INDEPENDENT REPORT FROM NON-GOVERNMENTAL ORGANIZATIONS

SUBMISSION TO THE HUMAN RIGHTS COMMITTEE
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By

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In light of the presentation of Guatemala's Third Periodic State Report to the Human Rights Committee (the Committee), the Center for Economic and Social Rights (CESR), the Multidisciplinary Group on Sexual and Reproductive Rights of Guatemala, and Planned Parenthood Federation of America (PPFA) wish to make this joint submission to the Committee, ahead of its examination of Guatemala's periodic report on the implementation of the International Covenant on Civil and Political Rights (ICCPR). The areas of concern addressed in the report evidence significant structural and systemic problems affecting fundamental human rights of Guatemalan women protected by the ICCPR, in particular the rights of low-income women, indigenous women, and those living in rural areas.

These areas of concern include 1) equality between men and women, 2) maternal mortality and morbidity, 3) lack or limited access to sexual and reproductive health services, 4) lack of adequate information on sexual and reproductive rights for adolescents, and 5) violence against women.

The undersigned organizations urge the Committee to pressure the State to prioritize these issues as central to the complete enjoyment and full exercise of human rights for girls and women in Guatemala, as articulated in the ICCPR.

Background

Though Guatemala is a lower middle-income country, poverty, inequality, and discrimination are widespread. Women and girls suffer very high levels of gender- based violence and are restricted from full civic participation. Racism and poverty most sharply affect the large indigenous population. And while the country clearly turned a corner with the Peace Accords of 1996, corruption, impunity, and political instability persist.

The reality of Guatemalan women's lives, particularly indigenous women, is characterized by pervasive discrimination in the economic, political, educational, and health spheres, as well as within the family. Patriarchal attitudes among men make it extremely difficult for a woman to exercise her rights without her partner's approval. Gender and sex discrimination in its many forms is only beginning to be recognized[1].

The Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW Committee) has stated that Guatemalan women's poverty is reflected in their poor access to health care, including sexual and reproductive health, leading to high rates of maternal mortality, and lack of access to land and educational opportunities[2]. The CEDAW Committee has also called upon Guatemala to ensure, inter alia, that indigenous women have full access to bilingual education, health services, and credit facilities and can fully participate in decision-making processes[3]. These decision-making processes must include real choices regarding reproductive health to avert deaths from preventable causes.

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[1] The Center for Reproductive Rights, *An Unfulfilled Human Right: Family Planning in Guatemala,* p. 29. http://reproductiverights.org/sites/crr.civicactions.net/files/documents/guatemala.pdf

[2] Committee on the Elimination of all Forms of Discrimination against Women, Concluding Observations to Guatemala, to Guatemala, 12 February 2009, CEDAW/C/GUA/CO/7, para. 26, 40 and 42.

[3] Ibidem.

Despite repeated pledges by governments over the last decade to promote safe motherhood as a national priority, little progress has been made in building a maternal health system that minimizes the risks faced by Guatemalan women and guarantees their human rights[4]. For many years, Guatemala did not take the necessary or adequate measures to respect, promote, and guarantee reproductive and sexual rights even though it had signed and ratified most international human rights treaties, including the ICCPR[5]. In recent years, in fulfillment of Guatemala´s commitments under the Millennium Development Goals[6], policies and strategies have been drawn up with the aim of reducing maternal mortality and morbidity. However, in practice, there has been no political support for the establishment of comprehensive reproductive health programs, having as a consequence the violations of not only economic, social, and cultural rights, but also of civil and political rights, mostly of women.

The worst consequences of the denial of human rights have been suffered by the indigenous population, constituting around 40% of the total population[7]. Indigenous women, in particular, have been the most affected by economic and social deprivation and exclusion. In a country such as Guatemala, where the majority of the population lives in poverty the government's applicable policies and programs related to reproductive rights are significant determinants of whether individuals are able to exercise these rights[8]. It is relevant to note that despite being the largest economy in Central America "the country's social indicators are generally much lower than those of the poorest countries in the sub-region, such as Honduras and Nicaragua"[9]. More than half the population lives below the national poverty line and one in seven Guatemalans lives in conditions of extreme poverty[10]. Poverty is twice as prevalent among the indigenous population, 75% of which lives in poverty (as compared to 36% of the non-indigenous population). More than one-third of the poor indigenous population (over one million people) lives in extreme poverty[11].

1) Equality between men and women (Articles 2, 3, 26 and 27)

Gender disparities are thoroughly entrenched in Guatemala. Poverty disproportionately affects women, children, and residents of the northern and northwestern indigenous regions, where more than three-fourths of the population are poor.

Chronic malnutrition is greater in girls (50%) than in boys (48.6%)[12]. According to official data from 2000, the prevalence of chronic malnutrition was almost four times greater among boys and girls from the poorest quintile than in those from the wealthiest quintile[13].

