



June 19, 2001

The Human Rights Committee

Re: Supplementary information on Guatemala  
Scheduled for review by the U.N. Human Rights Committee during its  
seventy-second session

Dear Committee Members:

The purpose of this letter is to provide some independent information regarding Guatemala, which is scheduled to be reviewed by the Human Rights Committee during its July session. Non-governmental organizations, such as the Center for Reproductive Law and Policy (CRLP) can play a central role in providing the committee with information that is reliable, accurate and independent concerning the rights covered by the International Covenant on Civil and Political Rights (Political Rights Covenant). This letter will highlight several particular areas of concern related to the status of women's reproductive rights in Guatemala.

Reproductive rights are fundamental to women's health and equality and we believe that states parties' commitment to ensuring said rights should receive serious attention. Further, women's reproductive health and rights are a part of the Committee's mandate under the Covenant on Civil and Political Rights.

CRLP has identified for the Committee the following issues of concern, which directly affect the reproductive health and lives of women in Guatemala:

- A. **The Right to Reproductive Health and Family Planning, including Safe and Legal Abortion (Articles 3, 6, 23, and 26 of the ICCPR)**

The ICCPR's guarantee of the right to life in Article 6 requires governments to take "positive measures" aimed at preserving life.<sup>1</sup> Such measures should respond to the needs of both women and men, in keeping with Articles 3 and 26, which guarantee, the right to equal enjoyment of the rights in the Covenant and equality before the law. Because reproductive health care is an essential condition for women's survival, these provisions collectively give rise to a governmental duty to ensure the full range of reproductive health services, including the means of preventing unwanted pregnancy.

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<sup>1</sup> Human Rights Committee, The Right to Life (article 6), General Comment 6, para. 5, July 30, 1982.

The Human Rights Committee (“the Committee”) has recognized in its General Comment 19(39) the right to “procreate and live together,” which by inference includes the right to reproductive health care and to all safe and appropriate forms of contraception.<sup>2</sup> Accordingly, the Committee has found possible violations of the Covenant where women have difficulty accessing contraceptive methods to prevent unwanted pregnancies.<sup>3</sup>

## 1. Family Planning

Even though Guatemalan law does not restrict women’s rights to obtain and use contraceptive methods existing laws and policies do not affirmatively ensure that women, particularly low-income and rural women, have access to family planning. Much of the Guatemalan population lacks an accurate understanding of and access to contraceptive methods, both modern and traditional. While lack of access to health services, care and information on family planning is a problem throughout Guatemala, available data indicates considerable inequality in access to such services according to social class and region. Rural and indigenous women have significantly less knowledge of such matters than do urban populations and *mestizos*.<sup>4</sup>

Contraceptive prevalence in Guatemala is low, with only about 38% of women of reproductive age ever having used a contraceptive method, and only 34% ever having used a modern method.<sup>5</sup> Over 49% of *mestiza* women use some form of contraception, while only 12.9% of indigenous women do.<sup>6</sup>

Guatemalan public health institutions do not have effective policies in place that provide information and/or counseling on family planning to address this situation. In March 1999, Guatemala promulgated the *Law for the Dignity and Integral Promotion of Women*, which established the Guatemalan government’s obligation to develop programs and mechanisms to provide women with health-related services. However, its implementation remains limited, particularly because the private sector has provided an increasing share of health services, leaving low-income women dependent on inadequate government health services. In addition, existing information and statistics regarding Guatemalan women’s ability to access reproductive health care services is rarely disaggregated by race, ethnic background or migrant status. This woeful lack of specific data impedes efforts to effectively evaluate the implementation of the Covenant’s provisions concerning reproductive health.

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<sup>2</sup> UNITED NATIONS CENTER FOR HUMAN RIGHTS, MANUAL ON HUMAN RIGHTS REPORTING 120, U.N. Doc. HR/PUB/91/1 (1991) at 113.

<sup>3</sup> *Id.* ¶ 239.

<sup>4</sup> See INSTITUTO NACIONAL DE ESTADÍSTICA, ENCUESTA NACIONAL DE SALUD MATERNO INFANTIL [NATIONAL SURVEY OF MATERNAL AND INFANT HEALTH], at xxiv, 38, 42 (July 1999).

<sup>5</sup> See *Id.* at 40.

<sup>6</sup> See *Id.* at 44.

