Guatemala must effectively prosecute those who unlawfully persecute the members or associates of indigenous women's political advocacy groups, it must take steps to ensure that indigenous women enjoy a reasonable and fair opportunity to promulgate their political views in the media in their native languages, and it must take such measures as necessary to capacitate indigenous women to fully participate in the political life of the nation.

## RECOMMENDATIONS

- The State of Guatemala should 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 political discrimination against indigenous women and girls.
- The State of Guatemala should provide 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.
- The Guatemala National Institute for Statistics should provide more comprehensive quantitative and qualitative analyses of political discrimination against indigenous

---

transportation, all of which serve to limit the numbers who actually vote. It is also reflected in constraints with regard to seeking election. National political parties restrict the election of their Indigenous members to decision-making leadership posts in the internal party structure, thereby effectively excluding them from the wider political arena. Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Guatemala: Maya*, July 2008, <http://www.unhcr.org/refworld/docid/49749d163c.html>.

<sup>152</sup> “[T]he Committee, in my opinion unnecessarily, emphasizes the individual nature of rights of participation under article 25. In my view there are situations where article 25 calls for special arrangements for rights of participation to be enjoyed by members of minorities and, in particular, Indigenous peoples. When such a situation arises, it is not sufficient under article 25 to afford individual members of such communities the individual right to vote in general elections. Some forms of local, regional or cultural autonomy may be called for in order to comply with the requirement of effective rights of participation.” *Diergaardt et al. v. Namibia*, Comm’n’c No. 760/1997, Individual opinion by Martin Scheinin, U.N.Doc. CCPR/C/69/D/760/1996(July, 25 2000).

women and girls, disaggregating the data by the intersection of gender, race and social origin.

- The Guatemala National Institute for Statistics should analyze the political underrepresentation of women (and related issues, such as illiteracy) by the intersection of gender, race and social origin.
- The State of Guatemala should promote indigenous women's participation in public and political life by implementing job training programs for current and future female indigenous leaders, by launching adult literacy programs, and by undertaking awareness-raising campaigns about indigenous women's human rights. The government should subsidize the transportation, materials and food costs of the indigenous women participating in such programs so that lack of resources will not discourage them from attending.
- The State of Guatemala should initiate affirmative action programs designed to promote the hiring of qualified indigenous women in politically relevant positions.
- The State of Guatemala should launch a campaign to document indigenous women whose birth certificates or identification cards were lost during the civil war, or were simply never emitted, so that they may register to vote and thereby exercise their constitutional right to participate in the political process.
- The State of Guatemala should subsidize radio and television broadcasting in indigenous languages to ensure that indigenous women will have access to balanced and reliable information with respect to political developments in their country.
- The State of Guatemala should take stronger measures to protect indigenous women's rights defenders, particularly those in the employment of the government, from violence and harassment, and to prosecute those responsible for such violations.
- The State of Guatemala should publish and disseminate in the indigenous languages of the nation the findings of the Human Rights Committee, the National Institute for Statistics and other governmental agencies concerning political discrimination against indigenous women and girls.

### *Guatemala's Failure to Ensure Women Maquila Workers' Rights*

In March 2011, CUNY School of Law student attorneys from the IWHR Clinic conducted a fact-finding mission to Guatemala in order to investigate human rights violations by *maquila* companies in Guatemala. Current and former women *maquila* workers identified the following human rights issues and violations:<sup>153</sup>

---

<sup>153</sup> IWHR Clinic student attorneys conducted follow up phone interviews with *maquila* worker organizations in October 2011 and confirmed that these human rights issues and violations continue to exist in Guatemala.

