



## **Human Rights Violations Against Transgender Women in Guatemala**

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### **Submitted by:**

Organización Trans Reinas de la Noche (OTRANS)

Red Nacional de Personas Trans (REDTRANS Guatemala)

Red Nacional de Diversidad Sexual (REDNADS)

Red de Personas Trans de Latinoamérica y el Caribe (REDLACTRANS)

Center for International Human Rights of  
Northwestern Pritzker School of Law

Synergía - Initiatives for Human Rights

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## 1. Introduction

This report is a joint submission by Organización Trans Reinas de la Noche (OTRANS)<sup>1</sup>, Red Nacional de Personas Trans, (REDTRANS Guatemala)<sup>2</sup>, Red Nacional de Diversidad Sexual (REDNADS)<sup>3</sup>, Red de Personas Trans de Latinoamérica y el Caribe (REDLACTRANS)<sup>4</sup>, the Center for International Human Rights (CIHR)<sup>5</sup> of Northwestern Pritzker School of Law, and Synergía - Initiatives for Human Rights<sup>6</sup> to the Human Rights Committee (“Committee”), in connection with the Committee’s consideration of the State of Guatemala’s implementation of the International Covenant on Civil and Political Rights (“Covenant”)<sup>7</sup> at its 122<sup>nd</sup> session taking place in Geneva, Switzerland in March and April, 2018.

The purpose of this report is to highlight the widespread and systematic human rights violations experienced by transgender women in Guatemala. In particular, the report draws the attention of the Committee to the following breaches of the Covenant:

- Guatemala fails to take effective measures to eradicate patterns of discrimination against transgender women. Guatemalan legislation does not explicitly prohibit discrimination on the basis of sexual orientation and gender identity. This violates the State’s obligations under Articles 2(1) and 26 of the Covenant.
- Guatemala fails to adequately prevent, investigate and prosecute incidents of gender-based violence and killings against transgender women. Transgender women are constantly targeted for abuse. They suffer cruel, inhuman and degrading treatment, including a constant threat of violence that amounts to torture, forced disappearances and sexual violence. This violates the State’s obligations under Articles 2(1), 6, 9, 17 and 26 of the Covenant.

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<sup>1</sup> OTRANS “Reinas de la noche” is a pioneer organization in the defense of the human rights of transgender women in Guatemala. It promotes a series of activities, such as leadership initiatives, network building and training workshops for the implementation of policy that provides gender sensitive health initiatives.

<sup>2</sup> REDTRANS Guatemala is a network that brings together Guatemalan NGOs that protect and promote transgender women’s rights.

<sup>3</sup> REDNADS is a citizen-led movement that gathers efforts towards the defense of sexual diversity rights.

<sup>4</sup> REDLACTRANS is a network that gathers and connects trans persons from Latin America and the Caribbean. Its purpose is to assure the effective protection and exercise of human rights through policy advocacy, awareness activities and engagement and strengthening of local transgender human rights defenders’ organizations.

<sup>5</sup> The Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law (Chicago, IL, U.S.) is dedicated to human rights education and legal and policy advocacy within the United States and worldwide. CIHR is in special consultative status with the United Nations Economic and Social Council (ECOSOC).

<sup>6</sup> Synergía - Initiatives for Human Rights is a non-profit organization established in 2017, working to promote and protect human rights across several countries and regions in the world, with an emphasis on the human rights of marginalized groups, such as LGBTI people. Synergía focuses on institutional strengthening, security and protections, and rights and advocacy at domestic, regional and international levels.

<sup>7</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter “Covenant”].

- Human rights defenders as well as political representatives who stand up for the human rights of trans women are subject to threats and harassment, and in extreme cases, human rights defenders are subject to physical violence by both state and non-state actors. This violates the State's obligations under Articles 2(1), 6, 9, 17, 19, 22 and 26 of the Covenant.
- Guatemala violates the right to legal recognition of gender identity, by refusing to allow transgender individuals to change the gender designation on their official identity documents. This violates Articles 2(1), 16, 17 and 26 of the Covenant.

This report will discuss these violations and will propose for the Committee's consideration questions to be asked during the review and recommendations to be made to Guatemala to address these violations.

