



Organización de Apoyo a una  
Sexualidad Integral frente al Sida

## Universal Periodic Review (UPR) – Guatemala 2012

### **OASIS report on the Human Rights Situation for the *Sexual and Gender Diversity Communities in Guatemala***

Guatemala, April 10, 2012

Original: Spanish\*

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#### **I. Introduction**

1. In May of 2008, Guatemala was submitted to the Universal Periodic Review (UPR) process, obtaining, at least, three recommendations regarding the *Sexual and Gender Diversity Communities*<sup>1</sup> Human Rights, ss:

1.1 Life and physical integrity Rights/extrajudicial executions: “*Adopt all measurements to fight against femicide, lynching and murders of people due to their sexual orientation (Switzerland)*”.<sup>2</sup>

1.2 Justice Administration: “*Put an end to the impunity on reported aggressions against members of the excluded communities based, among other situations, on sexual orientation and gender identity, and start the consequent public awareness, mainly with the order forces and the judges (Slovenia)*”.<sup>3</sup>

1.3 Human Rights Defenders: “*Approve new measurements to put an end to the impunity on the aggressions against human rights defenders and the violence against other people due to their sexual orientation or gender identity, through education programs and public awareness of the order forces, and judicial authorities and others, giving special attention, among other things, to the minorities defined by their sexual orientation and gender identity human rights’ defense (Czech Republic)*”.<sup>4</sup>

2. In June of 2008, Guatemala accepted the three recommendations regarding the *Sexual and Gender Diversity Communities*, and made a commitment to implement them<sup>5</sup>.

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<sup>1</sup> Sexual and Gender Diversity Communities: “*Associative net of gay, lesbian, bisexual, transgender, transsexual, intersexual and asexual people, among other individuals, who share social-cultural contexts around special sex features, sexual orientation or gender identity. The Sexual and Gender Diversity Communities posses countless axis of cohesion that go beyond ideological, geographical and linguistic aspects of society in general*”. Source: OASIS.

<sup>2</sup> UPR report, May 29 of 2008, A/HRC/8/38, paragraph 89 numeral 16.

<sup>3</sup> UPR report, May 29 of 2008, A/HRC/8/38, paragraph 89 numeral 35.

<sup>4</sup> UPR report, May 29 of 2008, A/HRC/8/38, paragraph 89 numeral 36.

<sup>5</sup> Permanent Representative of Guatemala to the UN’s speech, regarding UPR recommendations. June 11 of 2008.

3. In March of 2010, motivated by the presentation of a candidacy to the Human Rights Council (HRC), Guatemala affirmed having started the implementation of the recommendations from the UPR thorough “*a process of follow-up of the recommendations*” and made, voluntarily, a series of promises and commitments from which stands out: “*approach subjects on human rights equitably, objectively and non-selectively, maintaining surveillance and observance of human, economic, social, cultural, civil and politic rights, including the right to development*”.<sup>6</sup>

4. In April of 2012, besides the statements of the Human Rights Ombudsperson (HRO), there are no further concrete actions to implement the UPR recommendations from 2008, and the *Sexual and Gender Diversity Communities* continue in the same abandonment by the State of Guatemala. Commitments made by the Government have not been accomplished.

## **II. *Sexual and Gender Diversity Communities in Guatemala Human Rights Situation***

5. In Guatemala, the *Sexual and Gender Diversity Communities* have been threatened to stay underground and stay hidden, due to the Government’s abandonment, which constitutional duty is to guarantee life, liberty, justice, security and integral development of the inhabitants<sup>7</sup>.

6. Discrimination and violence, due to homophobia<sup>8</sup>, constitute an urgent challenge in human rights matter because they are deeply entrenched in society and they have been promoted by the Government’s weakness to ensure the wellbeing of its population; especially of those in poverty conditions –and extreme poverty- for having been socially excluded<sup>9</sup>.

7. The *Sexual and Gender Diversity Communities* are not duly integrated to the Guatemalan society, an example of this is that, according to what is established in the Civil Law, only heterosexual couples can be married<sup>10</sup> or declare a civil union<sup>11</sup> to obtain access to family constitutional protection.<sup>12</sup> Exclusions as the previously quoted distort and limit the guaranteed

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<sup>6</sup> Permanent Representative of Guatemala to the UN’s letter, regarding candidacy to HRC 2010-2013 and Appendix of: Promises and Commitments of Guatemala for the Promotion and Protection of Human Rights. March 19 of 2010. A/64/730.