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[4] Center for Economic and Social Rights and Instituto Centroamericano de Estudios Fiscales, Rights or Privileges, Fiscal Commitment to the Right to Health and the Right to Health, Education and Food in Guatemala, 2009, p. 14. Executive Summary available in English at:
http://www.cesr.org/downloads/Rights%20or%20Privileges%20Executive%20Summary%20final.pdf
[5] Guatemala ratified this treaty on May 5, 1992.
[6] Op.cit 4, p. 46.
[7] Instituto Nacional de Estadística, Encuesta Nacional de Condiciones de Vida – ENCOVI (National Survey on Statistics, National Survey on Life Conditions) 2006.
[8] Op. cit. 1 p. 29. Available at: http://reproductiverights.org/sites/crr.civicactions.net/files/documents/guatemala.pdf
[9] Op. cit. 4, p. 7.
[10] Ibidem.
[11] Ibidem.
[12] Encuesta Nacional de Salud Materno Infantil - ENSMI (National Survey on Infant Maternal Health) 2002.
[13] Op. Cit. 4, p. 21.

Gender disparities in education are particularly marked. The ratio of girls to boys completing primary school is the lowest in Latin America[14]. Additionally girls' completion rates are far lower than boys'. According to data from the Guatemalan Ministry of Education, the gender gap for completion of primary education has increased from 6.4 percent in 1991 to 6.9 percent in 2006. Gender disparities are also evident among indicators for grade repetition and school inscription. Male non-indigenous youth complete an average of 5.6 years of schooling, while indigenous girls complete an average of 3.5 years. This gap has remained relatively stable over the last 15 years, despite the commitments to the objectives of the MDGs[15]. As a result, the average literacy rate among male, non-indigenous, urban youths is almost 30% higher than that of female, indigenous, rural women of the same age[16].

2) Maternal mortality (Articles 3, 6, 7, 17.1, 17.2 and 26)

Article 6 of the PIDCP requires that States not only respect the right to life, but also guarantee and protect it. States are obligated to take positive measures necessary to preserve life[17]. Such measures should respond not only to the needs of men, but women as well, in accordance to Articles 3 and 26 of the ICCPR, which establishes the obligation of States to guarantee equality in the enjoyment of the rights between men and women, including equality in before the law.

According to the most recent comparative UN data, Guatemala has one of the highest maternal mortality rates in Latin America, 290 deaths per 100,000 live births[18]. A Guatemalan woman is 20 times more likely to die from complications in childbirth or pregnancy than a woman in Costa Rica[19]. Furthermore, national data indicate that indigenous women face a grossly disproportionate risk of pregnancy-related death. An indigenous woman is three times more likely to die during childbirth or pregnancy than a non-indigenous woman[20].

It is worth mentioning that according to the tracking and monitoring system for Millennium Development Goal number 5 (MDG 5), which calls for improvement of maternal health, Guatemala is still far behind in meeting this goal[21].

The principal immediate cause for maternal mortality in Guatemala is related obstetrical complications during pregnancy, birth, or the postpartum period. In other words, 50% of

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[14] Op. cit. 4, p. 65
[15] Op. cit. 4, pp. 63-75.
[16] Op. cit. 4, pp. 63-75.
[17] Human Rights Committee, General Comment, no. 6: Right to Life, HRI/GEN/1/Rev.7 (1982), par. 5.
[18] Data from WHO/UNICEF/ UNFPA and World Bank, 2007, cited in Op. cit. 4, p. 7. This figure represents the estimated maternal mortality rate, adjusted for under-reporting. The nationally-reported figure published by the Guatemalan Ministry of Health in 2003 is 153 deaths per 100,000 live births.
[19] Ibidem.
[20] Ministry of Health, Final Report on Maternal Mortality Data for 2000. MSPAS, *Informe Final: Línea Basal de Mortalidad Materna para el Año 2000,* Guatemala City, Guatemala: MSPAS, 2003., cited in Op. Cit 4. p 41.
[21] Tracking Monitor for the Millennium Development Goals available at: http://www.mdgmonitor.org/country_progress.cfm?c=GTM&cd=320. For more information also see: *Margaret C* Hogan, Kyle J Foreman, Mohsen Naghavi, Stephanie Y Ahn, Mengru Wang, Susanna M Makela, Alan D Lopez, Rafael Lozano, Christopher J L Murray, Maternal mortality for 181 countries, 1980–2008: a systematic analysis of progress towards Millennium Development Goal, Institute for Health Metrics and Evaluation.

Guatemalan women who die in childbirth do so due to hemorrhages – a higher proportion than the Latin American average, and an indication of the lack of timely access to emergency obstetric care.

- **Indigenous women and women from rural areas are the most affected**

The regions with the highest maternal mortality rate are the north, northwest, and southwest of the country, which are also the regions with higher concentration of indigenous, rural, and poor population[22]. In Alta Verapaz, one of the poorest departments, the maternal mortality rate is four times higher than in Sacatepéquez, a department located closer to the capital city[23].