## **2. Trans Women's Rights Are Human Rights: The International Protection for the Human Rights of Transgender Women**

All people are entitled to enjoy the protection afforded by international human rights law. Transgender women are no exception. The non-discrimination principle, recognized in the UN Charter<sup>8</sup>, the Universal Declaration of Human Rights<sup>9</sup> and other basic human rights treaties<sup>10</sup> including the International Covenant on Civil and Political Rights, mandates that the rights recognized in these treaties are ensured to all individuals, without any distinctions based on race, color, sex, national origin, religion or political opinion or other status. The "other status" clause invites the recognition of new grounds upon which discrimination is prohibited, such as sexual orientation and gender identity. It is now well-recognized that discrimination based on sexual orientation and gender identity violates the non-discrimination principle<sup>11</sup>.

Gender identity is defined as "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"<sup>12</sup>. Moreover, "gender identity should

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<sup>8</sup> United Nations Charter, 24 Oct. 1945, 1 UNTS XVI, Articles 1(2) and 13(1) [hereinafter UN Charter].

<sup>9</sup> Universal Declaration of Human Rights, 10 Dec.1948, 217 A (III), Articles 1, 2 and 7 [hereinafter "UDHR"].

<sup>10</sup> See, e.g., Covenant, *supra* note 7, at Articles 2(1) and 26; American Convention on Human Rights, Nov. 21, 1969, 1144 U.N.T.S. 143, Articles 1.1 and 24 [hereinafter "ACHR"].

<sup>11</sup> Office of the United Nations High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, 2012, at pp. 10-11, available at: <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>.

<sup>12</sup> Yogyakarta Principles. *Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2006, at p. 6, fn. 2, available at [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf). See also Inter-American Commission on Human Rights, *Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*, 12 Nov. 2015, OAS/Ser.L/V/II.rev.1 Doc. 36, ¶20, at p. 29, available at <http://www.oas.org/en/iachr/reports/pdfs/violencelgbtipersons.pdf>. [hereinafter "IACHR, *Violence against LGBTI persons*"].

be understood to be inclusive of gender expression as a ground of protection”<sup>13</sup>. Trans persons are protected under this category. Trans women are those “persons whose sex assigned at birth was male while their gender identity is female”<sup>14</sup>.

The United Nations High Commissioner for Human Rights, in his 2015 report to the Human Rights Council on *Discrimination and violence against individuals based on their sexual orientation and gender identity*, has emphatically affirmed that states’ obligation to eradicate violence and discrimination based on gender identity encompasses, among others, the obligation of “refraining from interference in the enjoyment of rights, preventing abuses by third parties and proactively tackling barriers to the enjoyment of human rights, including in the present context, discriminatory attitudes and practices”<sup>15</sup>.

Furthermore, in its recent Advisory Opinion 24/17, the Inter-American Court on Human Rights has affirmed that “States should respect and guarantee to each person the possibility to register and change, rectify or adjust their name and the other components of their gender identity, such as photograph and sex or gender references, without interferences from public authorities or private parties. . . . Furthermore, the State should guarantee that individuals are able to exercise their rights and obligations in accordance with their identity, without being forced to portray a different identity which does not represent their individuality”<sup>16</sup>.

### **3. Substantive Violations of the Rights of Transgender Women in Guatemala.**

#### **3.1. Violation of the Right to Non-Discrimination (Articles 2 and 26)**

Article 2(1) of the Covenant requires States parties “to respect and to ensure” Covenant rights to all individuals, “without distinction of any kind”<sup>17</sup>. The obligation to “respect” the right to equality prohibits any discrimination by State actors, while the obligation to “ensure” that right requires States parties to protect individuals from discrimination committed by non-state as well as state actors. “[T]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against

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<sup>13</sup> The Yogyakarta Principles plus 10: Additional principles and state obligations on the application of International Human Rights Law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles, 10 Nov. 2017, Preamble, at p. 6, *available at* [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf).

<sup>14</sup> IACHR, *Violence against LGBTI persons*, *supra* note 12, ¶21, at p. 30.

<sup>15</sup> Office of the United Nations High Commissioner for Human Rights, Report to the Human Rights Council on “Discrimination and violence against individuals based on their sexual orientation and gender identity”, UN Doc. A/HRC/29/23, 4 May 2015, ¶ 10, *available at* <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>. [hereinafter OHCHR “Discrimination and violence against individuals based on their sexual orientation and gender identity”]

<sup>16</sup> Inter-American Court of Human Rights, Advisory Opinion 24/17, series A-24, Gender Identity, Equality and Non-discrimination against Same-sex Couples, 24 Nov. 2017, ¶ 115, *available in Spanish at* [http://www.corteidh.or.cr/docs/opiniones/seriea\\_24\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf) [hereinafter “IACtHR Advisory Opinion 24/17”]. [Translation from Spanish by the author].

