

# Country of Origin Report: Sexual Orientation and Gender Identity and Expression in Guatemala

ORAM - Organization for Refuge, Asylum  
and Migration

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The University of Minnesota Law School

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MINNESOTA LAW

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### About This Report:

Country of Origin (COI) reports are an essential tool in asylum adjudication. Reports are used for assessing a variety of elements in asylum claims: individual risk of persecution, the applicant's credibility, and the availability of state protection. Building on its extensive research and training experience within the refugee field, ORAM identified that more nuanced and culturally sensitive conceptualizations of sexual orientation and gender identity in COI reports could lead to a more accurate adjudication of asylum claims of this nature. This Guatemala COI Report is intended to help adjudicators and protection officers assess asylum claims by contextualizing personal stories of persecution.

### About ORAM:

Founded in 2008, ORAM is a pioneer in advocating for the safety and well-being of extremely vulnerable asylum seekers and refugees. ORAM provides innovative tools and delivers educational programs for refugee and migration professionals. Drawing upon our leadership experience and trailblazing work on sexual and gender minority refugees, we assist those facing extreme persecution and are in desperate need of help. ORAM works closely with governments, international and local organizations, respected academic institutions and communities to promote system-wide change through the sharing of information, capacity building and establishing sustainable futures for asylum seekers and refugees globally.

### About The Immigration and Human Rights Clinic, University of Minnesota Law School:

The Immigration and Human Rights Clinic is part of the James H. Binger Center for New Americans at the University of Minnesota Law School. Students in the Clinic represent asylum seekers and human trafficking survivors who are seeking protection in the United States. The Clinic also works on public policy issues affecting refugees, asylum-seekers and other noncitizens.

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## INTRODUCTION

Lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) people in Guatemala face significant hardships originating from both social barriers and government actions, which enforce discrimination against sexual minorities. Like their counterparts in neighboring Northern Triangle countries, LGBTIQ persons in Guatemala must confront regular threats of violence, which often result in assaults and hate-driven murders.<sup>1</sup> A 2019 United Nations report described LGBTIQ persons as one of the most “marginalized sectors” of Guatemalan society.<sup>2</sup> That year, eighteen LGBTIQ persons, including six transgender women and nine gay men, had been murdered - an increase from 2018.<sup>3</sup> Nor has violence against members of the LGBTIQ community decreased since then. In January 2021 alone, at least five LGBTIQ-identifying individuals were killed in Guatemala.<sup>4</sup> Moreover, according to the Observatory on the Murder of Trans Persons, Guatemala ranks 6th worldwide in gross numbers of murdered trans persons — only behind significantly more populous countries like Brazil, Mexico and Colombia.<sup>5</sup>

Cultural norms, including the dominance of conservative elements of the Catholic Church and Evangelical denominations, have led to a perpetual social stigma against LGBTIQ Guatemalans.<sup>6</sup> Organized gangs also regularly target LGBTIQ people, who frequently are forced

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<sup>1</sup> See generally Human Rights Watch, “Every Day I Live in Fear”: Violence and Discrimination Against LGBTIQ People in El Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States (2020) [https://www.hrw.org/sites/default/files/media\\_2020/10/centralamerica\\_LGBTIQ1020\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2020/10/centralamerica_LGBTIQ1020_web_0.pdf) (hereinafter Human Rights Watch 2020).

<sup>2</sup> United Nations High Commissioner for Human Rights, *Situation of Human Rights in Guatemala*, ¶ 4, U.N. Doc A/HRC/43/3/Add.1 (Jan. 17, 2020).

<sup>3</sup> *Id.* at ¶ 82.

<sup>4</sup> Human Rights Watch, “It’s What happens When You Look Like This” (March 2021), [https://www.hrw.org/sites/default/files/media\\_2021/03/%E2%80%9CIt%E2%80%99s%20What%20Happens%20When%20You%20Look%20Like%20This%E2%80%9D\\_0.pdf](https://www.hrw.org/sites/default/files/media_2021/03/%E2%80%9CIt%E2%80%99s%20What%20Happens%20When%20You%20Look%20Like%20This%E2%80%9D_0.pdf) [hereinafter Human Rights Watch 2021].

<sup>5</sup> Inter-American Commission On Human Rights, *Situation of Human Rights in Guatemala* 144 (2016), <http://www.oas.org/en/iachr/reports/pdfs/guatemala2016-en.pdf>.

<sup>6</sup> Human Rights Watch (2020), *supra* note 1

to leave their hometowns or the entire country because of these violent threats.<sup>7</sup> A government that is often indifferent and sometimes willfully harmful to LGBTIQ causes only worsens these difficult social conditions. Guatemala's parliament has in recent years attempted to advance proposals to restrict the civil rights of LGBTIQ people, and demonstrators protesting in favor of LGBTIQ rights sometimes face repression at the hands of the country's police forces. Moreover, LGBTIQ people facing non-state forms of oppression such as employment discrimination or hate crimes often find they are unable to receive the necessary assistance from local and national authorities.

This Report describes the national legal framework that applies to sexual minorities, the conditions LGBTIQ Guatemalans face, and social attitudes toward them. Part I examines how Guatemala's legal regime treats LGBTIQ people. Part 2 describes how those laws are applied, and the extent to which Guatemala has complied with its international human rights obligations. Part 3 describes social attitudes and treatment by non-state actors. The Report ends with a series of conclusions drawn from the research.

While the Report aims to provide an overview of the experiences of individuals with varying sexual orientations and gender identities, the majority of the available data is focused on the experiences of trans individuals.

## **1. LEGAL FRAMEWORK**

Currently, there is no comprehensive legal framework regarding LGBTIQ issues in Guatemala. Given this absence, this part of the Report discusses legal protections relating to

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<sup>7</sup> *Id.*

LGBTIQ people that derive from, or are present in, the Guatemalan Constitution, domestic legislation, and international obligations.