Access to skilled attendance in childbirth — a critical intervention to prevent maternal death — is still far from universal. Official data from 2002 reported that only 41% of births were attended by qualified personnel, highlighting the disparities between women living in urban areas (66%) and rural areas (33%). Rates of maternal death are higher in those areas where there are fewer births in public health centers. More updated data[24] shows that the total percentage of births attended by qualified personnel is now 51.3%. However, the disparity between the urban population (77%) and rural population (37%) has widened further. Similarly, the gap among indigenous and non-indigenous has also grown to 40 percent between 2002 and 2008/09[25]. The lack of cultural appropriateness of maternal health services, and derogatory treatment at the hands of maternal health personnel, continue to dissuade many indigenous women from accessing these services. Emergency obstetric care also continues to be unavailable and inaccessible to most women, particularly rural, indigenous and poor women, despite recent commitments to expand the number of Maternal and Child Health Centers (Centros de Atención Integral Materno Infantil- CAIMIs)[26].

In 2009, the CEDAW Committee noted that the maternal mortality rates were still very high in Guatemala, and that the "vulnerable groups of women, in particular in rural areas, still have difficulties in accessing reproductive health care services"[27]. This Committee recommended that Guatemala increase coverage and accessibility of medical services for women, in particular in rural areas, and increase training of health professionals, including midwives, in rural areas and in indigenous communities[28]. The Committee on Economic, Social and Cultural Rights (ESCR Committee)[29] and the Committee on the Rights of the Child[30] have also expressed concern over Guatemala's high rates of maternal mortality.

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[22] Secretaria de Planificación y Programación de la Presidencia - SEGEPLAN (Ministry of Planning and Programming of the Presidency) 2006.
[23] Ministry of Health 2003.
[24] Encuesta Nacional de Salud Materno Infantil - ENSMI (National Survey Infant Maternal health) 2008-2009
[25]Ibidem.
[26] Op cit 4, pp. 47-55.
[27] Concluding observations of the Committee on the Elimination of all Forms of Discrimination against Women to Guatemala, 12 February 2009, CEDAW/C/GUA/CO/7 par. 35.
[28] Ibidem, par. 36.
[29] Concluding observations of the Committee on Economic, Social and Cultural Rights to Guatemala, 12 December 2003,E/C.12/1/Add.93 par. 25.
[30] Concluding Observations of the Committee on the Rights of the Child to Guatemala, CRC/C/15/Add.154 9 July 2001, para. 41.

- **Illegal and unsafe abortion is one of the leading causes of maternal mortality**

According to international human rights obligations, the Guatemalan State has a duty to prevent the high maternal mortality rates resulting from illegal and unsafe abortion[31], yet its official government report acknowledges that abortion and the complications and deaths due to abortions have not been addressed properly[32], even though this Committee brought this situation to the government's attention in 2001.

Despite repeated pledges by the government over the last decade to promote safe motherhood as a national priority, little progress has been made in building a maternal health system that minimizes the risks faced by Guatemalan women and guarantees their right to life and health[33]. The government includes in its official report to the Committee that maternal mortality is one of the priorities of the public health policy. It also acknowledges the lack of budget to implement the strategies needed to address this problem properly and the lack of celerity in implementing the strategies,[34] which confirms that there is a substantial gap between political will and actual actions to reduce maternal mortality, which is the State´s obligation.

In accordance with the human rights principles outlined in the ICCPR, this Human Rights Committee has recognized that a State's duty to protect the right to life of women, necessarily includes a commitment to providing access to safe, legal abortion[35], and moreover, that denying such access can constitute multiple violations of the Covenant[36]. This Committee has also expressed that State Parties to the ICCPR should "ensure that [women] do not have to undergo life-threatening clandestine abortion"[37] in accordance with Article 6[38], and has clearly linked illegal and unsafe abortions with high rates of maternal mortality.[39]

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[31] CEDAW Committee concluding observations to Nicaragua, 02/02/2007, U.N. Doc. CEDAW/C/NIC/CO/6, para. 17.

[32] See paragraph 205 of the Guatemalan official report.

[33] Op. Cit. 4, p. 14.

[34] See paragraph 198 of the Guatemalan official report.

[35] See Center for Reproductive Rights, Bringing Right to Bear, Abortion and Human Rights Government Duties to Ease Restrictions and Ensure Access to Safe Services, New York. Available at: http://reproductiverights.org/sites/crr.civicactions.net/files/documents/BRB_abortion_hr_revised_3.09_WEB.PDF. This publication refers to the following Human Rights Committee Concluding Observations that have addressed this issue: Chile, 18/05/07, U.N. Doc. CCPR/C/CHL/CO/5, par. 8; Costa Rica, 08/04/99, U.N. Doc. CCPR/C/79/Add.107, par. 11; El Salvador, 22/07/2003, U.N. Doc CCPR/CO/78/SLV, par. 14; Gambia, 12/08/2004, U.N. Doc. CCPR/CO/75/GMB, par. 17; Guatemala, 27/08/2001, U.N. Doc. CCPR/CO/72/GTM, par. 19; Honduras, 13/12/2006, U.N. Doc. CCPR/C/HND/CO/1, par. 8 ; Kenya, 29/04/2005, U.N. Doc. CCPR/CO/83/KEN, par. 14; Kuwait, 27/07/2000, U.N. Doc. CCPR/CO/69/KWT, A/55/40, pars. 15–16; Lesotho, 08/04/99, U.N. Doc. CCPR/C/79/Add.106, par. 11; Mauritius, 27/04/2005, U.N. Doc. CCPR/CO/83/MUS, par. 9; Morocco, 01/12/2004, U.N. Doc. CPR/CO/82/MAR, par. 29; Paraguay, 24/04/2006, U.N. Doc. CCPR/C/PRY/CO/2, par. 10; Peru, 15/11/2000, U.N. Doc. CCPR/CO/70/PER, par. 20; Poland, 02/12/04, U.N. Doc. CCPR/CO/82/POL, par. 8; Senegal, 19/11/97, U.N. Doc. CCPR/C/79/Add.82, par. 12; Trinidad and Tobago, 03/11/2000, U.N. Doc. CCPR/CO/70/TTO, par. 18; United Republic of Tanzania, 18/08/98, U.N. Doc. CCPR/C/79/Add.97, par. 15; Venezuela, 26/04/2001, U.N. Doc. CCPR/CO/71/VEN, par. 19; Viet Nam, 26/07/2002, U.N. Doc. CCPR/CO/75/VNM, par. 15.

