

**GUATEMALA**  
**THE SITUATION OF LESBIAN, BISEXUAL, TRANSEXUAL AND**  
**TRANSGENDER WOMEN WITH RESPECT TO DISCRIMINATION**

Shadow Report

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**Organization of Bisexual and Lesbian Women “Desde Nosotras”**  
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**Convention on the Elimination of All Forms of Discrimination**  
**against Women (CEDAW)**

**43rd Session, January 19 - February 6, 2009**

# I NTRODUCTION

The Republic of Guatemala ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1982 and the Optional Protocol in 2001. It has since issued its two inaugural reports (CEDAW/C/GUA/3-4 and CEDAW/C/GUA/5), which were reviewed by the Committee in its 577th and 578th sessions, held on August 12, 2002. Concluding Observations were issued on August 23, 2002 (A/57/38), (CEDAW/C/GUA/6) 35th session, held from the 15th of May until the 2nd of June 2006.

The report issued by Guatemala is on the agenda of the upcoming 43rd session of the Committee (January 19 - February 6, 2009). This review is in compliance with the provisions laid out in Article 18 of the Convention.

This report seeks to offer a view of the situation that Lesbians, Bisexual, Transgender, and Transsexual women face, living in the City of Guatemala, particularly as regards discrimination based on sexual orientation<sup>1</sup> and gender identity.<sup>2</sup>

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<sup>1</sup> *Sexual orientation* refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender,” Yogyakarta Principles, Preamble.

<sup>2</sup> *Gender identity* to refer to “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms,” Yogyakarta Principles, Preamble.

## EXECUTIVE SUMMARY

Guatemala has ratified a series of international treaties that recognize the human rights of women. Some of these treaties have even become part of Guatemala's Constitution. Nonetheless, this has been insufficient in changing the discrimination that women face. An alarming sign of this fact are the violent murders committed against woman (femicide), which has been a serious problem for years. This terrible situation is no less a problem today as the number of murders to date has risen to 443.<sup>3</sup>

The situation is particularly acute in the case of violence committed against human rights defenders. The UN Special Representative, Hina Jilani, visited the country in 2003 and wrote in her report that the most fundamental rights of human rights defenders have been violated in Guatemala in recent years and these violations are almost never properly investigated. Only a few cases of violations against human rights defenders that have been reported have had a satisfactory legal outcome.

In large part, these attacks are directed towards activists or organizations that work with vulnerable populations, such as lesbians and female and travesti<sup>4</sup> sex workers, or towards the activities that these activists and organizations carry out. Those who have taken an active role in defense of their own rights inevitably run the risk of exposure to the same type of violence describe above.

In Guatemala women continue to suffer from inequality in regards to the protection of their human rights. Discrimination and violence also have a major impact on lesbian, bisexual, transsexual, and transgender women, already living their identities secretly, who seek to maintain their personal security and their participation in spheres crucial to survival, such as employment and education.

There are no anti-discrimination laws in Guatemala that protect sexual diversity. The government has also promised to classify sexual harassment against women as a criminal offense<sup>5</sup>. In conjunction with these initiatives, the Guatemalan government would provide a safe economic environment, free of discrimination and harassment toward women with different sexual orientations or gender identities.

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<sup>3</sup> Study conducted by the Government, dated October 13, 2008

<sup>4</sup> In Latin America, the term *travesti* refers to male-born people who express themselves in feminine ways. They modify or not their bodies through surgery and/or hormonal treatment. For many, being travesti is a distinct gender identity with a political dimension, as expressed by activists and scholars in this region.

<sup>5</sup> A Shadow Report on "The Human Rights Situation of Women in Guatemala"

# **M**AIN RIGHTS VIOLATIONS OF THE ARTICLES OF THE CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

*Violations to the structural principles of the Convention: equality, non-discrimination and state obligations*

*Article 1: Definition and scope of the concept of discrimination*

*Article 2: Policies and legislation designed to eliminate discrimination*

*Article 11: Eliminating discrimination against women in the field of employment*

In its Concluding Observations issued in 2002<sup>6</sup>) the Committee expressed its concerns in light of the fact that, while the human rights of women had been explicitly recognized in various laws, it did not appear that women were generally aware of their rights protected by these laws or the means by which to exercise them. The Committee observed that, despite the establishment of protective measures and rights in regards to social security in the labor field, the fact that no such legislation is applied has resulted in discrimination against women in the sense described in Article 1 of the Convention.