### 1.1. Guatemala's Constitution and LGBTIQ Rights

Guatemala's Constitution does not explicitly discuss LGBTIQ rights.<sup>8</sup> The Constitution considers all humans free and equal in dignity and rights.<sup>9</sup> Further, it guarantees—without discrimination— education,<sup>10</sup> healthcare,<sup>11</sup> and humane treatment in the penitentiary system.<sup>12</sup> Because the Constitution applies to “humans,” the Constitution should technically apply to LGBTIQ individuals, but Guatemalan law and jurisprudence does not expressly support this notion.<sup>13</sup>

The Constitution also establishes the preeminence of international law—specifically the treaties and agreements approved and ratified by Guatemala—over Guatemalan law.<sup>14</sup>

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<sup>8</sup> See Constitución Política de la República de Guatemala.

<sup>9</sup> [Constitution] tit. II, ch. I, art. 4 (“En Guatemala todos los seres humanos son libres e iguales en dignidad y derechos.”); *id.* tit. II, ch. II, sec. 1, art. 50 (extending this protection to all children and deeming any discrimination as punishable); *see also id.* tit. II, ch. I, art. 44 (holding laws and government provisions that reduce, restrict, or distort the rights guaranteed by the Constitution void).

<sup>10</sup> [Constitution] tit. II, ch. II, sec. 4, art. 71 (“Se garantiza la libertad de enseñanza y de criterio docente. Es obligación del Estado proporcionar y facilitar educación a sus habitantes sin discriminación alguna. Se declara de utilidad y necesidad públicas la fundación y mantenimiento de centros educativos culturales y museos.”).

<sup>11</sup> [Constitution] tit. II, ch. II, sec. 7, art. 93 (“El goce de la salud es derecho fundamental del ser humano, sin discriminación alguna.”); *see also id.* tit. II, ch. II, sec. 7, arts. 94–95 (obligating the State to provide healthcare and obligating all inhabitants to see to its conservation and reestablishment).

<sup>12</sup> [Constitution] tit. II, ch. I, art. 19(a) (“Deben ser tratados como seres humanos; no deben ser discriminados por motivo alguno, ni podrán infligírseles tratos crueles, torturas físicas, morales, psíquicas, coacciones o molestias, trabajos incompatibles con su estado físico, acciones denigrantes a su dignidad, o hacerles víctimas de exacciones, ni ser sometidos a experimentos científicos . . .”).

<sup>13</sup> *See, e.g.,* Freedom House, Freedom in the World 2018 – GUATEMALA (2020), <https://freedomhouse.org/country/guatemala/freedom-world/2020> (“The constitution prohibits discrimination based on gender, but women continue to face gender-based inequality . . .”).

<sup>14</sup> [Constitution] tit. II, ch. I, art. 46 (“Se establece el principio general de que en materia de derechos humanos, los tratados y convenciones aceptados y ratificados por Guatemala, tienen preeminencia sobre el derecho interno.”). *See infra Part III* for a discussion of Guatemala's international human rights obligations.

Provisions in the Constitution that could theoretically offer equal protection to LGBTIQ individuals include the recognition of *de facto* unions<sup>15</sup> and the distribution of power to local administrators to authorize the state of matrimony.<sup>16</sup> But currently pending federal legislation would statutorily define these provisions in a manner harmful to LGBTIQ individuals.<sup>17</sup> Other provisions could be interpreted to provide equal protection to the LGBTIQ community's cultural identity and expression.<sup>18</sup>

## **1.2. Laws Specifically Concerning Same-Sex Acts and “Homosexual” Behavior**

Homosexuality was decriminalized in Guatemala in 1871.<sup>19</sup> In the 150 years since that action, domestic civil law has not furthered its protection of LGBTIQ individuals. Guatemala's Civil Code contains no such protections, currently defining marriage as a social institution between a man and a woman.<sup>20</sup> The Civil Code does recognize marriages held outside the Republic<sup>21</sup> and only allows local officials to declare *de facto* unions between a man and a woman.<sup>22</sup>

### **1.2.1. Iniciativa 5272: Life And Family Protection Bill**

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<sup>15</sup> [Constitution] tit. II, ch. II, sec. 1, art. 48 (“El Estado reconoce la unión de hecho y la ley preceptuará todo lo relativo a la misma.”).

<sup>16</sup> [Constitution] tit. II, ch. II, sec. 1, art. 49 (“El matrimonio podrá ser autorizado por los alcaldes, concejales, notarios en ejercicio y ministros de culto facultados por la autoridad administrativa correspondiente.”).

<sup>17</sup> See *infra*, part II, A.

<sup>18</sup> [Constitution] tit. II, ch. II, sec. 2, arts. 57–65 (providing protection for cultural identity and expression).

<sup>19</sup> Manuel Fernandez, *Guatemala*, in THE GLBTQ Encyclopedia Project (2004), [http://www.glbtqarchive.com/ssh/guatemala\\_S.pdf](http://www.glbtqarchive.com/ssh/guatemala_S.pdf); see also Thomas P. Anderson et al., *Guatemala*, in Encyclopædia Britannica (2020) (describing Guatemala's postcolonial period, specifically the 1871 revolution and the ensuing period of “liberal ascendancy”).

<sup>20</sup> Código Civil [CC], art. 78, (“El matrimonio es una institución social por la que un hombre y una mujer se unen legalmente . . .”).

<sup>21</sup> [CC], art. 86 (“El matrimonio celebrado fuera del territorio nacional, en la forma y con los requisitos que en lugar de su celebración establezcan las leyes, producirá todos sus efectos en la República, a no ser que medie impedimento absoluto para contraerlo por algunas de las causas que determina este Código.”).