[36] See, e.g., Human Rights Committee, K.L. v. Peru, Comm. No. 1153/2003, 24/10/05, U.N. Doc. CCPR/C/85/D/1153/2003.

[37] Human Rights Committee, General Comment 28, Equality of rights between men and women (art. 3), 10, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (March 29, 2000).

The Guatemalan Penal Code highly restricts abortion, allowing the procedure only when a pregnant woman's life is in danger. In other circumstances, abortion is punishable by imprisonment[40]. The criminalization of abortion drives women to seek illegal, clandestine, and unsafe abortions, with subsequent risks to their life and health, particularly for young women and girls. This issue has been raised by the CEDAW Committee to the Guatemalan State's attention in its latest concluding observations from 2009[41].

The criminalization of abortion in Guatemala results in women and girls who are victims of rape or incest being forced to carry their pregnancy. Despite the high levels of sexual violence in Guatemala, this is a situation that has not been addressed by the government.

According to a 2003 government study on maternal mortality, abortion is the fourth leading cause of maternal deaths[42]. An estimated 65,000 girls and women a year obtain an abortion, often performed by non-medical personnel under non-sterile conditions, according to a 2006 study by the Guttmacher Institute[43]. The report estimates that while one in three women seeking abortion experiences complications, only one in five receives medical treatment for those complications. Nearly 22,000 women a year are hospitalized for treatment of abortion-related complications. Thousands more do not seek medical attention and suffer further complications out of fear of stigma or prosecution for inducing an abortion.

This study shows that a woman is often left with no option but to subject herself to an unsafe abortion that endangers her life or damages her dignity, thus violating her right to life as well as other rights recognized at the ICCPR, such as the right to privacy established in article 17, which refers to decisions people make about their bodies, particularly related to reproduction, which should be strictly private. As affirmed in international standards, women´s reproductive rights include the right to make decisions free from coercion, discrimination or violence[44]. Governments should not interfere in women`s reproductive and sexual decisions, and should provide them with the necessary information to make informed ones.

In Guatemala, there are no clear laws or guidelines on how to proceed when an abortion is needed to save a woman's life. As a result, there is a high risk that medical professionals lack the awareness that it is legal and do not have knowledge on how to perform an abortion to save a patient's life. This could exacerbate the lack of access to safe, dignified, and timely services, which causes women to seek unsafe abortions. Therefore, it is important to promote access to safe and legal abortion services by developing health regulations and guidelines that are grounded in a human rights framework. The Ministry of Health has the responsibility to draft and approve guidelines to ensure access to therapeutic abortion.

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[38] Ibidem.
[39] Ibidem.
[40] Guatemalan Penal Code, Article 137.
[41] CEDAW Committee concluding observations to Guatemala, Op. Cit 18, para. 36.
[42] Ministry of Health, Final Report on Maternal Mortality Data for 2000. MSPAS, *Informe Final: Línea Basal de Mortalidad Materna para el Año 2000,* Guatemala City, Guatemala: MSPAS, 2003.
[43] Singh, Elena Prada and Edgar Kestler, Induced Abortion and Unintended Pregnancy in Guatemala, International Family Planning Perspectives, Volume 32, Number 3, September 2006, p. 136.
[44] International Conference on Population and Development, Programme of Action , Chapter VII, A

3) Limited access to reproductive health services (Articles 3, 6, 9, 17, 23 and 26)

This Committee has recognized the importance of providing women and girls access to reproductive health services and has required States Parties to report on their efforts to reduce maternal and infant morbidity and mortality rates and to "help women prevent unwanted pregnancies, and to ensure (women and girls) do not have to undergo life-threatening clandestine abortions"[45]. The lack or limited access to reproductive health services constitute a violation to articles 2, 3, 6, 7, 17, 24, 26 of the ICCPR, since these health care services help young girls to develop the necessary sense of self-awareness and self worth to initiate and invest in care for their bodies as well as to make informed decision about personal relationships. Further, access to reproductive and sexual health services reduces not only the incidence of maternal mortality and morbidity but also unintended pregnancies and sexually transmitted infections, including HIV.