<sup>7</sup> Political Constitution of the Republic of Guatemala. Article 2°. State Duties.

<sup>8</sup> Víctimas de la Homofobia: Consecuencias psicológicas. Jorge Osama López, Profesor Asociado Departamento de Psicología Básica, Clínica y Psicología Universitat Jaume I Castello.

<sup>9</sup> Social exclusion based on non-heterosexual orientation in Guatemala. Ruben Mayorga and Maria Antonieta Rodriguez – OASIS. Year 2000.

<sup>10</sup> Civil Law of Guatemala. Article 78. “Matrimony is a social institution in which a man and a woman are legally linked, with permanence intentions and to live together, procreate, feed and raise their children and help each other”.

<sup>11</sup> Civil Law of Guatemala. Article 173. “Civil union of a man and a woman with the capacity to be married, may be pronounced by themselves before the mayor of their township or a notary, for it to produce legal effects, as long as there exists a home and the shared life has been constant for more than three years before their relatives and social relationships, accomplishing the aims of procreation, feeding and education of their children and helping each other”.

<sup>12</sup> Political Constitution of the Republic of Guatemala. Article 47. “The State guarantees the social, economical and legal protection of the family. It will promote its organization based on the legality of matrimony, the spouse’s rights equality, responsible parenthood and the people’s right to freely decide their number and the spacing between children”.

rights and liberties in the Political Constitution of the Republic<sup>13</sup> and allow persecution and de facto penalization<sup>14</sup>, which becomes evident through hate crimes<sup>15</sup> due to a) sexual orientation, b) gender identity and c) sexual features of the victims.

8. Actual numbers are considerably higher, because it has been particularly difficult to quantify and give a follow-up to hate crimes,<sup>16, 17, 18</sup> because: a) they are not foreseen as punishable acts in the Criminal Law<sup>19</sup> b) they are often mistaken with other violence manifestations<sup>20,21</sup> and c) because victims do not report them<sup>22</sup> either because of fear to be publicly exposed to more discrimination<sup>23</sup> or because they doubt the ineffective justice system.

9. Murders constitute most registered hate crimes<sup>24</sup>, which usually show extreme cruelty manifestations. There exist other more generalized hate crimes but they get less attention due to the regularity in which they occur; for instance, the HIV epidemic continues affecting particularly the *Sexual and Gender Diversity Communities*<sup>25</sup>, however, no adequate means have been destined to eradicate the stigma and the discrimination that promote the HIV transmission and difficult access to integral treatment. Also, there are significant percentages of sexually-diverse people who are victims of sexual exploitation<sup>26</sup> it is also known that many of them feel forced to emigrate trying to save their life, there are even know cases of suicide<sup>27</sup>.

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<sup>13</sup> Political Constitution of the Republic of Guatemala. Articles: 4°, 47° and 140°, regarding human being's freedom and equality, spouse's rights equality and the State's organization to guarantee its populations rights and liberties, respectively.

<sup>14</sup> For example: File HRO: ORD.GUA.7074-2010/SJS. The OASIS director, Jorge Lopez Sologastoa, reported a violation to the human right to education, when the principal from a public school suspended two minors for considering that their lesbian sexual orientation was a hazard for the other students of that school. Annual Detailed Report 2010 from the HRO. Page 102. Sixth paragraph.

<sup>15</sup> Extract, Guatemala, the Face of Homophobia. Jorge Lopez Sologastoa and Luis Zapeta, Special report on hate crimes.

<sup>16</sup> "The Human Rights Ombudsperson Sergio Morales explained that from 2007 to 2011 there were 29 aggressions". Source: Prensa Libre [Local news paper]. July 8 of 2011. Page. 10. Nationals. The HRO refers only to murders, aggressions and disappearances reported by OTRANS of transgender and transsexual people.

<sup>17</sup> OASIS reports 64 hate crimes from 1996 to 2006, none resolved. Source: OASIS.

<sup>18</sup> OTRANS reports 29 hate crimes from 2007 to 2011.

<sup>19</sup> Annual Detail Report 2010 from the HRO. Page 100. Fifth paragraph. Hate crimes Section.

<sup>20</sup> For example: In January of 2006, the HRO reports the case of a 30-years-old Colombian man who was sexually abused by Police agents. Annual Detailed Report 2006. Page 630. File ORD.GUA.50-2006/DL

<sup>21</sup> Hate Crimes in Guatemala. Jose Aguilar Martinez. CAS. Page 39. First paragraph.