<sup>22</sup> [CC], art. 173 (“La unión de hecho de un hombre y de una mujer con capacidad para contraer matrimonio, puede ser declarada por ellos mismos ante el alcalde de su vecindad o un notario, para que produzca efecto legales . . .”).

Although Guatemala’s Constitution considers all people equal in rights, its Congress does not. The Guatemalan Congress approved a preliminary version of Iniciativa 5272—known as the Life and Family Protection Bill<sup>23</sup>—in August 2018.<sup>24</sup> Guatemalan President Alejandro Giammattei has expressed his support of the bill.<sup>25</sup> Among other things, the purpose of the bill is to (1) protect the institution of marriage between a man and a woman and (2) protect the right of parents to guide their children “in the field of sexuality.”<sup>26</sup>

The bill amends the Civil Code to define marriage as a social institution between a man a woman—determined by their sex assigned at birth—and prohibit same-sex marriage.<sup>27</sup> The bill also amends the Civil Code to prohibit the declaration of a de facto union between people of the same sex.<sup>28</sup>

The bill prohibits all public and private schools from promoting policies or programs related to sexual diversity<sup>29</sup> and gender or teaching sexual behaviors other than heterosexuality as

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<sup>23</sup> Proyecto de Ley para la Protección de la Vida y la Familia, Iniciativa 5272, Congreso de la República de Guatemala (2018), [https://www.congreso.gob.gt/detalle\\_pdf/iniciativas/66](https://www.congreso.gob.gt/detalle_pdf/iniciativas/66).

<sup>24</sup> Human Rights Watch, World Report 2020 244 (2020), [https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2020\\_0.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2020_0.pdf). (hereinafter “HRW World Report 2020”).

<sup>25</sup> *Id.* (noting President Giammattei’s statements during his election campaign that he supported the bill).

<sup>26</sup> Iniciativa 5272, *supra* note 25, at art. 1 (“La presente ley tiene por objeto la protección de[] . . . la institución del matrimonio entre un hombre y una mujer . . . y el derecho de los padres en orientar a sus hijos en el ámbito de la sexualidad.”).

<sup>27</sup> Iniciativa 5272, *supra* note 25, at art. 16 (“Se reforma el artículo 78 del Código Civil . . . . ‘El matrimonio es una institución social por la que un hombre y una mujer, así nacidos, se unen legalmente . . . . Se prohíbe expresamente el matrimonio entre personas del mismo sexo.’”).

<sup>28</sup> Iniciativa 5272, *supra* note 25, at art. 18 (“Se reforma el artículo 173 del Código Civil . . . . Se prohíbe expresamente la declaratoria de union de hecho entre personas del mismo sexo.”).

<sup>29</sup> The bill defines sexual diversity as the set of thoughts, tendencies, and practices by which certain groups of society adopt sexual behavior other than heterosexuality. Iniciativa 5272, *supra* note 25, at art. 2(a) (“Diversidad sexual: El conjunto de pensamientos, tendencias y practicas por las que determinados grupos de la sociedad adoptan una conducta sexual distinta a la heterosexualidad.”).



normal.<sup>30</sup> In the same article, the bill protects the right of parents to guide their children “in the field of sexuality.”<sup>31</sup> This article specifically protects a parent’s right to choose what type of education will be provided to their children in accordance with their own moral and religious convictions, as well as the behaviors, principles, and values that will govern the life of minors.<sup>32</sup>

Finally, the bill takes pains to protect the right to reject non-heterosexual conducts and practices.<sup>33</sup> In doing so, it specifically protects from prosecuting individuals who do not accept sexual diversity or gender ideology as normal, so long as they have not violated the law.<sup>34</sup> This provision arguably allows the denial of services on the basis of sexual orientation or gender identity.<sup>35</sup>

In sum, the Life and Family Protection Bill patently discriminates against LGBTIQ individuals. Its definition of marriage explicitly prohibits same-sex unions and implicitly excludes transgender individuals. It prohibits schools from educating students on LGBTIQ-related topics. Finally, it protects majority anti-LGBTIQ viewpoints while doing nothing to protect the rights and views of LGBTIQ individuals. In fact, Guatemala has no legislation specifically protecting the

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<sup>30</sup> Iniciativa 5272, *supra* note XX, at art. 15 (“Se prohíbe a las entidades educativas públicas y privadas, promover en la niñez y adolescencia, políticas o programas relativos a la diversidad sexual y la ideología de género o enseñar como normales las conductas sexuales distintas a la heterosexualidad.”).

<sup>31</sup> *Id.*

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

<sup>33</sup> Iniciativa 5272, *supra* note 25, at art. 18 (“Toda persona tiene derecho a su libertad de conciencia y expresión, derecho que implica no estar obligado a aceptar como normales las conductas y prácticas no heterosexuales.”).

<sup>34</sup> Iniciativa 5272, *supra* note 25, at art. 18 (“Ninguna persona podrá ser perseguida penalmente por no aceptar como normal la diversidad sexual o la ideología de género, siempre que no hubiere infringido disposición legal alguna o hubiere atentado contra la vida, la integridad o la dignidad de las personas o grupos que manifesten conductas y prácticas distintas a la heterosexualidad.”).