In Guatemala, the lack of access to adequate reproductive and sexual health care services for girls and women, particularly indigenous girls and women, continues to be an issue of grave concern. The government provides health services at health care posts, health centers[46] and hospitals scattered throughout the country, however, these services only reach 25% of Guatemala's population[47], leaving most of the population without access to these services. While many of these health centers offer pre- and post-natal care, and are staffed by birthing attendants, only 51% of women have access to medical personnel during childbirth (the average for Central America is 77% percent)[48]. Moreover, ethnic and geographic disparities in access have widened, as noted earlier. Other services such as STI screenings and mammograms are only available at hospitals,[49] which severely limits the reproductive health care services that are provided to women, in particular those living in rural areas. While government run health centers and health posts are placed throughout the country, many of them have limited staff, are open for limited hours, and offer a limited supply of medicine for the population.

Guatemala has the highest fertility rate in Latin America and one of the highest adolescent pregnancy rates in the region. Although the country's total fertility rate (TFR: a synthetic measure of the fertility rate in order to facilitate comparisons) decreased from 4.4 (ENSMI 2002)[50] to 3.6 (ENSMI 2008/2009), huge discrepancies can be seen between the urban population (2.9) and the rural population (4.2), suggesting a lack of adequate reproductive health services, especially in rural areas.

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[45] Human Rights Committee, General Comment 28 (art.3).Op. Cit. 10.
[46] The Government also supports a plan known as the "Extension of Coverage", by which small NGOs train promoters to offer basic healthcare in the more rural areas. The government pays these NGOs per client they serve. The objective of this plan is to reach more of the population.
[47] Kestler Edgar, Singh Susheela, Prada Elena. Induced Abortion and Unintended Pregnancy in Guatemala. International Planning Perspectives, 2006, 32(3):136-145.
[48] Population Reference Bureau, Women of our World, 2005. Available at: http://www.prb.org/pdf05/WomenOfOurWorld2005.pdf
[49] Ibidem.
[50] Encuesta Nacional de Salud Materno Infantil - ENSMI (National Survey on Infant Maternal Health)

- **Access to family planning and contraception**

The Committee has established that the right established in article 23 of the ICCPR not only refers to the right to marry, but also to the right to have children with the chosen person[51]. Therefore, the right to plan and to construct one's family must be protected and ensured by the obligation of the State not to interfere with reproductive options, which includes the possibility of acceding to a range of options of contraceptives. The Guatemalan government must abstain from imposing legal and political obstacles that impede access to an ample range of family planning methods for everyone.

Numerous studies have found low levels of accurate knowledge in Guatemala about modern and natural family planning methods, as well as the female reproductive cycle. Adolescent girls still have little access to the information and services needed to exercise their right to decide freely whether to have children, how many they might have, and the time between having each child. Guatemala ranks among the countries in Latin America with the worst indicators of unmet contraceptive need. According to the latest data (ENSMI 2008-2009), unmet contraceptive need is particularly high in rural areas (25.4%) and among indigenous women (29.6%), in comparison with urban areas (14.7%) and non-indigenous women (15.1%). The country's low contraceptive knowledge is reflected in the contraceptive prevalence rate, which indicates that only 30% of women of reproductive age have ever used any contraceptive method[52]. Rural and indigenous women have significantly less knowledge of such matters than do urban and *mestizo* (of mixed Spanish and indigenous descent) populations. More than 40% of *mestiza* women use some form of contraception, while less than 10% of indigenous women do[53]. However, the majority of the population desires greater access to family planning information and services and believes that the government should support that access[54.] The desired use of family planning, versus actual contraceptive prevalence, shows that 24.3% of women have an unmet need for family planning methods[55].

There is also little consistency of the availability of contraceptive methods at health centers. For example, many of the long-term methods are often unavailable at health posts and centers, while many of the short-term methods are often unavailable at hospitals[56]. Health workers at these health care centers rarely provide contraceptive education, and simply hand out the contraceptive method, thus women are rarely well informed about its proper use, any side effects, or STI prevention, violating article 19 of the ICCPR.

The lack of provision of family planning information and services disproportionately affects women living in rural areas, particularly indigenous woman, constituting a violation to article 2[57]. This is because indigenous women are much less likely to have the information, the economic means, and

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[51] Human Rights Committee, General Comment no. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23).
[52] Op. cit. 1, p. 16.
[53] Ibidem.
[54] Ibidem.
[55] Ibidem.
[56] Op. cit. 1, citing Instituto Nacional de Estadística, Encuesta Nacional de Salud Materno Infantil (National Survey of Maternal and Infant Health), at xxiv, 86, July 1999.
[57] The maternal mortality rate between indigenous women is 211, and between non indigenous is 70. The regions with higher maternal mortality rates in the country are those with a higher indigenous, rural population as well as high poverty rates. Op cit. 4, p. 41.

the autonomous ability, given the prohibitive distances and linguistic and cultural differences, to seek out governmental health providers to help manage their reproductive health and control their reproductive capacity, despite their expressed desire to do so. However, it is not just the physical and economic barriers impeding access to reproductive health services, "the cultural inappropriateness of these services is one of the most significant obstacles faced by indigenous women, who report derogatory treatment and disregard for their language and cultural traditions, such as a preference for vertical childbirth"[58].