- *Maquilas* engage in unjustifiable layoffs due to pregnancy.
- Pregnancy testing as a threshold requirement to employment.
- Women are unjustly fired for worker organizing.
- Younger women employees are not being paid for work done.
- Some *maquilas* are not paying social security.
- Women have to take pills to stay awake because of employer's extreme work demands.
- Sexual harassment by bosses.
- *Maquila* companies change their names so they can avoid following labor laws and paying workers their wages due.
- The work is hard, and there few safety protections. Some women have even been killed.
- Women work all day, go home at 10 or 11 p.m. and risk their lives walking home in the streets so late. Specifically, women must often work extended hours from October through December to meet holiday production demand, which further increases the risk of violence women workers face while traveling to and from work during early morning hours and late at night.<sup>154</sup>
- Women workers remain grossly uninformed of their labor rights.
- There are an insufficient number of government actors to enforce labor standards in the *maquilas*.

#### *Discrimination Against Maquila Workers Based on Pregnancy*

“The first question a woman is asked when she applies for a job is, ‘Are you pregnant?’” - Former *maquila* worker, member of Comite de Barcenas, Barcenas, Guatemala. Interview by IWHR Clinic, March 8, 2011.

Women working in the *maquilas* are regularly required to report whether they are pregnant as a condition of employment, either through questions on job applications, in interviews, or through physical examinations, including invasively prodding a woman's stomach by in-house medical personnel.<sup>155</sup> Pregnancy testing is a threshold requirement in many companies.<sup>156</sup> Women often lie about whether or not they are pregnant, especially if they are in the early stages of pregnancy.<sup>157</sup> Some *maquilas* require the applicant to supply a certificate, at her own cost, to prove she is not pregnant.<sup>158</sup> *Maquila* employers engaging in these forms of harassment and sexual discrimination are in violation of article 17's prohibition against unlawful and arbitrary interferences with a woman's privacy and family.

This Committee's jurisprudence broadly defines a woman's right to privacy, free from unlawful

<sup>154</sup> Telephone interview by IWHR Clinic with *maquila* worker organizer, in Barcenas, Guatemala (Oct. 7, 2011) (on file with IWHR Clinic).

<sup>155</sup> HUMAN RIGHTS WATCH, FROM THE HOUSEHOLD TO THE FACTORY: SEX DISCRIMINATION IN THE GUATEMALAN LABOR FORCE 85 (2002), available at <http://www.unhcr.org/refworld/docid/45cc6f092.html>.

<sup>156</sup> Interview by IWHR Clinic with Comite de Barcenas member, in Barcenas, Guatemala (Mar. 8, 2011) (on file with IWHR Clinic).

<sup>157</sup> *Id.*

<sup>158</sup> HUMAN RIGHTS WATCH, FROM THE HOUSEHOLD TO THE FACTORY: SEX DISCRIMINATION IN THE GUATEMALAN LABOR FORCE 85 (2002), available at <http://www.unhcr.org/refworld/docid/45cc6f092.html>.

and arbitrary interferences under article 17.<sup>159</sup> Given this broad definition, a woman's private decisions regarding her reproductive life fall within article 17's scope and protections. Under article 17 women working in the *maquilas* of Guatemala are protected from unlawful and arbitrary interferences or attacks by the Guatemalan government and/or other persons within Guatemala. A *maquila* employer using pregnancy testing as a condition of employment is engaging in an unlawful interference with a woman's reproductive privacy as this practice has no basis in Guatemalan law.<sup>160</sup> Furthermore, the Labor Ministry of Guatemala has interpreted the Labor Code as prohibiting pregnancy questioning and pregnancy testing as a condition for employment.<sup>161</sup> Given that *maquila* companies continue to use pregnancy testing as a condition for employment, the government of Guatemala is not fulfilling its obligation under article 17 to protect women working in the *maquilas* from unlawful interferences.