<sup>35</sup> HRW World Report 2020, *supra* note 26 (arguing that this interpretation would render Guatemalan law in violation of international human rights law). Compare Iniciativa 5272, *supra* note 25, at art. 18, with [Constitution] tit. II, ch. I, art. 46.

rights of LGBTIQ people.<sup>36</sup> The Office of the United Nations High Commissioner for Human Rights (OHCHR) worries that the bill decriminalizes hate crimes against LGBTIQ individuals.<sup>37</sup>

### 1.3. International Obligations

Guatemala joined the United Nations in 1945.<sup>38</sup> Accordingly, Guatemala's international obligations are "guided by the fundamental principles of universality, equality and non-discrimination . . . ."<sup>39</sup> In general, these fundamental principles are upheld through international human rights covenants and treaties containing expansive, open-ended protections against discrimination<sup>40</sup> and are "interpreted to include discrimination on the basis of sexual orientation, gender identity, and sex characteristics."<sup>41</sup>

Since joining the United Nations, Guatemala has signed and/or ratified several United Nations treaties that contain protections for LGBTIQ individuals: the International Covenant on Civil and Political Rights (ICCPR); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); International Covenant on Economic, Social and

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<sup>36</sup> HRW World Report 2020, *supra* note 26, at 246.

<sup>37</sup> Hum. Rts. Council, Situation of Human Rights in Guatemala, at 15, U.N. Doc. A/HRC/43/3/Add. 1 (2020) ("OHCHR notes with concern that Congress continued to push the final debate on Bill No. 5272 on the "protection of life and the family", which contained provisions that would decriminalize hate crimes against lesbian, gay, bisexual and transgender persons.").

<sup>38</sup> Press Release, Department of Public Information, United Nations Member States, U.N. Press Release ORG/1469 (July 3, 2006).

<sup>39</sup> United Nations Human Rights Office of the High Commissioner, Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law 9 (2019) [hereinafter International Human Rights Obligations Report], [https://www.ohchr.org/Documents/Publications/Born\\_Free\\_and\\_Equal\\_WEB.pdf](https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf) (citing G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948)).

<sup>40</sup> *Id.* (citing International Covenant on Civil and Political Rights art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171).

<sup>41</sup> *Id.* (citing *Toonen v. Australia*, CCPR/C/50/D/488/1992, Adoption of Views, U.N. Human Rights Committee (Apr. 4, 1994), <https://juris.ohchr.org/Search/Details/702>).

Cultural Rights (CESCR); and Convention on the Rights of the Child (CRC).<sup>42</sup> This section discusses each treaty’s protections for LGBTIQ people.

### **1.3.1. International Covenant on Civil and Political Rights**

Guatemala acceded to the ICCPR on May 5, 1992.<sup>43</sup> Article 2(1) holds that each signatory “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as . . . sex . . . or other status.”<sup>44</sup> The Committee on Economic, Social and Cultural Rights—a U.N. body charged with monitoring compliance with the ICCPR—has affirmed that Article 2 protects against discrimination on the basis of sexual orientation, gender identity, and intersex status.<sup>45</sup>

Under Article 40 of the ICCPR, each State must periodically submit reports on the measures they have adopted to uphold the rights the Covenant guarantees.<sup>46</sup> Guatemala submitted its fourth periodic report in 2016.<sup>47</sup> Guatemala reported thirteen measures adopted to raise awareness of and protect LGBTIQ individuals, including new Public Prosecution Service policies, National Civil Police training programming, visits by the Public Defenders Institute to inspect the conditions of LGBTIQ individuals in custody, and a fourteen-year plan by the Ministry of Public Health and Social Welfare for the betterment of transgender individuals.<sup>48</sup> The report notes eleven complaints to the Public Prosecution Service of violence directed specifically at the LGBTIQ population, and notes the existence of a Sexual Diversity Unit within The Office of the Human

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<sup>42</sup> See *Ratification Status for Guatemala*, United Nations Human Rights Office of the High Commissioner, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx) (choose “Guatemala” from “Please select a country” dropdown) (last visited Jan. 5, 2021).

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

<sup>44</sup> International Covenant on Civil and Political Rights art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>45</sup> International Human Rights Obligations Report, *supra* note 41.

<sup>46</sup> ICCPR, *supra* art. 40(1).

<sup>47</sup> See Fourth Periodic Report of States Parties Due in 2016, U.N. Doc. CCPR/C/GTM/4 (2017).

<sup>48</sup> *Id.* at 3–4.

Rights Advocate.<sup>49</sup> Guatemala also reported that, in 2012, the LGBTIQ population was “covered by the Unit for the Analysis of Attacks against Human Rights Defenders . . . which makes recommendations for preventing attacks.”<sup>50</sup> Finally, the report lists the LGBTIQ population as a priority for National Civil Police protection.<sup>51</sup>

In its observations on the report, the Human Rights Committee expressed concern about the lack of legal protections for the LGBTIQ community:

The Committee is concerned about the fact that the country has no law that specifically prohibits discrimination and hate crimes motivated by the victim’s sexual orientation or gender identity and that protects transgender persons’ right to legal recognition of their identity. It is also concerned about the increase in the number of murders of transgender women and about shortcomings in the recording and investigation of violent acts motivated by the victim’s sexual orientation or gender identity. It also regrets the lack of consolidated data on investigations, prosecutions, judgments, penalties and reparation in cases involving violence and hate crimes directed against lesbian, gay, bisexual, transgender and intersex persons . . . .<sup>52</sup>

Accordingly, in 2018, the committee recommended four measures. First, it recommended that Guatemala adopt legislation prohibiting “discrimination based on sexual orientation and gender identity” and protecting a “transgender person’s right to legal recognition of their identity.”<sup>53</sup> Second, the committee recommended the adoption of “necessary legislative means for adequately categorizing hate crimes motivated by the victim’s sexual orientation or gender identity and systematically compile data on investigations, prosecutions, judgments, penalties and reparation in such cases.”<sup>54</sup> Third, the committee recommended the adoption of protocols ensuring (1) the systematic reporting and investigation of sexual-orientation-based

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<sup>49</sup> *Id.* at 4.