The CEDAW Committee has recommended that Guatemala increase the coverage and accessibility of medical services for women, in particular in rural areas, and increase the training of health professionals, including midwives, in rural areas and in indigenous communities[59].

In what seemed like a positive sign, in 2005, the Guatemala Congress approved the Universal and Equitable Access to Family Planning Services Law, which stresses the need for family planning services and ensures that efforts to provide these services receive adequate financing[60]. However, this law underwent many legal challenges, which hindered its implementation. It was three and a half years later (October 2009) that the guidelines for this law were finally approved with the goal to make this law operational. Nevertheless, there is still work to do to assure its implementation.

It seems the government has finally shown some political will to comply with its obligation to provide family planning services, but results remain to be seen. Careful monitoring and accountability is being carried out by civil society organizations, in particular by the Observatory on Reproductive Health[61].

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[58] Op. cit 7, p. 14.

[59] CEDAW Committee, Concluding Observations to Guatemala, February 12, 2009, CEDAW/C/GUA/CO/7, para 36.

[60] The law aims at ensuring that all persons receive access to family planning services, which it defines as including information, counseling, sexual and reproductive health education and the provision of family planning methods, including access to emergency contraception[60]. Furthermore, the law establishes mechanisms for funding family planning services at the national level in order to reduce Guatemala's dependency on foreign donors for these services. The law is to be implemented nationally, in primary and secondary schools, public health facilities, and in facilities run by private and civil society organizations offering basic health care services. The law is intended to primarily benefit rural populations who do not have access to basic health care services. It also calls for the Ministry of Health to work with NGOs to ensure that geographically isolated populations have access to family planning measures. The government must ensure that family planning services are offered by skilled providers and that these services are integrated into other reproductive health services, including prenatal, delivery, and postnatal care; uterine and breast cancer detection; testing for sexually transmissible infections; and prevention of osteoporosis. A special strategy is to be developed for adolescent access to family planning.

[61] The Observatory on Reproductive Health (OSAR) is unique collaboration among civil society organizations, academia and professional organizations, to monitor the implementation of the legal framework and public policies related to reproductive health in Guatemala. It was created with the support of the Guatemalan Congress, in order to provide support to and ensure accountability of the Congress itself. OSAR has recently opened 11 "local chapters" in different departments of the country, which will allow the Observatory to monitor the policies outside the capital city and give them a more integral view of the situation of reproductive health in the country. For more information in Spanish: http://www.osarguatemala.org/

4) **Lack of information on reproductive and sexual rights for adolescents** (Articles 19 and 24)

A complete understanding of sexual and reproductive health is essential to make informed decisions about one's sexual and reproductive health and to protect the right to health. In addition, information on sexual and reproductive health is essential to reduce teen pregnancy, unwanted pregnancy, unsafe abortion, and to prevent transmission and expansion of sexually transmitted infections, including HIV/AIDS, among youth. States cannot guarantee human rights of adolescents with any effectiveness or take any measures with respect to their public health concerns without first guaranteeing that all people have comprehensive sexual and reproductive health information that is non-discriminatory and based on current scientific evidence. It's crucial that adolescents are able to demand that the State provide this information in order to give them a "greater say in decision-making processes and enhancing their capacity to hold providers accountable for the delivery and quality of services"[62].

It's worth noting that 94% of maternal deaths occur in women with primary education or less, which reflects the strong link between the right to education and right to health[63].

In Guatemala, since the year 2000, the Law for the Prevention and Control of STIs, HIV and AIDS (27-2000) provides a legal framework that obligates the State of Guatemala, through the Ministry of Education, to provide sex education in all public schools and provide better and science-based information in public health services. Nevertheless, they have failed to do so: sex education still hasn´t reached public schools, and HIV preventive programs have been focused on sexual abstinence and delaying first sexual intercourse.

The National Statistic Institution of Guatemala (Instituto Nacional de Estadística –INE-) revealed that 69% of the population is less than 30 years old; because of that, it is vital that sex education be institutionalized in public schools with its own specific budget. The need for a national campaign to prevent unwanted pregnancies and HIV is also needed, especially for teenagers and young people, a campaign that must be lead by the Ministry of Health, the Reproductive Health Program and National HIV/AIDS Program, and should have its own specific budget.

The 2005 Law of Universal and Equitable Access to Family Planning Services has two articles that are devoted entirely to adolescents: Article 9 calls for coordinating strategies between ministries to provide specialized services, and Article 10 specifies that beginning in the last two years of primary school, age-appropriate, school-based sexuality education curricula should include content on "individuals' rights and responsibilities in maintaining and promoting their health; sexuality; and too early and unwanted pregnancies as risk factors for poor maternal and child health outcomes"[64].

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[62] Article 19, *Time for Change: Promoting and Protecting Access to Information and Reproductive and Sexual Health Rights in Peru,* p. 19, January 2006.
[63] Op. cit 18, p. 41.
[64] Congreso de la República de Guatemala, Ley de Acceso Universal y Equitativo de Servicios de Planificación Familiar y su Integración en el Programa Nacional de Salud Reproductiva, Decreto Número 87-2005, http://www.infile.com/cms/myfiles/503.pdf (Congress of Guatemala, Decrete 87/2005).