<sup>22</sup> Transphobia, Aggressions and Hate Crimes 2007-2011. Luis Zapeta Mazariegos. OTRANS 2011. Page 35. Second paragraph.

<sup>23</sup> Guatemala, the Face of Homophobia, Jorge Lopez Sologastoa y Luis Zapeta. OASIS 2007. Page 19. First paragraph.

<sup>24</sup> Newscast T13 Noticias. October 8 of 2011. Violence against *Sexual and Gender Diversity Communities*.

<sup>25</sup> Prevalence of HIV in Men that have Sex with Men (MSM): 11.5% according to Central-American Multi-centric Study of HIV/STD Prevalence and Behaviors. 2003. 18.3% according to Baseline Study of the Project: Actions Intensification to Prevent and Integral Treatment of HIV-AIDS in Vulnerable Groups and Priority Areas in Guatemala funded by the Global Fund. GETSA and OASIS (2006).

<sup>26</sup> 26.57% of the people of the *Sexual and Gender Diversity Communities* receive money or other goods in exchange for sexual intercourse. Source: Study on Sexual Behavior. OASIS. 2011.

<sup>27</sup> Newscast Noti7: Young man commits suicide at Incienso Bridge. OASIS pays for burial expenses for young homosexual man, who committed suicide for not having protection for his family formed with his same-sex partner.

10. The Human Rights Ombudsperson has informed to the Congress of the Republic<sup>28</sup> about the human rights situation, highlighting the vulnerability of the *Sexual and Gender Diversity Communities*,<sup>29,30</sup> quoting the current normative<sup>31,32</sup> and making evident the inclined atmosphere towards *hate crimes*<sup>33</sup> which are added to the high index of impunity linked to the general weakness of public institutions<sup>34,35</sup>.

11. Reports from the Human Rights Ombudsperson refer to international commitments that the Government has not accomplished, regarding sexual diversity,<sup>36</sup> and they mention the Organization of American States' concern on human rights violations due to sexual orientation and gender identity<sup>37</sup>.

12. Homophobia was institutionally recognized in Guatemala, for the first time, in the Human Rights Ombudsperson Annual Detailed Report of 2004<sup>38</sup>, when it was described as a social phenomenon in the same level as racism, xenophobia and other manifestations of existing negative discrimination. Since that historic moment, the Human Rights Ombudsperson has been, gradually, adopting some gender and sexual diversity terminology, for instance *sexual orientation*<sup>39</sup> and *gender identity*<sup>40</sup> which have been used, without a clearly defined system, to illustrate characteristics that promote hate crimes against those who flaunt them, and even persecution for *Sexual and Gender Diversity Communities* human rights defenders.<sup>41,42,43,44</sup>

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<sup>28</sup> Law of the Congress of the Republic Human Rights Commission and of the HRO. Article 15. Annual Detailed Reports.

<sup>29</sup> Annual Detailed Report 2003 from the HRO. Page 176. Fourth paragraph. Refers that homosexuals are discriminated and seen repulsive, disdain and wary.

<sup>30</sup> Annual Detailed Report 2008, 2009, 2010 and 2011 from the HRO. Sections: Sexual Minorities Human Rights / Sexual Diversity Human Rights.

<sup>31</sup> Annual Detailed Report 2008 from the HRO. Pages 151 and 152. Notes 170, 171, 172, 173, 174 and 175, quoting: Human Rights Universal Declaration, Political Constitution of the Republic of Guatemala and American Declaration on Human Rights.

<sup>32</sup> Annual Detailed Report 2009 from the HRO. Page 233. Sixth paragraph, quoting: Principles of Yogyakarta about International Legislation on Human Rights in Relationship with Sexual Orientation and Gender Identity.

<sup>33</sup> Annual Detailed Report 2010 and 2011 from the HRO. Hate Crimes Section.

<sup>34</sup> Annual Report of the United Nations High Commissioner for the Human Rights on the activities of her office in Guatemala. A/HRC/19/21/Add.1. Seventh paragraph. On Impunity.

<sup>35</sup> Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. 2007. A/HRC/4/20/Add.2. Paragraphs 32, 33 and 34. Reports 35 murders that were not investigated and notes: "There has been impunity for murders motivated by hatred towards persons identifying as gay, lesbian, transgender, and transsexual".

<sup>36</sup> Annual Detailed Report 2008 from the HRO. Page. 248. Seventh paragraph, about the recommendations for the State of Guatemala in relationship with the UPR.