<sup>50</sup> *Id.* at 30.

<sup>51</sup> *Id.* at 30–31.

<sup>52</sup> Human Rights Commission Concluding Observations on the Fourth Periodic Report of Guatemala, at 2, U.N. Doc. CCPR/C/GTM/CO/4 (2018) (citing ICCPR articles 2, 6, 7, 17, and 26).

<sup>53</sup> *Id.* at 2.

<sup>54</sup> *Id.*

crimes and gender-identity-based crimes, (2) adequate punishment for perpetrators of such crimes, and (3) secure complaint mechanisms for such crimes.<sup>55</sup> Finally, the committee urged Guatemala to “redouble its efforts to combat stereotypes and prejudice” against the LGBTIQ community.<sup>56</sup>

### **1.3.2. Convention Against Torture**

Guatemala acceded to the CAT on January 5, 1990.<sup>57</sup> The CAT holds that “torture” may be based on “discrimination of any kind,”<sup>58</sup> and that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”<sup>59</sup> The Committee against Torture emphasizes that State obligations under CAT apply to all persons regardless of sexual orientation, gender identity or sex characteristics and reaffirmed the obligation of States to prevent and address torture and ill-treatment against LGBTIQ people.<sup>60</sup>

### **1.3.3. Other Treaties**

Guatemala ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on August 12, 1982.<sup>61</sup> The CEDAW defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any

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<sup>55</sup> *Id.* at 2–3.

<sup>56</sup> *Id.* at 3.

<sup>57</sup> See Ratification Status for Guatemala, United Nations Human Rights Office of the High Commissioner, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx) (choose “Guatemala” from “Please select a country” dropdown) (last visited Jan. 5, 2021).

<sup>58</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1(1), Dec. 10, 1984, 1465 U.N.T.S. 85, 113

<sup>59</sup> *Id.* art. 2(1).

<sup>60</sup> International Human Rights Obligations Report, *supra* note 41, at 9–10 (citing Committee against Torture, General Comment No. 2 (CAT/C/GC/2), 2008, para. 21; and General Comment No.3 (CAT/C/GC/3), 2012, paras. 32, 39).

<sup>61</sup> See Ratification Status for Guatemala, United Nations Human Rights Office of the High Commissioner, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx) (choose “Guatemala” from “Please select a country” dropdown) (last visited Jan. 5, 2021).

other field,”<sup>62</sup> and calls on member states to take actions to effectively eliminate such discrimination.<sup>63</sup> The Committee on the Elimination of Discrimination against Women has implicitly recognized this discrimination to include discrimination against lesbian, bisexual, transgender and intersex women.<sup>64</sup>

Guatemala acceded to the International Covenant on Economic, Social Cultural Rights (CESCR) on May 19, 1988.<sup>65</sup> The CESCR holds that “[a]ll peoples have the right of self-determination” and that all people may “freely determine their political status and freely pursue their economic, social and cultural development.”<sup>66</sup> Accordingly, member states must uphold these rights “without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>67</sup> The Committee on Economic, Social and Cultural Rights affirms that this non-discrimination guarantee includes sexual status and gender identity.<sup>68</sup>

Guatemala ratified the Convention on the Rights of the Child (CRC) on June 6, 1990.<sup>69</sup> Article 2(1) of the CRC provides that parties “shall respect and ensure the rights set forth in the

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<sup>62</sup> Convention on the Elimination of All Forms of Discrimination against Women art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>63</sup> *Id.* art. 2.

<sup>64</sup> International Human Rights Obligations Report, *supra* note 41, at 10 (citing Committee on the Elimination of Discrimination against Women, General Recommendations No. 28 (CEDAW/C/GC/28), 2010, para. 18, and No. 33 (CEDAW/C/GC/33), 2015, para. 8. See also Committee on the Elimination of Discrimination against Women, Concluding Observations on Kyrgyzstan (CEDAW/C/KGZ/CO/4), 2015; on Ecuador (CEDAW/C/EQU/CO/8-9), 2015; on Denmark (CEDAW/C/DNK/CO/8), 2015; on India (CEDAW/C/IND/CO/4-5), 2014; on Cameroon (CEDAW/C/CMR/CO/4-5), 2014)

<sup>65</sup> See *Ratification Status for Guatemala*, United Nations Human Rights Office of the High Commissioner, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx) (choose “Guatemala” from “Please select a country” dropdown) (last visited Jan. 5, 2021).

<sup>66</sup> International Covenant on Economic, Social and Cultural Rights art. 1(1), Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>67</sup> *Id.* art. 2(2).

<sup>68</sup> International Human Rights Obligations Report, *supra* note 41, at 10.

<sup>69</sup> See *Ratification Status for Guatemala*, United Nations Human Rights Office of the High Commissioner, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx) (choose “Guatemala” from “Please select a country” dropdown) (last visited Jan. 5, 2021).

present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's . . . sex . . . or other status.”<sup>70</sup> The Committee on the Rights of the Child interprets Article 2 protection to include sexual orientation, gender identity, and intersex status.<sup>71</sup>

## **2. APPLICATION OF THE LAW**

Despite the international obligations outlined in the previous section, LGBTIQ persons have not benefited from the protection of these agreements. This section addresses the discriminatory interpretation of laws against LGBTIQ people as well as the inadequacy of police investigations of anti-LGBTIQ crimes, excessive police brutality against the LGBTIQ community, and the harsh and inhumane prison conditions for incarcerated LGBTIQ people.

### **2.1. Discriminatory Interpretation of Laws**

As discussed above, Guatemala does not provide any explicit legal protection for LGBTIQ individuals. In fact, law enforcement officials interpret existing laws in ways which discriminate against the LGBTIQ community by (1) failing to extend the protections of anti-discriminatory statutes to LGBTIQ individuals and (2) criminalizing LGBTIQ individuals under vaguely worded criminal statutes.