This Committee has elaborated on how the State is to regulate lawful interferences under article 17. The State is to employ only competent public authorities to gather information relating to an individual's private life.<sup>162</sup> Domestic legislation regulating lawful interferences in a woman's private life must specify in detail the precise circumstances in which such interferences may be permitted and the authority designated to conduct the interferences.<sup>163</sup> Effective measures should be in place for personal and body searches so that searches are carried out in a manner consistent with the dignity of the person being searched.<sup>164</sup> The Government of Guatemala is not fulfilling its specific obligations under article 17 to regulate when and how a *maquila* company may interfere with women worker's private life. First, *maquila* companies using in-house, company doctors to conduct pregnancy examinations violate article 17's requirement that only competent public authorities are allowed to gather information on a woman's private life. Furthermore, invasive prodding and pressing on a woman worker's abdomen is inconsistent with the dignity of her person. Given the Guatemalan government's failure to prevent *maquila* companies from continuing these practices, the Government is not fulfilling its obligation under article 17 to protect women working in the *maquilas* from unlawful interferences.

---

<sup>159</sup> The Human Rights Committee jurisprudence concerning article 17 ranges from immigration and deportation, to child custody and visitation to violations of tenancy rights to private residence raids. See *Gonzalez v. Republic of Guyana*, Commc'n No. 1246/2004, U.N. Doc. CCPR/C/98/D/1246/2004 (Mar. 25, 2010); *Vojnovic v. Croatia*, Commc'n No. 1510/2006, U.N. Doc. CCPR/C/95/D/1510/2006 (Mar. 20, 2009); *Sultanova et al. v. Uzbekistan*, Commc'n No. 915/2000, U.N. Doc. CCPR/C/86/D/915/2000 (Mar. 30, 2006).

<sup>160</sup> Guatemalan Constitution, available at <http://pdba.georgetown.edu/constitutions/guate/guate93.html>; Guatemalan Labor Code, art. 151, available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/29402/73185/S95GTM01.htm>.

<sup>161</sup> “[G]iven that rights and obligations inherent to the working woman derive from pregnancy and maternity, which the State protects and whose strict enforcement [the State] ensures in a special manner, every act or document through which an applicant for a job is required whether she is pregnant [sic] or that intends to give her an exam related to that status, are *nulos ipso jure* and do not obligate those applicants [to comply].” (quoting communication (letter) from José Girón Cano and Jacqueline Ortiz Morales, Consejo Técnico y Asesoría Jurídica [Technical and Legal Counsel Department], Ministry of Labor, dated Aug. 10, 2000, Dictamen 250/2000) available at [http://www.unhcr.org/refworld/country,,HRW,,GTM,,45cc6f092,0.html#P453\\_78608](http://www.unhcr.org/refworld/country,,HRW,,GTM,,45cc6f092,0.html#P453_78608).

<sup>162</sup> UN Human Rights Committee, General Comment No. 16: Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation), ¶ 7, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Apr. 8, 1988).

<sup>163</sup> *Id.* ¶ 8.

<sup>164</sup> *Id.*

This Committee has said that States have an obligation under article 17 to adopt legislative and other measures to give effect to the prohibition against arbitrary or unlawful interferences or attacks.<sup>165</sup> The Guatemalan Constitution, section 8, article 102(k), lays out the rights of women workers and requires the regulation of the conditions in which they work.<sup>166</sup> The Constitution specifically regulates motherhood for working women. A pregnant woman cannot be made to do any work that would endanger her pregnancy.<sup>167</sup> Employers are required to provide maternity leave as well as pay a new mother part of her salary before and after her baby is born.<sup>168</sup> Women are entitled to two extra rest periods within the day while they are breastfeeding.<sup>169</sup> Also, various articles within the Guatemalan Labor Code prohibit firing a pregnant or breastfeeding woman unless she is in severe breach of her contract due to her condition.<sup>170</sup> Article 152 governs maternal leave for pregnant women.<sup>171</sup> Article 153 of the Labor Code governs accommodations for breastfeeding mothers and article 154 governs the wages for maternity leave or respite periods for breastfeeding mothers.<sup>172</sup>