<sup>37</sup> Annual Detailed Report 2009 from the HRO. Page. 233. Seventh paragraph and reference to Note 43 about: "OAS, Human Rights Resolution, Sexual Orientation and Gender Identity, AG/RES 2504 (XXXIX-0/09)".

<sup>38</sup> Annual Detailed Report 2004 from the HRO. Page.23. Second paragraph. Homophobia Section.

<sup>39</sup> Annual Detailed Report 2004 from the HRO. Page.16. third paragraph. "Discrimination" Section.

<sup>40</sup> Annual Detailed Report 2009 from the HRO. Page.233. First paragraph.

<sup>41</sup> Criminalization to defenders. UDEFEGUA. 2011. Pages 59, 60 and 61. Criminalization case of the defender Jorge Lopez Sologaistoa, director of OASIS, for having reported human rights violations.

<sup>42</sup> Letter to the General Prosecutor. January 22, 2009. Human Rights First

<sup>43</sup> Extrajudicial Execution of the OASIS Communications Assistant, Rashell Paulina Marrot, on December 17 of 2005. Her aggressors were four Police agents. On February 3 of 2006, the Inter American Commission of Human Rights orders Guatemala to give preventative measurements for the staff of OASIS, and the HRO declares a violation to the human right to life of Paulina (REF.EXP.ORD.GUA 1128-2005/DI).

13. Even though the Human Rights Ombudsperson has shown willingness to tackle the *Sexual and Gender Diversity Communities* human rights violations<sup>45,46</sup> to this current report's date, none of the three recommendations from the 2008 UPR regarding gender and sexual diversity have been handled. Not only the Executive Power but also the Legislative and the Judicial Powers have been aloof from their responsibility. Commitments made by the Government have not been accomplished.

14. In Guatemala, the idea that only those who commit hate crimes are responsible for those actions is still held, and the following is disregarded: "International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups".<sup>47</sup>

### **III. Recommendation**

15. Request Guatemalan Government to accomplish, urgently, its commitment on implementing the recommendations from the UPR of 2008, regarding the *Sexual and Gender Diversity Communities* protection.

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<sup>44</sup> References to Jurisprudence and Doctrine of the Inter-American System. 2007. International Commission of Jurists. Pages 22 and 49.

<sup>45</sup> Annual Detailed Report 2008, Page.449, first paragraph. Internal workshops to avoid discrimination towards people for their sexual orientation, directed by the Assistant Departmental of San Marcos, Guatemala.

<sup>46</sup> On May 28 of 2011, the HRO publicly pronounced "for the tolerance, the dignity and the right to sexual diversity" and included the subject as the transversal axis in the National Agenda of Human Rights 2012-2016.

<sup>47</sup> Taken from [www.ohchr.org](http://www.ohchr.org).