<sup>17</sup> Covenant, *supra* note 7, at Art. 2(1).

acts committed by private persons or entities that would impair the enjoyment of Covenant rights”<sup>18</sup>.

Article 26 extends the right to equality and non-discrimination: “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination”<sup>19</sup>. Rather than merely reiterating the obligations set out in Article 2(1), it “provides in itself an autonomous right,” by “prohibit[ing] discrimination in law or in fact in any field regulated and protected by public authorities”<sup>20</sup>. Thus, as this Committee has recognized, “[i]n fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26”<sup>21</sup>.

Guatemala has violated its obligation to protect transgender individuals from discrimination by state and non-state actors. The transgender population in Guatemala is constantly subjected to discrimination and the vast majority of transgender individuals report that they have suffered some type of discriminatory harassment in their lifetime due to their gender identity. In the November 2015 “*Characterization and estimation of trans women in Guatemala*” survey, 71% of the surveyed transgender individuals indicated that they regularly suffer discriminatory acts, and 60% reported having suffered some kind of harassment<sup>22</sup>. Among the most common discriminatory actions are denial of employment opportunities (43.2% of the respondents who reported having experienced discrimination), denial of educational opportunities (30.3%), family rejection (28.3%), denial of access to health services (25.5%), and extortion (18.5%)<sup>23</sup>.

This situation is all the harsher due to the State’s persistent failure to explicitly prohibit discrimination on the basis of sexual orientation and gender identity. Guatemala’s anti-discrimination laws do not apply to discrimination based on sexual orientation and gender identity. Indeed, on October 6, 2015, the State indicated to the Inter-American Commission on Human Rights that Guatemala provides no legal recognition of the rights of the LGBTI community<sup>24</sup>. According to a 2016 U.S. government report on the human rights situation in Guatemala, “[t]here was general societal discrimination against LGBTI persons in access to education, health care, employment, and housing. The government undertook minimal efforts to address this discrimination”<sup>25</sup>.

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<sup>18</sup> Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.1326 (Mar. 29, 2004), ¶ 8, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iW6Ttaxgp3f9kUFpWoq%2FhW%2FTpKi2tPhZsbEJw%2FGeZRASjdFuuJQRnbJEaUhby31WiQPI2mLFDe6ZSwMMvmQGVHA%3D%3D> [hereinafter “General Comment No. 31”].

<sup>19</sup> Covenant, *supra* note 7, at Art. 2(1) (emphasis added).

<sup>20</sup> Human Rights Committee, General Comment No. 18: Non-discrimination (Nov. 10, 1989), ¶ 12, available at <http://www.refworld.org/docid/453883fa8.html> [hereinafter “General Comment No. 18”].

<sup>21</sup> General Comment No. 31, *supra* note 18, ¶ 8.

<sup>22</sup> M.E. Guardado et alii, *Caracterización y Estimación del tamaño poblacional en mujeres trans en Guatemala*, 2015, at p. 55.

<sup>23</sup> *Id.*

<sup>24</sup> Inter-American Commission on Human Rights, *Country Report: Guatemala*, OEA/Ser. L/V/II. Doc. 43/15, 2015, ¶ 342 at 149, available in Spanish at <http://www.oas.org/es/cidh/informes/pdfs/guatemala2016.pdf>. [hereinafter “IACHR, *Country Report: Guatemala*”]

<sup>25</sup> U.S. Department of State, *Guatemala 2016 Human Rights Report*, available at <https://www.state.gov/documents/organization/265802.pdf>.

Instead of enacting laws to protect the equal rights of LGBT individuals, Guatemala's Congress has been considering a bill that would make the situation even worse. The National Evangelical Coordinator, a religious civil society organization in Guatemala, introduced an anti-LGBT bill on April 27, 2017. Bill 5272 was called *Law for the Protection of Life and Family* ("Ley de Protección de la Vida y la Familia"). Demonstrating the deep homophobia and transphobia of Guatemalan society, the proposal was accompanied by 30,000 citizens' signatures in support of the bill<sup>26</sup>. This bill's explanatory memorandum stated that the law was "raised because nowadays minority groups of the Guatemalan society that follow an international agenda exist and they propose paths of thinking and incongruent practices against Christian morals and promote models of behavior that are against the right to life, the natural order of marriage and family"<sup>27</sup>.