Although Guatemala has enacted laws to address the issue of discrimination against pregnant and post-partum women in the workplace, these laws are not effectively prohibiting *maquila* employers' continued discrimination against pregnant and post-partum women. Women continue to have difficulty receiving their salary before and after the baby is born, required by the Guatemalan Labor Code.<sup>173</sup> In addition, women continue to have difficulty getting the legally prescribed two extra rest periods for breastfeeding.<sup>174</sup> If the employer allows time for breastfeeding, this time will sometimes be reserved at the end of the workday instead of in the middle of the day when the women need to be breastfeeding.<sup>175</sup> The *maquila* employer will inform a woman that she can leave work at 4 p.m. instead of 5 p.m. in order to breastfeed.<sup>176</sup> On one occasion the employer made this announcement and then locked the doors at 4 p.m., not allowing the women to leave.<sup>177</sup>

In spite of article 151 of the Guatemalan Labor Code prohibiting the firing of a pregnant or breastfeeding woman the practice continues in the *maquilas*. One woman was forced to quit because she was breastfeeding.<sup>178</sup> In January, the *maquila* owners discovered that she had just had a child. The employer told her that, because of her child, she was not at the level of

---

<sup>165</sup> *Id.* ¶ 1.

<sup>166</sup> Guatemalan Constitution, available at <http://pdba.georgetown.edu/constitutions/guate/guate93.html>.

<sup>167</sup> Guatemalan Labor Code, art. 151, available at

<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/29402/73185/S95GTM01.htm>.

<sup>168</sup> *Id.* art. 152.

<sup>169</sup> Guatemalan Constitution, available at <http://pdba.georgetown.edu/constitutions/guate/guate93.html>.

<sup>170</sup> Guatemalan Labor Code, art. 151, available at

<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/29402/73185/S95GTM01.htm>.

<sup>171</sup> *Id.* art. 152.

<sup>172</sup> *Id.* arts. 153–54.

<sup>173</sup> Phone interview by IWHR Clinic with *maquila* worker organizer, in Barcenas, Guatemala (Oct. 7, 2011) (on file with IWHR Clinic).

<sup>174</sup> Interview by IWHR Clinic with Comité de Barcenas member, in Barcenas, Guatemala (Mar. 8, 2011) (on file with IWHR Clinic).

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Interview by IWHR Clinic with Comité de Barcenas member, in Barcenas, Guatemala (Mar. 8, 2011) (on file with IWHR Clinic).

productivity they needed. During the time she was breastfeeding, the employer was taking money off her paycheck because her productivity had gone down. They told her that she should quit, although, they would not fire her. The employer continued to pressure her to quit until she signed a card renouncing her job.

The Guatemalan government's failure to enforce the Labor Code in a way that protects pregnant and post-partum women workers' rights is a violation of the State's obligation to adopt legislative measures giving effect to the prohibition against unlawful interferences into a woman's privacy and family.

### *Guatemala Failure to Ensure Labor Rights and Freedom of Association*

“Owners threaten the workers with closure of the whole *maquila* when we try to unionize. The owners yell and scream at us. Unions make us feel valued and that our rights are important.”

– Former *maquila* worker, member of *Comite de Barcenas*, Barcenas, Guatemala.  
Interview by IWHR Clinic, March 8, 2011.

Guatemalan women seeking to unionize in order to change the *maquila* working conditions face many challenges. Women's representation within the few existing unions is low, with women making up 2.3% of the membership.<sup>179</sup> Employer opposition to union organizing presents another challenge. Employers will often terminate workers who attempt to unionize.<sup>180</sup> When a woman is terminated for joining a union, she is stigmatized by the *maquila* industry preventing her from being hired by other *maquila* companies in the future.<sup>181</sup> They also threaten closure of the *maquila* if the workers unionize and employ verbal abuse to stifle union activity.<sup>182</sup> Owners often put pressure on the unions to dismantle because the owners seek to avoid meeting the union's demands.<sup>183</sup> Labor authorities tend to defend and protect multinational corporations instead of controlling the labor violations in the *maquilas*.<sup>184</sup> Workers' attempts to exercise the right to strike are frustrated by weak law enforcement entities unwilling or unable to protect workers' rights.<sup>185</sup> *Maquila* businesses will frequently change their names to avoid following labor laws, making the business hard to track and frustrating labor rights enforcement efforts.<sup>186</sup> *Maquila* businesses also change names to avoid paying wages owed to workers; no recourse is available to workers and banks will not honor checks given to workers after the company changes its name. This is frequently carried out by identifying different family members as new

---

<sup>179</sup> International Trade Union Confederation, *2009 Annual Survey of violations of trade union rights - Guatemala*, June 11, 2009, available at <http://www.unhcr.org/refworld/docid/4c52caea11.html>.