## 2. Abortion

The Committee has acknowledged that States' duties to protect and ensure the right to life includes a duty to protect women who terminate their pregnancies.<sup>7</sup> It has called upon States to take measures "to ensure that women do not risk life because of restrictive legal provisions on abortion," i.e. being forced to seek abortions under clandestine, unsafe conditions.<sup>8</sup> In this regard, the Committee has recommended liberalization of laws that criminalize abortion.<sup>9</sup>

Complications from abortion are the second most common cause of death among women in Guatemala.<sup>10</sup> For every ten pregnancies there are 3 abortions.<sup>11</sup> Despite the fact that the Ministry of Public Health and Social Assistance (MPHSA) has recognized that abortion is one of the principal and most serious health problems among the country's female population, it continues to be criminalized, except to save the woman life.<sup>12</sup> The criminalization of abortion has driven this practice underground, thus exposing women, particularly the poorest and youngest, to serious health risks.

## 3. HIV/AIDS and Sexually Transmissible Infections

Between 1984 and June 1996, 936 cases of HIV/AIDS were reported in Guatemala.<sup>13</sup> The pattern of infection by sex is three men to every one woman.<sup>14</sup> The highest incidence of infection is among people between the ages of 20 and 50.<sup>15</sup>

Although Guatemala has enacted laws and policies delineating the rights of people living with HIV/AIDS, these regulations have been undermined by the lack of implementation of said laws. For instance, the administration of blood tests is prohibited as a requirement to obtain goods or services<sup>16</sup> and the results of blood test are supposed to be strictly

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<sup>7</sup> U.N. Doc. CCPR/C/79/Add.104 ¶ 15.

<sup>8</sup> *Report of the Human Rights Committee*, ¶ 167, 52<sup>nd</sup> Session, U.N. Doc. A/52/40.

<sup>9</sup> U.N. Doc. CCPR/C/79/Add.104 ¶ 15.

<sup>10</sup> TERTULIA, No. 10, March 19, 2000 (<http://www.cuidese.net/tertulia>) [hereinafter TERTULIA], citing ASOCIACIÓN PRO BIENESTAR DE LA FAMILIA GUATEMALTECA (APROFAM).

<sup>11</sup> *Id.*

<sup>12</sup> THE MINISTRY FOR PUBLIC HEALTH AND SOCIAL ASSISTANCE (MPHSA), REPRODUCTIVE HEALTH UNIT, OPERATIVE PLAN 1996, at 1 (1996).

<sup>13</sup> MPHSA, GENERAL OFFICE OF HEALTH SERVICES, NATIONAL PROGRAM TO PREVENT AND CONTROL HIV/AIDS, MANUAL DE CONSEJERÍA EN VIH/SIDA/ETS PARA PROFESIONALES DE SALUD [GUIDELINES ON HIV/AIDS/STI'S FOR HEALTH PROFESSIONALS], at 3 (1996).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> MPHSA, GENERAL OFFICE OF HEALTH SERVICES, NATIONAL PROGRAM TO PREVENT AND CONTROL HIV/AIDS, NORMAS, PRINCIPIOS Y RECOMENDACIONES PARA LA PREVENCIÓN Y CONTROL DE LA INFECCIÓN VIH/SIDA [REGULATIONS, PRINCIPLES AND RECOMMENDATIONS FOR THE PREVENTION AND CONTROL OF HIV/AIDS], at 17 (n.d.).

confidential.<sup>17</sup> However, health professionals are required to notify the nearest health authority when a case of AIDS or HIV infection is diagnosed.<sup>18</sup>

## **B. Discrimination Against Women (Articles 3, 6 and 26 of the ICCPR)**

The Committee has recognized that economic and social rights, such as the right to work, intersect with other rights found in the Covenant, which have an important impact on women's reproductive lives. The Committee has affirmed that inequality of access to the labor market is a violation of the Covenant and has made strong recommendations that States parties eliminate *de jure* as well as *de facto* discrimination against women in this domain.<sup>19</sup>

Employment is protected by the Constitution as an inherent right of all persons and is declared a social obligation.<sup>20</sup> The Guatemalan Constitution provides that the protection of working women and the regulation of women's working conditions are basic social rights that must be guaranteed by labor legislation.<sup>21</sup> Even though the Guatemalan Labor Code<sup>22</sup> regulates nondiscrimination based on sex, family responsibility, civil status, and pregnancy,<sup>23</sup> women's rights are not adequately protected due to the lack of knowledge with respect to labor rights. Moreover the Labor Code continues to have a discriminatory treatment towards working women by placing them in the same category as minors.<sup>24</sup>

## **C. Violence Against Women (Articles 3, 6 and 7 of the ICCPR)**

Article 7 of the ICCPR states that no one shall be subjected to torture, inhuman or degrading treatment, or punishment. Article 6 ensures the individual's right to life. Both of these rights are potentially violated when women are subjected to rape and domestic violence. Article 3, which provides for the equal enjoyment by both sexes of the Covenant's rights, is violated if women are not protected from these practices by law and the government's diligent enforcement of such law.