Bill 5272 reflects an agenda to legitimize discrimination against LGBT persons. For instance, article 18 of the aforementioned bill stated that "[e]very person has the right to freedom of conscience and expression, a right that implies not being obliged to accept as normal non-heterosexual conduct and practices. No one person can be prosecuted for not accepting as normal sexual diversity or gender ideology . . ."<sup>28</sup>. Although article 18 and certain other objectionable provisions were removed from the bill during the debates of the Constitutional Committee of the Guatemalan Congress<sup>29</sup>, it remains possible that these or other very damaging provisions may be added into the bill during the upcoming consideration and debate of the bill in the Plenary of the Guatemalan Congress.

### **3.2. Violation of the Right to Life and Security of Person (Articles 6, 9 and 17 in connection with Articles 2(1) and 26)**

Under Articles 6 and 9 of the Covenant, Guatemala has an obligation to take adequate measures to protect transgender women from acts of violence by non-state as well as state actors:

"The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury. *For example, States parties must respond appropriately to patterns of violence against categories of victims such as . . . violence against persons on the basis of their sexual orientation or gender identity.*"<sup>30</sup>

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<sup>26</sup> Prensa Libre, "Diputados piden castigar el aborto y matrimonio gay: Congresistas de diferentes bancadas presentaron este jueves una iniciativa que penaliza con cárcel y multas el matrimonio gay y el aborto," 27 Apr. 2017, available at <http://www.prensalibre.com/guatemala/politica/diputados-piden-castigar-el-aborto-y-matrimonio-gay>.

<sup>27</sup> Guatemalan Congress, Bill 5272, 27 Apr. 2017, at 1. [Translation from Spanish by the author].

<sup>28</sup> *Id.*, at 18.

<sup>29</sup> Dulce Rivera, "Iniciativa que prohíbe matrimonio entre personas del mismo sexo recibe dictamen", 23 Oct. 2017, available at <http://www.guatelevision.com/2017/10/23/iniciativa-matrimonio-sexo/>.

<sup>30</sup> Human Rights Committee, General Comment No. 35: Article 9 (Liberty and security of the person), U.N. Doc. CCPR/C/GC/35 (2014), at ¶ 9 (footnotes omitted) (emphasis added), available at

Unfortunately, Guatemala has failed in this obligation. The high number of murders and other violent attacks against transgender individuals is stark evidence of the very hostile and violent environment for the transgender population that persists in Guatemala<sup>31</sup>. By failing to take adequate measures to protect LGBT individuals from such attacks, Guatemala is violating its positive obligations with respect to the rights to life and personal security under Articles 6 and 9(1) of the Covenant. Guatemala's failures in this regard likewise violate the right under Articles 2(1) and 26 to equal protection of the law and non-discrimination, as well as the Article 17(2) right to the protection of the law against interference with privacy and attacks on honour and reputation.

In 2017, a transgender woman was murdered in front of a bar in the municipality of Salamá, Department of Baja Verapaz. Prior to her death, she had expressed concern about death threats she had received from an unknown woman<sup>32</sup>.

On August 10, 2017, a transgender woman was stabbed in front of the Regional Hospital of the municipality of Zacapa<sup>33</sup>. The attack was so vicious that, even though it took place in front of a hospital where the victim was able to obtain immediate medical treatment, it was still impossible to save her life due to the gravity of her wounds<sup>34</sup>.

A young transgender woman from the dangerous slum of "El Gallito" in Guatemala City fled to the United States in July 2017, seeking asylum due to the attacks she suffered in Guatemala as a consequence of her gender identity. A group of men had beaten and sexually assaulted her and left her lying in a ditch when they learned that she was a transgender woman. When she awoke, she decided she had to flee. As she fled north through Guatemala, just south of the Mexican border she was attacked again due to her gender identity<sup>35</sup>.

In November and December 2016, five transgender women were killed in alleged hate crimes in Guatemala<sup>36</sup>.

On June 4<sup>th</sup> 2015, a transgender woman was assassinated in San Cristobal due to her gender identity. The victim "was shot at point-blank range," making it very difficult for her family to even identify her body<sup>37</sup>.

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<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGGB%2bWPAXjdnG1mwFFPYGIInfb%2f6T%2fqwtc77%2fKU9JkoeDcTWWPIpCoePGBcMsRmFtoMu58pgnmzjyiyRGkPQekcPKtaaTG> [hereinafter "General Comment No. 35"].

<sup>31</sup> Proyecto de investigación TvT, *Observatorio de Personas Trans Asesinadas (TMM) Actualización TDoV 2017*, 2017 available at <http://transrespect.org/es/trans-murder-monitoring/tmm-resources>. See also, IACHR, *Country Report: Guatemala*, supra note 24, ¶ 340.