<sup>180</sup> *Id.*

<sup>181</sup> Interview by IWHR Clinic with *Comite de Barcenas* member, in Barcenas, Guatemala (Mar. 8, 2011) (on file with IWHR Clinic).

<sup>182</sup> Interview by IWHR Clinic with *Comite de Barcenas* member, Barcenas, Guatemala (Mar. 8, 2011) (on file with IWHR Clinic).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> International Trade Union Confederation, *2009 Annual Survey of violations of trade union rights - Guatemala*, June 11, 2009, available at <http://www.unhcr.org/refworld/docid/4c52caea11.html>.

<sup>186</sup> Director of *Comite de Barcenas*, Address at International Women's Day Celebration (Mar. 8, 2011).

owners; even when companies legitimately change ownership, the new owners do not honor the prior owners' debts to its workers.<sup>187</sup>

Article 22 protects a woman's right to form as well as join a trade union.<sup>188</sup> Furthermore, Guatemalan law prohibits firing a worker for joining a union.<sup>189</sup> Under the law, an employer would be sanctioned for taking such an action by either having to pay a fine of 1,000 *quetzales*<sup>190</sup> or would have to reinstate the employee within 24 hours of the termination. In addition, the employer would be required to pay the employees lost wages.<sup>191</sup> While Guatemala has codified certain protections for women joining unions, the reality is that *maquila* employers continue to dismiss and stigmatize women workers who attempt to unionize.<sup>192</sup> The State's tendency to defend and protect multinational corporations instead of controlling and sanctioning employers that interfere with a woman's right to unionize is a violation of the Guatemalan government's obligations under article 22.

This Committee has said that freedom of association relates not only to the right to form an association but also guarantees the right of such an association to freely to carry out its statutory activities.<sup>193</sup> The protections afforded by article 22 extend to all activities of an association.<sup>194</sup> The Guatemalan Labor Code specifically regulates the formation of the union as well as the regulation of the union's activities.<sup>195</sup> Even though legislation is in place to protect union activity, *maquila* employers restrict this activity by threatening closure of the plant and using verbal abuse to intimidate female workers. These threats and pressure interfere union activity. The Guatemalan government's failure to prevent the *maquila* owners from engaging in these types of scare tactics is a violation the State's obligations under article 22 of the Covenant.

“Girls are at risk of the traditional machista patriarchal system that utilizes physical, moral and psychological mistreatment to keep women oppressed.” – *Maquiladora* worker and member of Comité de Barcenás, in Barcenás, Guatemala. Interview by IWHR Clinic, March 8, 2011.

## RECOMMENDATIONS

- Address in the next State report, legislation adopted and measures taken to combat labor

<sup>187</sup> Phone interview by IWHR Clinic with *maquila* worker organizer, in Barcenás Guatemala (Oct. 7, 2011) (on file with IWHR Clinic).

<sup>188</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 22, G.A. Res. 2200A (XXI), 999 UNTS 171 (Dec. 16, 1966).

<sup>189</sup> Guatemalan Labor Code, art. 209, available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/29402/73185/S95GTM01.htm>.

<sup>190</sup> 1,000 Guatemalan Quetzales is equal to approximately 125.74 US Dollars or 92.79 Euros.

<sup>191</sup> Guatemala Labor Code, art. 209, available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/29402/73185/S95GTM01.htm>.