#### **2.1.1. Failure to Extend Existing Protections to LGBTIQ Individuals**

Guatemalan law enforcement officials have the ability to apply statutes which protect categories of persons that could be interpreted to include LGBTIQ individuals, but courts and police officers have demonstrated an unwillingness to extend the laws in this way. For example, in 2008, Guatemala enacted a law criminalizing certain forms of physical and sexual violence against women, but Guatemalan officials indicated that this new femicide law is inapplicable to

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<sup>70</sup> Convention on the Rights of the Child, art. 2(1), Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>71</sup> International Human Rights Obligations Report, *supra* note 41, at 10.

trans women because “they are not biological women.”<sup>72</sup> Further, Article 202 of Guatemala’s penal code prohibits discrimination based on “gender, race, ethnicity, language, age, religion, economic situation, illness, disability, marital status, or any other motive, reason, or circumstance.”<sup>73</sup> However, the statute does not prohibit discrimination based on sexual orientation and gender identity specifically.<sup>74</sup> And according to the Attorney General’s Office, in Guatemalan history there have been no convictions based on discrimination on the grounds of sexual orientation or gender identity.<sup>75</sup> While the phrase “or any other motive, reason, or circumstance” could be used as a basis for discrimination claims based on sexual identity and sexual orientation, Guatemala’s societal attitudes, police biases, and insufficient investigations into LGBTIQ-related crimes make it unlikely that such claims under Article 202 will succeed.

The political climate in Guatemala prevents the successful passage of legislation prohibiting anti-LGBTIQ discrimination; in fact, recent attempts by lawmakers and transgender organizations to advance legislation favoring LGBTIQ individuals have ultimately failed. In 2017, Sandra Morán, the country’s first openly lesbian member of Congress, presented a draft law on gender identity which would ensure that transgender individuals would have the ability to correct their birth certificate to match their own perception of gender identity.<sup>76</sup> Organizations have found that without correct identification documents, “trans people are subject to harassment in their daily interactions, in banks, health centers and when accessing State services.”<sup>77</sup> The legislature

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<sup>72</sup> Congress of the Republic of Guatemala, Decree 22-2008, Law Against Femicide and Other Forms of Violence Against Women (Ley Contra el Femicidio y otras Formas de Violencia Contra la Mujer), May 2, 2008, [https://www.oas.org/dil/esp/ley\\_contra\\_el\\_femicidio\\_y\\_otras\\_formas\\_de\\_violencia\\_contra\\_la\\_mujer\\_guatemala.pdf](https://www.oas.org/dil/esp/ley_contra_el_femicidio_y_otras_formas_de_violencia_contra_la_mujer_guatemala.pdf)

<sup>73</sup> Congress of the Republic of Guatemala, Decree 57-2002, <http://scm.oas.org/pdfs/2002/cp10270.pdf> (accessed September 11, 2020), art. 1

<sup>74</sup> *Id.*

<sup>75</sup> Human Rights Watch (March 2021), *supra* note 4

<sup>76</sup> IACHR Report, *supra* note 5

<sup>77</sup> Regional Group on Risks, Emergencies, and Disasters for Latin America and the Caribbean (REDLAC), The Impact of Violence on LGBTIQI People in the North of Central America (Sept 2019),



ultimately rejected the proposal, thus denying transgender individuals the ability to have their gender identity legally recognized.<sup>78</sup> And according to a report published by the Regional Group on Risks, Emergencies and Disasters for Latin America and the Caribbean (REDLAC), legislators only invited people from traditional religious groups to participate in a workgroup about the proposed bill and excluded LGBTIQ activist organizations from the discussions.<sup>79</sup> Similarly, in 2019 lawmakers in Guatemala proposed amending the penal code to include sexual orientation and gender identity specifically.<sup>80</sup> However, in 2019 the U.S. State Department found that efforts to pass laws against discrimination based on sex characteristics “encountered severe opposition among legislators.”<sup>81</sup>

Guatemala’s labor code presents another example of a statute which officials could, but do not choose to, extend to LGBTIQ individuals. The Guatemalan labor code protects against employment discrimination on grounds of race, religion, political opinion, and socioeconomic status, but fails to protect sexual orientation or gender identity.<sup>82</sup> The labor code fails to even provide a catch-all “other grounds” category, further limiting the ways in which LGBTIQ individuals could bring claims for employment discrimination.<sup>83</sup> In addition, the U.S. State Department found that, in general, the Guatemalan government did not effectively enforce employment discrimination laws against all forms of discrimination and the penalties were

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<https://reliefweb.int/sites/reliefweb.int/files/resources/Protection%20Snapshot%206%20-%20English%20-%20September%202019.pdf>

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Oscar Garcia, “Bill to Prevent Discrimination Against LGBTIQ People Presented” (“Presentan iniciativa de ley para prevenir la discriminación contra personas LGTBIQ”), Guatevision, December 18, 2019, <https://www.guatevision.com/nacionales/presentan-iniciativa-de-ley-para-prevenir-la-discriminacion-contra-personaslgbtbiq> (accessed September 11, 2020).