In the labor field, the unequal treatment of lesbian, bisexual, transsexual and transgender women begins with the posting of the job offer. In the majority of job offers a “nice appearance” is a stipulated requirement. In a social context this is equivalent to “be pretty, attractive” in opposition to appearances that may seem “less feminine.” By being denied access to employment or by receiving unequal treatment due to physical appearance, a lesbian, bisexual, transsexual or transgender woman’s right to freedom of expression is violated. Once integrated in the labor force, they work under the constant threat of being fired if their private lives become public.

Lesbian and bisexual women share the same burden as other women: being victims/objects of sexual harassment committed by male bosses. In the case of those who are identified by their bosses or male co-workers as lesbian, the harassment is justified by the belief, deeply-rooted in the culture, that all lesbians really need is a man to help them forget about women. In some cases, the women are “accused” of being lesbian because they do not respond positively to the harassment of their bosses and male co-workers. This type of accusation is problematic for all women, but for those who are actually lesbian and are trying to keep their orientation hidden, the situation becomes much more difficult. In other cases, not even the explicit manifestation of a lesbian preference helps to end the harassment. In Guatemala approval is still pending for a regulation that would penalize sexual harassment and recommend training aimed at the police, health, judicial and educational professionals.

In 2007, the Men’s Central Institute of Guatemala (high school) listed among its admission requirements that applicants should “exhibit no homosexual tendencies.” By this measure this public education institution not only denies admission and the right of education to lesbian and bisexual women, but also to any adolescent that expresses a feminine gender identity.

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<sup>6</sup> (A/57/38) Concluding Observations for the CEDAW, August 23, 2002.

**We request that the Honorable Committee recommend to the state of Guatemala:**

- 1.1. To establish in its legislation, the principles of equality and non-discrimination based on sexual orientation and gender identity, including means of amending and interpretation, and guarantee the effective execution of these principles both in public and private employment, including legislation that regulates professional training, hiring, promotion, firing, working conditions and wages;
- 1.2. To adopt all appropriate measures, including educational and training programs, aimed at eliminating prejudiced or discriminatory attitudes and practices based on the idea of inferiority or superiority of a sexual orientation, gender identity or gender expression;
- 1.3. To guarantee the right of each person to decide, under normal circumstances, when, to whom, and how to reveal information concerning their sexual orientation or gender identity, and to protect all people, in the areas of public and private employment against the arbitrary and unwanted disclosure of this information or the threat thereof by individuals who would disclose it;
- 1.4. To approve a law that deals with the issue of sexual harassment and specifically includes protections for women of different sexual orientations. The law should provide for the establishment of institutions tasked with receiving complaints of abuse, sexual harassment and discrimination, and of providing for appropriate training and awareness programs to counteract discriminatory attitudes towards people with diverse sexual orientations and gender identities;
- 1.5. To adopt all legislative, administrative and any other appropriate measures deemed necessary in order to guarantee equal access to education and equal treatment of all students, in an environment free from discrimination based on sexual orientation or sexual identity.

### **Article 3: Guarantee basic human rights and fundamental freedoms**

#### **General Recommendation 19 on violence against women**

Despite the recent law against femicide and other forms of violence against women (22-2008), the Guatemalan state has not demonstrated any real improvement. In the terrible context of violence against women and femicide that continues in the country, it is important to highlight the violence against female human rights defenders that goes back considerably. In large part, the common denominator between these attacks is that they are directed towards activists that work with vulnerable populations, such as lesbians, and female and travesti sex workers.

In 2003, members of the Support Organization for Integral Sexuality on AIDS (OASIS *Organización de Apoyo a una Sexualidad Integral frente al Sida*) were victims of an unsuccessful, but intimidating scene of harassment and kidnapping. This attack was probably linked to the group's denunciation of police abuses against female and travesti sex workers, as well as police murders of travesti women on the street (the best known case is that of Maria Conchita) and the insufficient action by the state to prevent or punish these cases.

During this same period more than 19 youths were killed. They were protesting the new penal laws and counted on the support of organizations like the Center for Human Rights Legal Action (CALDH) and the Institute of Comparative Penal Sciences. Likewise, members of other organizations were subjected to harassment and raids, such as Sons and Daughters for Identity and Justice against Forgetting and Silence (H.I.J.O.S), Lesbiradas, and workers of the Guatemala branch of Covenant House (*Casa Alianza*).