<sup>32</sup> *Id.*

<sup>33</sup> Mario Morales, "Hombre capturado por asesinato en Gualán", 05 Sep. 2017, available at <http://www.prensalibre.com/ciudades/zacapa/capturan-a-hombre-acusado-de-homicidio-en-gualan>.

<sup>34</sup> Centro de Documentación y Situación Trans en Latinoamérica y el Caribe (CEDOSTALC), Registered cases of violence against transgender women, Annex 1, 2017, at 22.

<sup>35</sup> Maria Inés Taracena, "Displaced LGBT People from Central America, Mexico head North for survival", 8 Sep. 2017, available at <https://radio.azpm.org/p/radio-azspot-episodes/2017/9/8/116373-displaced-lgbt-people-from-central-america-mexico-head-north-for-survival/>.

<sup>36</sup> Human Rights Council, Working Group on the Universal Periodic Review, Compilation on Guatemala, 28<sup>th</sup> session, 6<sup>th</sup> to 17<sup>th</sup> Nov. 2017, U.N. Doc. A/HRC/WG.6/28/GTM/2, p. 3, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/255/76/PDF/G1725576.pdf?OpenElement>.

<sup>37</sup> IACHR, *Country Report: Guatemala*, supra note 24, ¶ 343.

Transgender women are particularly vulnerable to violence because the absence of other employment opportunities often forces them into sex work. For example, on June 3, 2017, a Guatemalan trans woman died after being attacked with a firearm in the context of her sex work<sup>38</sup>. She is not the only such victim. Transgender women involved in sex work are constantly suffering aggressions and threats due to their gender identity. Between January and November 2017, 71 reported cases of such aggression occurred in Guatemala<sup>39</sup>.

A trans woman was beaten by two men on August 5, 2015 after she refused to perform sexual favors.<sup>40</sup> She was also a victim of agents of the Guatemalan police, who “targeted” her because she was a sex worker. The officers raped her and “forced her to have oral and anal sex with them at least five times”<sup>41</sup>.

Instead of protecting members of the transgender community from violent attacks, police officers have too often been part of the problem. As one trans activist stated in 2012: “A girlfriend was victim of a violent attack by the police. She was beaten by policemen while doing sex work and was threatened that if she said anything she would wake up in a wasteland”<sup>42</sup>. Despite the threat, she filed a sworn complaint against the policemen who had beaten her. Not long after that, her body was found in a wasteland<sup>43</sup>. This is not an isolated case of police abuse. In Guatemala, 29% of trans women stated that police officers were the principal agents of discrimination against them<sup>44</sup>.

Unfortunately, the progress Guatemala has made in combatting homicides has not extended to the transgender community. Even though the overall homicide rate in Guatemala has decreased over the past years, the most vulnerable people of the State remain under constant threat. On August 4, 2017, at the conclusion of its site visit to Guatemala, the Inter-American Commission on Human Rights recognized that “according to civil society organizations, the reduction in the homicide rate at the national level does not reflect in the grave situation of violence that persists against . . . LGBTI persons. In particular, the [Inter-American] Commission has received information about the increasing number of murders of trans women in Guatemala”<sup>45</sup>.

Guatemala is thus in violation of its positive obligations under Article 6, 9 and 17, due to its failure to take adequate measures to protect transgender women from murders and other violent assaults. As will be shown in the following section, Guatemala is also in violation of its related obligation under Articles 6 and 9 to promptly investigate, prosecute and punish the perpetrators of these crimes. Guatemala’s failure to protect transgender women from violent attacks and its failure to hold accountable the perpetrators of these

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*, at p. 7.

<sup>40</sup> Michael K. Lavers, “Transgender woman from Guatemala granted asylum in U.S.,” 4 Oct. 2017, available at <http://www.washingtonblade.com/2017/10/04/transgender-woman-guatemala-granted-asylum-u-s/>.

<sup>41</sup> *Id.*

<sup>42</sup> Red de personas trans de Latinoamérica y el Caribe, *La noche es otro país. Impunidad y violencia contra mujeres transgénero defensoras de derechos humanos en América Latina*, 2012, at p. 14.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Inter-American Commission on Human Rights, “Preliminary Observations to the IACHR’s On-Site Visit to Guatemala”, 04 Aug. 2017, Press Release 114A/17 available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2017/114A.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/114A.asp) [hereinafter “IACHR Preliminary Observations to Guatemala”].



crimes also violate its obligations under Articles 2(1) and 26, because transgender women are not being afforded the equal protection of the law.