<sup>81</sup> U.S. Department of State Report, *supra* note 89

<sup>82</sup> Código de Trabajo de Guatemala (Labor Code of Guatemala), Decree No. 1441,

<sup>83</sup> *Id.*

insufficient to deter violations, indicating that law enforcement could still fail to protect discrimination against LGBTIQ people even with additional codified protections<sup>84</sup>

### **2.1.2. The Criminalization of LGBTIQ Individuals**

In addition to denying protections of LGBTIQ individuals under certain statutes, Guatemalan officials also use laws protecting “public morals” to criminalize members of the LGBTIQ community.<sup>85</sup> For example, Article 489 of the Guatemala Penal Code criminalizes certain actions which violate the country’s customs or morals.<sup>86</sup> The statute punishes any person who “publicly offends modesty.”<sup>87</sup> While this legislation does not specifically criminalize LGBTIQ persons, police officers and prosecutors may enforce this type of public morality law against those persons who they perceive to be defying socially established sexual identity norms. The UN Committee against Torture has recognized that this type of language in penal codes grants discretionary power to judges and police officers, “which combined with prejudices and discriminatory attitudes, can lead to abuses against them.”<sup>88</sup> This can be seen in the case of one trans woman in Guatemala who described being detained eighteen times by police for “disrupting public order” when she was participating in sex work, despite the practice of it being legal.<sup>89</sup>

Further, police and prosecutors in Guatemala have also used the country’s vague anti-trafficking law to criminalize members of the LGBTIQ community. In 2009, Guatemala passed the “Law Against Sexual Violence, Exploitation, and Trafficking in Persons in Guatemala.”<sup>90</sup> The

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<sup>84</sup> U.S. Department of State Report, *supra* note 89

<sup>85</sup> IACHR Report, *supra* note 5

<sup>86</sup> Guatemala Penal Code Article 489, <https://policehumanrightsresources.org/content/uploads/2016/07/Penal-Code-1973.pdf?x96812>. (“Quien ofendiere públicamente el pudor con cantos, a legorías u otro material pornográfico u obsceno.”)

<sup>87</sup> *Id.*

<sup>88</sup> IACHR Report, *supra* note 5

<sup>89</sup> *Id.*

<sup>90</sup> U.S. Department of State, 2020 Trafficking in Persons Report: Guatemala, (2020) <https://www.state.gov/reports/2020-trafficking-in-persons->

purpose of the law is to “prevent, repress, punish and eradicate sexual violence, exploitation and trafficking in persons, care and protection of its victims and compensate the damages and losses caused.”<sup>91</sup> However, the PNC has used Guatemala’s anti-trafficking law as justification for arresting and detaining women who participate in sex work, including transgender women.<sup>92</sup> Because the 2009 anti-trafficking law does not explicitly differentiate people trafficking from sex work that is carried out willingly, the Guatemalan police are able use the law as a means of criminalizing transgender women.<sup>93</sup> The vague language again leaves transgender women who engage in sex work at risk of abuse, unlawful detention, and extortion at the hands of police.<sup>94</sup> In 2020, the U.S. Department of State issued a Trafficking in Persons Report for Guatemala in which it identified LGBTIQ persons as a group that is vulnerable to trafficking in Guatemala.<sup>95</sup> However, the Report critiqued the Guatemalan anti-trafficking law as being inconsistent with the international definition of trafficking because the Guatemalan law does not require the use of force, fraud, or coercion in order to find an adult trafficking offense.<sup>96</sup> The report found that police officers lacked awareness and understanding of trafficking investigation protocols and further found that “National Civil Police officers across the country had a lack of understanding of human

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report/guatemala/#:~:text=The%20anti%2Dtrafficking%20law%20of,serious%20crimes%2C%20such%20as%20rape.

<sup>91</sup> Ley Contra la Violencia Sexual, Explotación y Trata de Personas en Guatemala. [http://observatorio.mp.gob.gt/wordpress/wp-content/uploads/2019/10/ley-contra-la-violencia-sexual-explotacion-y-trata-de-personas\\_-\\_decreto\\_9-2009\\_-guatemala.pdf](http://observatorio.mp.gob.gt/wordpress/wp-content/uploads/2019/10/ley-contra-la-violencia-sexual-explotacion-y-trata-de-personas_-_decreto_9-2009_-guatemala.pdf)

<sup>92</sup> Latin American and Caribbean Transgender Network (REDLACTRANS), *The Night is Another Country: Impunity and Violence Against Transgender Women Human Rights Defenders in Latin America* (2012), <http://redlactrans.org.ar/site/wp-content/uploads/2013/05/Violencia-e-impunidad-English1.pdf> [hereinafter “REDLACTRANS Report”]

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> U.S. Department of State, 2020 Trafficking in Persons Report: Guatemala, (2020) <https://www.state.gov/reports/2020-trafficking-in-persons-report/guatemala/#:~:text=The%20anti%2Dtrafficking%20law%20of,serious%20crimes%2C%20such%20as%20rape.>

<sup>96</sup> *Id.*

trafficking.<sup>97</sup> The combination of the overly broad anti-trafficking statute, the lack of police training, and police biases has resulted in instances of abuse and arbitrary detention of LGBTIQ sex workers.

## **2.2. Inadequacy of State Protection**

The selective interpretation of laws in Guatemala is only one factor which contributes to the widespread impunity for crimes committed against the LGBTIQ community. Guatemala's Human Rights Ombudsperson's Office has expressed concern about the country's lack of protection against anti-LGBTIQ discrimination and violence.<sup>98</sup> In its contribution to a United Nations Report, the Office posited that the current climate in which institutions are seldom held accountable for anti-LGBTIQ discrimination exists because "LGBTIQQ people who have been victims of crimes based on sexual orientation or gender identity have been [made totally invisible] especially with regard to the crime of discrimination."<sup>99</sup> This section will describe how Guatemala fails to protect its LGBTIQ-identifying citizens by: (1) failing to investigate anti-LGBTIQ crimes, (2) failing to collect data about anti-LGBTIQ crimes, (3) failing to prevent gang-related violence toward LGBTIQ individuals, (4) allowing to go unchecked excessive police violence against LGBTIQ individuals, and (5) subjecting LGBTIQ individuals to harsh and inhumane prison conditions.