However, the implementation of this law continues to be a challenge in Guatemala in order to become a reality for adolescents.

Recently, on July 9, 2010, the Ministry of Health and the Ministry of Education, signed a collaborative political agreement, intended to implement integral sexual education for adolescents. However, access to comprehensive sex education continues to be a topic that has not reached the classroom and continues to be a political topic. It is urgent that the Guatemalan government implement the regulations of its own Family Planning Law in order to guarantee adolescents have access to sex education, which is necessary to exercise their human rights.

5) Sexual violence against women (Articles 3 and 17)

By not ensuring the necessary measures to prevent and eradicate violence against women, the State has failed to guarantee the protection of several rights for women and girls, which are enshrined in the ICCPR, including the right to life, liberty, security, privacy, and freedom from cruel, inhumane, and degrading treatment.

Violence, and in particular sexual violence, continues to be one of the main issues faced by women in Guatemala. The country continues to have high levels of violence associated with organized and street crime. Within this context, violence against women is also increasing, and as a result, both the CEDAW Committee and the ESCR Committees have expressed several times their concern over the gravity of the situation and the high rates of violence against women in Guatemalan society, including sexual violence inside and outside the family.

In its official report, Guatemala points to the advancement made in reaching equality between women and men, through the adoption of a normative framework on the issue of violence. Though as it is mentioned in the report, the Law against Femicide and other forms of violence against women, as well as the Law against Sexual Violence, exploitation and human trafficking are now in existence, their enforcement and implementation remain to be seen. According to concluding observations of the CEDAW Committee, despite the existence of this legislation regarding femicide[65], the overall climate of impunity has not subsided and women continue to be fearful of denouncing cases of violence. Additionally, the sexist culture that permeates Guatemalan society renders the enforcement of these laws even more difficult.

Women who have been victims of rape are in an acutely vulnerable situation, and it is the duty of the authorities to take all the necessary steps to protect them. It is important that women who have been raped receive timely quality care; care that is gender sensitive and that includes access to emergency contraception to prevent unwanted pregnancies. Unfortunately, given the mistrust that women have toward the authorities, there are no official statistics on the number of women that have been raped.

[65] Cedaw Committee, Concluding observations to Guatemala, 12 February 2009, CEDAW/C/GUA/CO/7.

As access to legal abortion in Guatemala is limited to saving the life of the woman, women who have been victims of rape, incest, and whose health (physical, mental, or social) is affected by the trauma of the experience are being denied the right to access safe and legal abortions. According to the Human Rights Committee, the prohibition of torture, cruel and inhumane treatment refers not only to acts that cause physical pain but also to acts that cause mental suffering to the victim[66]. The situation faced by women who are unable to avoid a pregnancy or are forced to carry their pregnancy to term, in many instances, can fall under the violation of the right to be free of torture and other cruel and inhumane or degrading treatment. The case of K.L. v. Peru analyzed by this Committee clearly demonstrates that the State's failure to guarantee access to a safe and legal abortion could cause suffering that can constitute a violation of Article 7 [67]. The availability of emergency contraception is also crucial for victims of rape.

As part of its final observations in 2009, the CEDAW Committee expressed concern regarding the lack of information provided by the government on the degree and consequences of illegal and unsafe abortions[68]. The Committee recommended the adoption of effective measures, including a review of the legislation that penalizes abortion, to prevent unsafe abortions and their impact on the health and the maternal mortality rates of women.

- **Rape and the lack of access to emergency contraception**

According to the law against rape, exploitation, and human trafficking[69], care for rape victims must be considered a medical emergency, and as such, the response from the health and justice systems must be timely and appropriate. For two years civil society, the State, and the international community worked on the protocol of a law intended to provide care to women victims of violence. Despite the fact, that the law was approved in November 2009, the protocol has not been implemented yet. On the contrary, the State is ignoring two years of work and is currently trying to reject the recently approved protocol in lieu of a new one, arguing the need to incorporate legal aspects that are in fact already part of the law established within the responsibilities of the Public Ministry.

Additionally, emergency room staff have not been trained in management of rape cases, nor is there a system of epidemiological surveillance for these cases. Staff are also not made aware of the emergency kits for rape that should be available in the hospitals. These emergency kits include two antibiotic treatments to prevent STIs, two tablets of emergency contraception to prevent pregnancy, and 56 tablets for antiretroviral treatment against HIV infection. Furthermore, there is not a system in place to notify the health and judicial systems when a woman is raped, nor is there a clear physical record of emergency services at each hospital, which adds to the lack of statistical information in cases of rape and violence against women.

[66] Human Rights Committee, General Comment No. 20: Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (art. 7), 10 March 1992 (HRI/GEN/1/Rev.7, para. 2 and 5).
[67] Human Rights Committee, Communication No. 1153/2003, CCPR/C/85/D/1153/2003, 22 November 2005, para. 6.3.
[68] Cedaw Committee, Concluding observations to Guatemala, 12 February 2009, CEDAW/C/GUA/CO/7, para. 36.
[69] Decree Number 9-2009.