The Committee has urged States to promulgate laws providing effective protection against rape, sex abuse, and violence against women.<sup>25</sup> The Committee holds a negative view of legal provisions that exempt a rapist from punishment if he marries his victim,<sup>26</sup>

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

<sup>18</sup> *Id.*, at 18.

<sup>19</sup> U.N. Doc. A/51/40, ¶318.

<sup>20</sup> GUAT. CONST., ART. 101.

<sup>21</sup> *Id.* Art. 102, § k).

<sup>22</sup> LABOR CODE, Decree No. 1441, Aug. 16, 1961.

<sup>23</sup> *Id.*, art. 151, §§ a, b and c.

<sup>24</sup> *Id.*, art. 147, 155.

<sup>25</sup> U.N. Doc. A/52/40, ¶ 167.

<sup>26</sup> *Id.* ¶ 431.

and has criticized States that do not consider rape in marriage an offense.<sup>27</sup> It has further commented that acts of discrimination, such as sexual harassment in the workplace, should “be established as punishable crimes.”<sup>28</sup>

In 1996, the Guatemalan Congress promulgated the Law to Prevent, Punish and Eradicate Domestic Violence.<sup>29</sup> The law establishes the role of the national police<sup>30</sup> and justices of the peace<sup>31</sup> in the process of receiving complaints of domestic violence or in the filing of requests for protection in such cases.<sup>32</sup> However, the practical adherence to this law has been minimal, compelling women’s organizations to undertake group action to target these irregularities. Another problem continues to be the lack of laws addressing acts of discrimination such as sexual harassment.

The Committee should also consider addressing the following questions to the Guatemalan government:

1. What steps are being taken to address the high level of maternal mortality in Guatemala, particularly among rural women? What is being done to address the barriers that women face in accessing full and affordable reproductive health and family planning services?
2. What measures are being taken to address the issue of unsafe and illegal abortion, one of the primary causes of maternal mortality? What governmental efforts exist to ensure post-abortion care for complications as well as for reproductive health counseling?
3. What governmental programs have been established to ensure that adolescents have access to reproductive health services, and what efforts have been made to ensure that adolescents’ rights to privacy and confidentiality are respected when seeking such services? Have any initiatives been taken to ensure that health care providers are sensitized to the specific reproductive health needs of adolescents? What measures have been taken to institutionalize sexual education programs?
4. What efforts are being made to enforce the state’s policies and address the continuing problem of impunity with respect to sexual and domestic violence against women? In particular, are there currently any mechanisms in place to accurately record cases of sexual and domestic violence and to follow up on protective measures and sentences against perpetrators?

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

<sup>28</sup> *Id.* ¶ 249.

<sup>29</sup> Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar [Law to Prevent, Sanction and Eradicate Domestic Violence], promulgated by Decree No. 97-96, Oct. 24, 1996.

<sup>30</sup> *Id.*, art. 10.

<sup>31</sup> *Id.*, art. 6.

<sup>32</sup> *Id.*, art. 13.

5. How has the *Law for the Dignity and Integral Promotion of Women* been implemented? How have the rights of women, particularly rural and indigenous women, to access family planning information and services been ensured/improved?

Finally, we have included the following supporting documentation for the Committee's reference:

- ◆ The Guatemala Chapter of *Women of the World: Laws and Policies Affecting Their Reproductive Lives – Latin America and the Caribbean*, by CRLP and DEMUS, Estudio para la Defensa de los Derechos de la Mujer.
- ◆ The Guatemala Chapter of *Women of the World: Laws and Policies Affecting Their Reproductive Lives – Latin America and the Caribbean 2000 Update*, by CRLP and DEMUS, Estudio para la Defensa de los Derechos de la Mujer.
- ◆ *An Unfulfilled Human Right: Family Planning in Guatemala*, by CRLP.
- ◆ *Reproductive Rights 2000: Moving Forward*, by CRLP.

There remains a significant gap between the provisions contained in the International Covenant on Civil and Political Rights and the reality of women's reproductive health and lives. We appreciate the active interest that the Committee has taken in the reproductive health and rights of women in the past, stressing the need for governments to take steps to ensure the realization of these rights.

We hope that this information is useful during the Committee's review of the Guatemalan government's compliance to the provisions contained within the International Covenant on Civil and Political Rights. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Very truly yours,

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