### **3.3. Violation of the Right to Access to Justice (Articles 6 and 9 in connection with Articles 2(1) and 26)**

As noted above, Guatemala has a positive obligation to promptly investigate, prosecute and punish violent crimes against transgender women. The evidence indicates, however, that the State has not met this obligation.

The State has not done a proper job prosecuting hate crimes against the LGBTI population. Between 2010 and 2015, the Prosecutors Office (*Ministerio Público*) has reported only 11 cases related to the LGBTI population concerning discrimination, threats, forced sex work, violence against women and injuries<sup>46</sup>.

This situation was recognized by the Inter-American Commission on Human Rights during its 2015 site visit to Guatemala. According to the IACHR,

“LGBTI persons also face great obstacles to access to justice. According to the information of civil society organizations brought to the Commission, the State of Guatemala has not guaranteed due investigation or due process in discriminatory or violent actions motivated by sexual orientation or gender identity of the victim. The murders of LGBTI persons are not documented in the police registries, and the ones that are exceptionally registered, ended in impunity”<sup>47</sup>.

One example of this impunity is the case of the 2010 kidnapping of a transgender woman. On February 10, 2010, a young man in a blue jeep in the Historical Centre of Guatemala City kidnapped transgender woman Catherine Mitchell Barrios<sup>48</sup>. After eight years, she remains missing and the State has not taken any action to find her and establish what happened that day<sup>49</sup>.

### **3.4. Attacks against human rights defenders who defend the rights of transgender people (Articles 6, 9, 17, 19 and 22 in connection with Articles 2(1) and 26)**

Human rights defenders, including political representatives who stand up for the human rights of transgender women, play an extremely important role in the protection of the human rights of transgender women. Violent attacks and other forms of harassment of such human rights defenders are grave violations of the Covenant, including Articles 6

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<sup>46</sup> UN Human Rights Committee, *Consideration of reports submitted by States Parties under Article 40 of the Covenant pursuant to the optional reporting procedure, Fourth periodic report of States parties due in 2016: Guatemala*, 5 January 2017, CCPR/C/GTM/4, ¶ 19 available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGTM%2F4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGTM%2F4&Lang=en).

<sup>47</sup> IACHR Preliminary Observations to Guatemala, *supra* note 45.

<sup>48</sup> Guatemalan Human Rights Advocate Office, File OR- GUA-1275-2010/DCP.

<sup>49</sup> OTRANS, *Informe de situación de mujeres trans en Guatemala* [Report on the situation of trans women in Guatemala], 2017, ¶13.

and 9 (rights to life and security of person), Article 17 (right to protection against unlawful attacks on privacy, honour and reputation), Articles 19 and 22 (rights to freedom of expression and association), and Articles 2(1) and 26 (rights to non-discrimination and equal protection of the law). This Committee has recognized that States parties have a particular obligation to “respond appropriately to patterns of violence . . . such as intimidation of human rights defenders”<sup>50</sup>.

Unfortunately, Guatemala has not taken appropriate measures to protect human rights defenders from harassment and violence, nor has it responded appropriately when such incidents occur. As the examples below indicate, an openly lesbian member of Congress who has advocated for the rights of transgender people has been subjected to harassment, and transgender human rights activists have been subjected to arbitrary arrest, humiliating treatment, and murder, all without an adequate response from the State.

Although it is commendable that an open member of the LGBT community has been elected to Congress, the disparaging treatment she has received is extremely regrettable. Congresswoman Sandra Moran, the first open member of the LGBT community to be elected to Congress, has been the victim of harassment due to her position in favor of the recognition of sexual and reproductive rights in Guatemalan legislation. On December 1, 2018, she introduced a bill in the Guatemalan Congress to recognize the right to gender identity<sup>51</sup>. Under this bill, transgender individuals would be allowed to amend their birth certificates to reflect their gender identity<sup>52</sup>. Previously, she had introduced a bill to legalize access to contraceptives for girls who had been raped. Due to her position in favor of sexual and reproductive rights, Evangelical churches have started an impeachment procedure against Congresswoman Moran<sup>53</sup>. Moreover, this is not the only occasion on which Congresswoman Moran has been harassed by conservative groups. In 2016, Guatemalan Congresswomen formed the “Congresswomen’s Forum”. Congresswoman Moran was proposed to lead the Board of Directors of this initiative. Nevertheless, her capacity to preside as the leader of the “Congresswomen Forum” was questioned on the basis of her sexual orientation. On 1<sup>st</sup> September 2016, Carlos Alejandro Berganza, a Guatemalan lawyer, published a “petition” in the electronic conservative platform “Citizen Go”, which stated, “Congressional Forum has to be presided by a woman in the full sense”<sup>54</sup>.