<sup>192</sup> International Trade Union Confederation, *2009 Annual Survey of violations of trade union rights - Guatemala*, June 11, 2009, available at: <http://www.unhcr.org/refworld/docid/4c52caea11.html>.

<sup>193</sup> Belyatsky et al. v. Belarus, Commc'n No. 1296/2004, ¶ 7.2, U.N. Doc. CCPR/C/90/D/1296/2004 (July 24, 2007).

<sup>194</sup> Korneenko et al. v. Belarus, Commc'n No. 1274/2004, ¶ 7.2, U.N. Doc. CCPR/C/88/D/1274/2004 (Oct. 31, 2006).

<sup>195</sup> Guatemalan Labor Code, arts. 206-34, available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/29402/73185/S95GTM01.htm>.

rights violations, specifically employer's interference with union activities and pregnancy based discrimination.

- 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.
- Enact legislation that provides a cause of action and remedy for women discriminated against based on her reproductive state by her employer.
- Adopt legislation that prohibits all forms of discrimination against women 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* in line with CEDAW's concluding observations (CEDAW/C/GUA/CO/7, para. 30).
- 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 stigmatizing a woman for joining or establishing a trade union. Provide a specific remedy for a woman who is stigmatized by her employer.
- Implement a national public education campaign about sex discrimination in the labor force and remedies available to injured parties. Include 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.

### III. APPENDIX A: SIGNATORIES TO THE SHADOW REPORT

International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law (<http://www.law.cuny.edu/clinics/clinicalofferings/IWHRC.html>)

The IWHR Clinic, founded in 1992, is part of Main Street Legal Services of the clinical program at the City University of New York School of Law. IWHR combines the education of progressive law students in using human rights with partnership with women activists and lawyers in the United States and abroad who are seeking to use the frameworks and mechanisms of international law and human rights to advance the human rights of women. IWHR is recognized for its expertise and contributions to gender jurisprudence and the practice of human rights. Recently, the IWHR participated in shadow reports before the Committee Against Torture and the Committee on Economic, Social and Cultural Rights with respect to Chile's ban on abortions. IWHR partnered with MADRE on the fact-finding mission in March 2011 to investigate human rights violations suffered by Guatemalan women.

MADRE ([www.madre.org](http://www.madre.org))

MADRE is an international women's human rights organization that works in partnership with community-based women's organizations worldwide to address issues of health and reproductive rights, economic development, education and other human rights. MADRE advances women's human rights by providing resources and training to enable its sister organizations to meet urgent needs in their communities and partners with women to create long-term solutions to the crises they face. Its programs areas are: Peace Building, Women's Health & Combating Violence Against Women, and Economic & Environmental Justice. MADRE works towards a world in which all people enjoy the fullest range of individual and collective human rights; in which resources are shared equitably and sustainably; in which women participate effectively in all aspects of society; and in which people have a meaningful say in policies that affect their lives. MADRE's vision is enacted with an understanding of the inter-relationships between the various issues it addresses and by a commitment to working in partnership with women at the local, regional and international levels who share its goals. MADRE is also a proud member of the Women Human Rights Defenders International Coalition, a resource and advocacy network for the protection and support of women human rights defenders worldwide.

MUIXIL

MUIXIL is a Guatemalan organization that focuses on the political, economic, and cultural rights of Ixil Mayan and other indigenous women in Guatemala. The mission of Muixil is to strengthen the Ixil community in Ixil country, a historically isolated Mayan farming community located in the northernmost outcrop of the Guatemala Highlands. Muixil represents women from three indigenous communities in the Department of El Quiché (Nebaj, Cotzal and Chajul), with a mandate to make living conditions better for its constituents by supporting local economic and social development projects. It applies financial and human resources to train indigenous women in their political, cultural, economic and social rights, and it engages in mentoring programs that provide indigenous women with practical skills such as those required to produce traditional textiles, raise livestock and plant crops on a small scale. The organization also provides a

culturally sensitive forum where indigenous women can express their concerns and seek out solutions in solidarity with one another.