In 2004, Citizens Coordinated for Sexual Diversity (CCDS) organized their fifth Gay Pride March in Guatemala City and condemned the violent murders of 18 travesti women that had occurred between January and June of that year. On July 4, 2004 Vanesa Anzora, a transvestite activist that had participated in the March, was found strangled in a hotel room in Guatemala City. With her murder, the number of transvestite women killed in Guatemala in 2004 reached 19.

On July 7, 2004, an activist from Lesbiradas, an organization that defends the rights of lesbians, received the first of four anonymous telephone threats in the office the group shared with CCDS. In these calls, the same voice chided them for the work of the organization. Five minutes after the last call, a man showed up at the office with what the activists later identified as a phony donation. He told the activists "this is good work that you are doing, but be careful that you are not too public, because of the way things are, and with so many maniacs loose. Not that I am threatening you, it is just a piece of advice!" The activists became very nervous and ended the conversation. When the activists promised to contact him later, he responded that he already had the office's telephone number, which increased their suspicions, as they had never given him this information. The name and the telephone number he had given the activists turned out to be false.

In December 2005 Paulina Méndez Cartagena, a transsexual sex worker was killed by four men on motorcycles that were wearing police uniforms. The same four men had shot at Zulma, a transsexual woman that worked with Paulina and managed to survive. The case was never prosecuted, even though the National Human Rights Ombudsman

for Guatemala, Sergio Morales, presented a resolution, which affirmed that the murder was an extrajudicial execution committed by the police.

Around the same time, other members of the Support Organization for Integral Sexuality on AIDS (OASIS), came under gun fire when they were walking down a street known for being an area where travesti and transsexuals engage in sex work. According to OASIS, eight people belonging to the organization died violently. These cases were not isolated, besides these eight individuals, seven transsexual sex workers also died in 2005.

In June 2006 a transsexual died as a consequence of injuries sustained after being attacked by unknown assailants in Guatemala City. The deceased, named Barbara, was Honduran and held the post of treasurer in an association of transsexual individuals that sought to end violence against transsexual women working on sexuality issues.

In 2007 during a party to collect funds for prevention work with female and travesti sex workers in La Blanca, Ocos San Marcos, a small locality approximately 185 miles (300 km) from the capital, the participants were attacked with tear gas. The perpetrator of this attack has never been identified and since then no similar event could take place in this location

Continuing with this policy of persecution of activists, in August 2008 the police in the City of Flores Costa Cuca Quetzaltenango detained a group of activists when they discovered them distributing condoms to female and travesti sex workers in that area. The police argued that they were kidnappers. Later, under considerable pressure from the Collective Friends against AIDS (*Colectivo Amigos Contra el SIDA*) they managed to secure their freedom.

The latest of these attacks occurred on October 18, 2008, in Samayac Suchitepéquez, a location some 100 miles (158 km) from the Guatemalan capital. The organization Friends against AIDS (*Amigos contra el SIDA*) and the Association Gay de Samayac had organized an event in order to inform female and travesti sex workers about HIV/AIDS. At the beginning of the event they were relying on the protection they were initially receiving from police, however; the police later abandoned the area and almost immediately a group of unknown men threw a tear gas canister. Even though there were no injuries, there was a great panic, people fainted, and women and children affected by the gas were crying.

**We request that the Honorable Committee recommend to the State of Guatemala:**

- 2.1 To adopt all legislative, administrative and any other appropriate measures deemed necessary in order to ensure favorable conditions for any and all activities directed toward the promotion and realization of human rights, including those rights pertaining to sexual orientation and gender identity;
- 2.2 To adopt all appropriate measures to combat actions or campaigns against women human rights defenders who work on issues related to sexual orientation and gender identity, as well as measures against those who attack women human rights defenders, due to their sexual orientations and gender identities;

- 2.3 To guarantee the protection of women human rights defenders who work on issues related to sexual orientation and gender identity against all forms of violence, threats, reprisals, de facto and de jure discrimination, pressure or any other arbitrary action perpetrated by state and non-state actors in response to their human rights activities;
- 2.4 To ensure that all attacks, whether committed by government employees, or by other individuals or by groups, are vigorously investigated and, in those cases where adequate proof is found, that formal charges be brought against those responsible, that they be brought before a court of law and properly sentenced.