Trans activists suffer an increasing pattern of violent attacks due to the transphobic environment and the well-known violence against human rights defenders<sup>55</sup>. On March 17, 2012, the Executive Director of OTRANS was arbitrarily arrested and detained in a male detention facility in the city of Quetzaltenango. While detained she suffered severe mistreatment, being obliged to undress and get her hair cut. Although this case was

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<sup>50</sup> General Comment No. 35, *supra* note 30, at ¶ 9.

<sup>51</sup> Anna-Catherine Brigida, “Lesbian Congresswoman creates ‘Path Toward Representation in Guatemala’”, 03 Nov. 2017, *available at* <https://www.nbcnews.com/feature/nbc-out/lesbian-congresswoman-opens-path-toward-representation-guatemala-n816006>.

<sup>52</sup> *Visibles*, “Transgender rights bill introduced in Guatemala”, 04 Dec. 2017, *available at* <http://www.washingtonblade.com/2017/12/04/transgender-rights-bill-introduced-guatemala/>.

<sup>53</sup> Radio La Red, “Iglesias Evangélicas solicitan antejuicio contra la diputada Sandra Morán”, 16 Jan. 2018, *available at* <https://lared.com.gt/iglesias-evangelicas-solicitan-antejuicio-la-diputada-sandra-moran/>

<sup>54</sup> Congresswoman Sandra Morán, Complaint to the Guatemalan Human Rights Advocate Office, 05 Sept. 2016, at p. 2.

<sup>55</sup> Human Rights Council, *Guatemala: Report of the Office of the Human Rights Advocate for the Universal Periodic Review*, 34<sup>th</sup> session, p. 3.

brought to the domestic courts where the abuses of the local authorities against this trans human rights defender were acknowledged, the case still remains pending. Neither the Prosecution nor the Court has provided information regarding whether any sanctions have been imposed against the police officers responsible for the abuses<sup>56</sup>.

On November 18, 2016, the beheaded body of a trans human rights activist was found. Her body showed signs of horrific abuse: her teeth were missing and her hair had been brutally ripped out<sup>57</sup>, and forensic evidence indicated that she had been poisoned<sup>58</sup>. Her torture and murder took place even though the Inter-American Commission on Human Rights had called upon Guatemala, since February 3, 2006, to implement precautionary measures to assure her safety<sup>59</sup>. Before her murder, she had been an activist with OTRANS.

### **3.5. Violation of the Right to Legal Recognition of Gender Identity (Articles 16 and 17 in connection with Articles 2(1) and 26)**

Every person has a fundamental right to legal recognition of his or her self-defined gender identity<sup>60</sup>. To respect and ensure this right, States must have in place procedures for modifying, upon request, the gender designations on all State-issued identity documents, including (among others) birth certificates, identity cards, and passports.<sup>61</sup> Because names can be a marker of gender, these procedures must also allow individuals to change their legally recognized names if they wish to do so.

This Committee has recognized the State obligation in this regard at least as far back as 2008, when it indicated, in its Concluding Observations for Ireland, that the State party “should also recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates”<sup>62</sup>. Similarly, the United Nations High Commissioner for Human Rights has expressed concern over the frequent denial of this right:

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<sup>56</sup> OTRANS, Heartland Alliance & Akahatá, Human Rights Situation of Travesti, Transgender and Transsexual Persons in Guatemala. List of Issues submitted to the working group on the Guatemala Report, Human Rights Committee 115<sup>th</sup> session, Aug. 2015, at p. 3, *available at* [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GTM/INT\\_CCPR\\_ICS\\_GTM\\_21419\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GTM/INT_CCPR_ICS_GTM_21419_E.pdf).

<sup>57</sup> Inter-American Commission on Human Rights, “IACHR repudiates murder of Defender of Trans Rights in Guatemala”, 2 Dec. 2016, Press Release 181/16, *available at* [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/181.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/181.asp).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, Principle 3 (2007), *available at* [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm) [hereinafter “Yogyakarta Principles”].

<sup>61</sup> *Id.*, Principle 3(C); OHCHR Discrimination and violence against individuals based on their sexual orientation and gender identity, *supra* note 15, ¶¶ 69, 70, and 79(i).