## Annex A

### Reference to sources of information quoted

Notes	Description	Internet link
2,3,4	UPR report, May 29 of 2008, A/HRC/8/38	• <a href="http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/GT/A_HRC_8_38_Guatemala_S.pdf">http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/GT/A_HRC_8_38_Guatemala_S.pdf</a>
5	Permanent Representative of Guatemala to the UN's speech, regarding UPR recommendations. June 11 of 2008	• <a href="http://www.oj.gob.gt/cursos/COMPILACION/Respuesta.pdf">http://www.oj.gob.gt/cursos/COMPILACION/Respuesta.pdf</a>
6	Permanent Representative of Guatemala to the UN's letter, regarding candidacy to HRC 2010-2013 and Appendix of Promises and Commitments. A/64/730	• <a href="http://www.guatemalaun.org/bin/documents/CDH_promesas.pdf">http://www.guatemalaun.org/bin/documents/CDH_promesas.pdf</a>
7, 12, 13	Political Constitution of the Republic of Guatemala	• <a href="http://www.congreso.gob.gt/manager/images/1188FE6B-B453-3B8C-0D00-549DA12F72CB.pdf">http://www.congreso.gob.gt/manager/images/1188FE6B-B453-3B8C-0D00-549DA12F72CB.pdf</a>
8	Victims of the Homofobia: psicológicas consecuencias. Jorge Osama López, Universitat Jaume I Castello.	• <a href="http://www.acgil.org/documents/246_documents_Victimasadelahomofobia,JorgeOsma.pdf">http://www.acgil.org/documents/246_documents_Victimasadelahomofobia,JorgeOsma.pdf</a>
9	Social exclusion based on non-heterosexual orientation in Guatemala. Ruben Mayorga and Maria Antonieta Rodriguez – OASIS. Year 2000	• <a href="http://www.desarrollohumano.org.gt/content/la-exclusion-social-basada-en-la-orientacion-sexual-no-heterosexual">http://www.desarrollohumano.org.gt/content/la-exclusion-social-basada-en-la-orientacion-sexual-no-heterosexual</a>
10, 11	Civil Law of Guatemala	• <a href="http://www.foroderechoguatemala.org/wp-content/uploads/2011/07/priva003.pdf">http://www.foroderechoguatemala.org/wp-content/uploads/2011/07/priva003.pdf</a>
14, 19-20, 29-33, 36-40, 45	Annual Detailed Report 2003, 2004, 2008, 2009, 2910 and 2011 from the HRO	• <a href="http://pdh.org.gt/index.php/documentos/informes">http://pdh.org.gt/index.php/documentos/informes</a>
15, 17, 23	Extract, Guatemala, the Face of Homophobia. Jorge Lopez Sologaitoa and Luis Zapeta. OASIS 2007	• <a href="http://www.asical.org/es/todo/ATT1233054590-1.pdf">http://www.asical.org/es/todo/ATT1233054590-1.pdf</a>
16	“The Human Rights Ombudsperson Sergio Morales explained that from 2007 to 2011 there were 29 aggressions”. Source: Prensa Libre. July 8 of 2011.	• <a href="http://www.prensalibre.com/noticias/Alarma-fobia-diversidad-sexual_0_513548669.html">http://www.prensalibre.com/noticias/Alarma-fobia-diversidad-sexual_0_513548669.html</a>
18, 22	Transphobia, Aggressions and Hate Crimes 2007-2011. Luis Zapeta Mazariegos. OTRANS 2011	• <a href="http://www.cineglbtpanama.com/Informe.pdf">http://www.cineglbtpanama.com/Informe.pdf</a>
21	Hate Crimes in Guatemala. Jose Aguilar Martinez. CAS.	• <a href="http://www.amigoscontraelsida.net/docs/crimenesdeodioenguatemala.pdf">http://www.amigoscontraelsida.net/docs/crimenesdeodioenguatemala.pdf</a>
24	Newscast T13 Noticias. October 8 of 2011. Violence against <i>Sexual and Gender Diversity Communities</i>	• <a href="http://youtu.be/-RKAV-EIshw">http://youtu.be/-RKAV-EIshw</a>
25	Prevalence of HIV in Men that have Sex with Men (MSM)	• <a href="http://www.pasca.org/sites/default/files/informe_tecnico_hsh_mayo2003.pdf">http://www.pasca.org/sites/default/files/informe_tecnico_hsh_mayo2003.pdf</a>
27	Newscast Noti7: Young man commits suicide at Incienso Bridge	• <a href="http://youtu.be/MFesOcUSdRM">http://youtu.be/MFesOcUSdRM</a>
28	Law of the Congress of the Republic Human Rights Commission and of the HRO	• <a href="http://www.pdh.org.gt/index.php/documentos/leyes-y-tratados">http://www.pdh.org.gt/index.php/documentos/leyes-y-tratados</a>
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42	Letter to the Attorney General. January 22, 2009. Human Rights First.	<ul style="list-style-type: none"> <li>• <a href="http://www.humanrightsfirst.org/wp-content/uploads/pdf/012309-HRD-lopez-pet-esp-no-sig.pdf">http://www.humanrightsfirst.org/wp-content/uploads/pdf/012309-HRD-lopez-pet-esp-no-sig.pdf</a></li> </ul>
44	References to Jurisprudence and Doctrine of the Inter-American System. 2007. International Commission of Jurists	<ul style="list-style-type: none"> <li>• <a href="http://www.icj.org/IMG/Inter-American_References.pdf">http://www.icj.org/IMG/Inter-American_References.pdf</a></li> </ul>
46	On May 28 of 2011, the HRO publicly pronounced “for the tolerance, the dignity and the right to sexual diversity”	<ul style="list-style-type: none"> <li>• <a href="http://www.redca.org/index.php?option=com_docman&amp;task=doc_view&amp;gid=76&amp;Itemid=116">http://www.redca.org/index.php?option=com_docman&amp;task=doc_view&amp;gid=76&amp;Itemid=116</a></li> </ul>