The protocol approved in 2009, establishes the creation of Committees of Integral Attention for Violence against Women, of management of sexual violence and of child abuse. These committees must be made up of hospital management representatives, officials from the OB/GYN and pediatric departments, and members of the legal, social work, psychology, and nursing fields. These committees will make the decisions that will give way to the operational emergency activities, the notification and follow-up of cases as they relate to the health and safety of the victim. Unfortunately, these committees have not been created to date.

All of these facts nullify the right of women to be free from violence.

- **Stigmatization of post-abortion care**

Even though the national program of post-abortion care has been in existence in Guatemala since 1996, given the religious fundamentalism and stigma that exist around abortion, there continues to be resistance from health workers to provide post-abortion services to women. As a result of this, women who arrive at local health care centers with incomplete abortions are victims of institutional violence. Women are forced to wait for extended periods of time, are given inadequate doses of anesthesia for procedures, and are often forced to undergo sharp curettage – a riskier medical procedure than the international standard of manual vacuum aspiration (MVA)[70].

In line with international standards issued by the WHO, the State should use modern technology such as MVA or misoprostol to treat incomplete abortions and avoid violence against women in the health sector, in order to avoid degrading or inhumane treatment.

Although Guatemala states in its official report that they have a post-abortion care program, funding of this program ended in September 2009, and the Ministry of Health shows no willingness to secure funding to continue it. The lack of a mechanism to monitor the implementation of the post-abortion care program has lead to a lack of accountability.

Questions for the government

The organizations that have signed this letter hope that the Committee will consider addressing the following questions to the Guatemalan State when drafting the list of issues as well as during the public session of revision of Guatemala's periodic report, as they are critical to ensure women's human rights.

- What are the steps being taken by the government to achieve a substantive equality for women in order for them to exercise their sexual and reproductive rights?
- What measures are being taken by the government in order to guarantee women's rights in the country as a whole without discrimination on ethnic or socio-economic grounds or on grounds of the different departments of the country that they live in?

[70] See World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems*, Geneva, 2003.

- What steps are being taken to address the consistently high levels of maternal mortality in Guatemala and ensure availability of universal health care for women, particularly access to skilled birth attendance and to emergency obstetric care, in line with international guidelines?
- How is the government planning on obtaining efficient and accurate data for maternal mortality?
- How will civil society participate in the monitoring of the reduction of maternal mortality?
- What are the strategies that the Guatemalan State will undertake in order to guarantee therapeutic abortion to women as established in the law?
- How is the government thinking of bringing its laws and protocols on abortion into line with international standards regarding the right of all women to the highest standard of sexual and reproductive health?
- What steps have been taken to guarantee the implementation the Universal and Equitable Access to Family Planning Services Law enacted in 2006?
- What measures will be taken to ensure adequate public funding for coverage, quality, and cultural pertinence of family planning services?
- What measures will be taken to provide training and support to traditional midwives who provide health services in the communities?
- What measures will be taken to increase and ensure access to adequate information on sexual and reproductive rights, especially for adolescents?
- How will the fundamental sex education for adolescents be addressed by the government to prevent unintended teen pregnancies?
- What measures will be taken to prevent and eradicate violence against women?
- What are the qualitative and quantitative results of policies and programs established by the State to combat and prevent sexual violence, especially among indigenous women?
- How is the government going to address the problem of unintended pregnancies as a consequence of sexual violence?
- What is the actual budget for the post-abortion care program in Guatemala?
- Is there a monitoring mechanism for the post-abortion care program?

Recommendations

- Urge the Ministry of Health to adopt a reliable and efficient data system for maternal mortality and ensure enough of a budget to implement the new strategy to reduce maternal mortality.
- Establish and adequately fund the interventions and policies needed to ensure access, availability, and quality of Emergency Obstetric Care, skilled childbirth attendance, and referral networks.
- Adopt a national protocol grounded in a human rights framework to guarantee access to therapeutic abortion
- Implement government programs in order to reduce unintended pregnancy, as laid out in the Universal and Equitable Access to Family Planning Services Law. Additional programs should monitor access to quality care, with attention to regional differences.
- Guarantee universal access to family planning services, including emergency contraception.

- Create professional accreditation for midwives so that they are recognized as legitimate health care providers.
- Adopt a referral system which includes protocols in the hospital to ensure that midwives can continue to provide support to their patients while in the hospital.
- Improve public funding of adolescent-friendly services that offer culturally-appropriate comprehensive sexuality education
- Guarantee access to health and counseling for women victims of violence.
- Adopt a system within the Ministry of Health hospitals that guarantees treatment and access to medicine (such as the emergency contraception and anti-retroviral drugs).

There is still a significant gap between the rights protected by the ICPPR and the reality that Guatemalan women, especially indigenous women, have to face. We applaud the committee for its commitment to the rights of girls and women. We hope this information is useful during the committee's review of Guatemala's report. If you need further information on these issues please do not hesitate to contact any of the undersigned organizations.

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