<sup>62</sup> Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee on Ireland*, ¶ 8, U.N. Doc. CCPR/C/IRL/CO/3 (30 July 2008), *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2FIRL%2FCO%2F3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2FIRL%2FCO%2F3&Lang=en).

In spite of recent advances in several countries, transgender persons are generally still unable to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity documents. As a result, they face multiple rights challenges, including in employment and housing, applying for bank credit or State benefits, or when travelling abroad.<sup>63</sup>

The High Commissioner therefore recommended that States remedy this discrimination by “[i]ssuing legal identity documents, upon request, that reflect preferred gender”<sup>64</sup>.

Regrettably, the right to legal recognition of one’s gender identity is not protected in Guatemala. The State refuses to allow transgender individuals to change the gender designation on their official identity documents under any circumstances. By failing to provide a procedure to have documents modified to conform to an individual’s gender identity, the state of Guatemala violates the right to equality and non-discrimination recognized in Articles 2 and 26 of the Covenant, the right to legal recognition of personality recognized in Article 16, and the right to protection of privacy, honour and reputation recognized in Article 17. For transgender individuals, the right to official documents conforming to one’s gender identity is a singularly important right, because the denial of legal recognition of a person’s gender identity leads to many other human rights violations. Without legal identity documents that conform to a person’s gender identity and chosen name, transgender women are extremely vulnerable to violence, humiliation and discrimination.

For example, as noted above, survey results indicate that many transgender individuals have been discriminatorily denied a job due to their gender identity. The lack of legal protection surrounding gender identity and the fact that Guatemala does not grant transgender individuals appropriate identity documents means that employers can disregard transgender applicants with relative impunity.

In 2017, CEDOSTALC, a community database system that records and monitors information regarding violations of the human rights of transgender people, has received nearly ten complaints from transgender women who were denied access to health care services and work because they did not have an identity document that matched their name and appearance. Two of them have reported that they had to change their clothes and hair style, abandoning their identity, in order to access work and health services<sup>65</sup>.

#### **4. Suggested questions to be asked during review session**

1. Is the State willing to enact legislation prohibiting discrimination based on sexual orientation and gender identity in employment, health care, education, housing, and access to public services? What other measures will the State take to reduce the level of discrimination against transgender women and other LGBT individuals?

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<sup>63</sup> OHCHR “Discrimination and violence against individuals based on their sexual orientation and gender identity”, *supra* note 15, ¶ 69.

<sup>64</sup> *Id.*, ¶ 79(i).

<sup>65</sup> Centro de Documentación y Situación Trans de Latinoamérica y el Caribe (CEDOSTALC), Database (2017).

2. What measures will the State take to protect transgender women from violence and to ensure that when acts of violence do occur, the State promptly and effectively investigates the incidents and prosecutes and punishes the perpetrators?

3. In this regard, has any progress been made in holding accountable the police officers responsible for the 2012 incident in which the Executive Director of OTRANS, Johana Esmeralda Ramírez, was arbitrarily arrested, detained in a male detention facility and subjected to humiliation (including the cutting of her hair) due to her gender identity?

4. Is the State willing to enact legislation giving transgender individuals the right to obtain birth certificates and other identity documents with the person's chosen name and a gender designation that matches the person's gender identity?

## **5. Proposed recommendations to be made to Guatemala**

1. Enact legislation that prohibits discrimination on the basis of sexual orientation and gender identity, and amend the Criminal Code to include hate crimes on the basis of sexual orientation and gender identity.

2. Investigate, prosecute and punish acts of violence against transgender women, and implement an effective system for keeping records of incidents of hate-motivated violence.

3. Approve the bill that recognizes the right to gender identity, so that transgender individuals are able to change their name and the gender designation on all identity documents, based solely on the individual's request. Promptly implement an administrative procedure so trans people can change their identification documents, according to their true identity.

4. Develop and implement a campaign, supported at the highest levels of Government, to teach acceptance and respect for sexual diversity and to raise awareness of the cases of violence and discrimination against transgender persons. In connection with this campaign, the State should express its commitment to full compliance with the landmark Advisory Opinion 24/17 of the Inter-American Court of Human Rights<sup>66</sup>, which sets out the obligations within the Americas regarding (a) people's right to adapt their name, gender and image on official documents to reflect their gender identity, and (b) States' obligations to respect and protect the rights of same-sex couples on the same basis as different-sex couples, without any form of discrimination.

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<sup>66</sup> IACtHR Advisory Opinion 24/17, *supra* note 16.