### Comité de Barcenas

Women Workers' Committee/Comité de Barcenas was founded in 1997 to combat labor violations against women in the sweatshops of Guatemala City, the Women Workers' Committee now fights for women's rights on and off the factory floor. The Committee works to meet urgent needs in the community of Barcenas, a makeshift and marginalized neighborhood on the edge of Guatemala City, and to advance the rights of women and young people through programs to promote health and well being of women and children in the workplace, school and community. The Committee hosts trainings for *maquila* workers, addressing workplace violations and informing women of their rights as workers. The Committee also documents violations and pursues legal remedies for women workers. The Women Workers' Committee provides a safe and supportive space for women to discuss sexual and psychological abuses that occur in their homes and workplaces. The Committee also runs educational programs for community members that focus on sexual and reproductive rights. Because Spanish is a second language for many of the indigenous women in Barcenas, the Women Workers' Committee provides Spanish instruction as well as computer literacy courses. These programs are designed for both youth and adults. Currently, the literacy programs boast 5,500 women, children, and young adults. In response to the continued high murder rate in Guatemala, the Women Workers' Committee has created neighborhood watch groups in order to provide additional safety measures.

### Women's Link Worldwide ([www.womenslinkworldwide.org](http://www.womenslinkworldwide.org))

Women's Link Worldwide is international human rights non-profit organization working to ensure that gender equality is a reality worldwide. Founded in 2001, Women's Link has 501(c)(3) status in the United States, foundation status in Spain and non-governmental organization status in Colombia, as well as regional offices in Europe (Madrid, Spain) and Latin America (Bogotá, Colombia). Women's Link takes a multilayered approach to advancing women's rights. Women's Link maintains a state-of-the-art body of information with court decisions from around the world and with strategies for working with courts and tribunals to advance women's rights and gender justice. They critically examine the structure, actors, and arguments available in a given context with the purpose of identifying the most strategic avenues to address issues of concern. They conduct field-based research when information is not available and it is necessary to undertake strategic litigation in areas of concern. They identify and litigate cases that will have an impact beyond individual interests by changing policies, practices, setting precedent, or creating social change. Finally, Women's Link offers technical assistance to advocates, NGOs and others to work strategically with the courts to promote gender equality through the development and implementation of human rights standards.

### Colectivo Artesana

Colectivo Artesana is an organization that works to create a collective life free of violence, especially for women. We are a collective composed of feminists, artists, athletes, and professionals. We work and organize with women deprived of their liberty and with their families. We are members of the Womens' Sector and part of the feminist women's movement

for human rights. We began our work with an artistic expression project with more than 150 female detainees. Our objective consists of developing the expressive capabilities amongst women that allows them to reach their full potential and discover other forms of how they are related to those in their community and their environment. Recognizing the problematic situation that families of our members confront, we attend to their families in a holistic manner. We implemented the program SANARTE to attend to female detainees and their children to assure that State institutions provide the required legal and psychosocial services. We recognize the enormous capacity the women have as human beings to resist and rebuild themselves in the face of adversity and difficult situations in life. Our programs also focus on having women be responsible builders of their reality. This means that we use an approach that allows women deprived of their liberty to adapt to conditions in prison and to find meaning and cope with the repressive, exclusionary, discriminative context and have a humane and deeply transformative experience.

Guatemala Human Rights Commission (<http://www.ghrc-usa.org>)

Founded in 1982, the Guatemala Human Rights Commission/USA (GHRC) is a nonprofit, nonpartisan, humanitarian organization that monitors, documents, and reports on the human rights situation in Guatemala, advocates for survivors of human rights abuses in Guatemala, and works toward positive, systemic change. GHRC was founded to monitor, document, and report on the human rights situation in Guatemala; to educate the United States public and government about the human rights situation in Guatemala; to advocate in Washington, D.C. for better United States policy decisions regarding Guatemala; and to support and advocate for the victims of the repression.