### **2.2.1. Inadequate Police Investigation**

Human rights organizations have concluded that Guatemala cannot guarantee due process nor proper investigations with regard to crimes motivated by sexual orientation or gender

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<sup>97</sup> *Id.*

<sup>98</sup> Guatemalan Human Rights Ombudsperson's Contribution to the Report of the United Nations Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, February 2019. <https://www.ohchr.org/Documents/Issues/SexualOrientation/Data/GuatemalaOmbudsperson.docx> (accessed September 11, 2020)

<sup>99</sup> *Id.*

identity.<sup>100</sup> For example, even where it was possible to identify the aggressor in crimes against transgender women, law enforcement has failed to take action.<sup>101</sup> After an on-site visit to Guatemala, the Inter-American Commission on Human Rights found that “killings of LGBTIQ persons are not documented in police reports, and those that happen to be recorded go unpunished.”<sup>102</sup> The U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions posits that the prevalence of violent crime exists in the country due to the justice system’s lack of adequate attention to victims and absence of effective investigations.<sup>103</sup> Human Rights Watch found that Guatemalan “police officers who operate with a gender bias” often complete inadequate investigations into crimes against lesbian, bisexual, and transgender women.<sup>104</sup> Additionally, in its annual crime and safety report on Guatemala, the Overseas Security Advisory Council (OSAC) found that in 2020, the Guatemalan police force significantly lacks training and funding, suggesting that police bias and fear of reporting may not be the only factors causing the low rate of investigations.<sup>105</sup> Regardless of the causes, the police’s consistent failure to adequately record and investigate crimes against LGBTIQ individuals or categorize them as hate crimes enables the government to disregard the societal issues facing the LGBTIQ community.<sup>106</sup>

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<sup>100</sup> See, *Id.*; OAS, Preliminary Observations to the IACHR’s On-Site Visit to Guatemala (August 4, 2017), [http://www.oas.org/en/iachr/media\\_center/preleases/2017/114a.asp](http://www.oas.org/en/iachr/media_center/preleases/2017/114a.asp); U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum Report on Mission to Guatemala of 21-25 August 2006, U.N. Doc. No. A/HRC/4/20/Add.2 ¶ 7 (19 February 2007); U.S Department of State Human Rights Report: Guatemala 2019 (2019); Human Rights Watch, Every Day I Live in Fear: Violence and Discrimination Against LGBTIQ People in EL Salvador, Guatemala, and Honduras, and Obstacles to Asylum in the United States (October 7, 2020), [https://www.hrw.org/sites/default/files/media\\_2020/10/centralamerica\\_LGBTIQ1020\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2020/10/centralamerica_LGBTIQ1020_web_0.pdf)

<sup>101</sup> REDLACTRANS Report, *supra* note 128

<sup>102</sup> IACHR Report, *supra* note 5

<sup>103</sup> U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum Report on Mission to Guatemala of 21-25 August 2006, U.N. Doc. No. A/HRC/4/20/Add.2 ¶ 7 (19 February 2007).

<sup>104</sup> HRW World Report 2020, *supra* note 26

<sup>105</sup> OSAC Guatemala Crime and Safety Report 2020, <https://www.osac.gov/Content/Report/d8c492ad-b604-457b-bd8f-18550eec1ff2> [hereinafter “OSAC Report”].

<sup>106</sup> OTRANS Report, *supra* note 6

In July 2012, the Latin American and Caribbean Transgender Network (REDLACTRANS) published interviews with several transgender activists in Guatemala who described instances in which police officers failed to follow up on reports of violence against LGBTIQ individuals.<sup>107</sup> As discussed below, more recent interviews indicate that anti-LGBTIQ discrimination by police has not changed significantly since this 2012 report. One interviewee described to REDLACTRANS in 2012, an incident in which she and her friend, both transgender women, were shot at by a man who approached them on the street.<sup>108</sup> Her friend died on the scene, but she was able to escape and filed a complaint to the police.<sup>109</sup> About the subsequent investigation, the interviewee stated: “a patrol car came to interview me about what happened but I never heard anything more about the investigation.”<sup>110</sup> Another transgender woman recounted an instance in which a group of transgender women were victims of a drive-by shooting.<sup>111</sup> One of the transgender women told a police officer in a nearby car what had happened, and asked them to follow the van in question.<sup>112</sup> The interviewee said that the police pretended to follow the van, and that the officer “could have asked for back up but they didn't, they let them get away.”<sup>113</sup> Both of these accounts involved the use of a deadly weapon against civilians, and yet Guatemalan police ignored the reports and failed to conduct investigations.

Recent interviews with LGBTIQ individuals whose complaints have received inadequate investigation demonstrate that the Guatemalan police’s treatment of the LGBTIQ community has not improved. For example, Human Rights Watch interviewed a trans activist in

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<sup>107</sup> REDLACTRANS Report, *supra* note 128

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

2019 who reported that police refused to aid her trans friend who was being beaten.<sup>114</sup> The police refused to respond to the call because, one officer said, “it’s a faggot that they’re beating.”<sup>115</sup> Human Rights Watch found that of the fifty-one LGBTIQ-motivated criminal complaints received by Guatemala authorities between 2016 and 2019, only four of the crimes resulted in convictions.<sup>116</sup>

### **2.2.2. Inadequate Data Collection for Anti-LGBTIQ Crimes**

Even when the police document that a crime occurred, they omit important details about the victim or the sequence of events which would be relevant to the classification of the crime as an anti-LGBTIQ hate crime.<sup>117</sup> For example, IACHR found that “trans women are frequently identified in public records as ‘men dressed in women’s clothes.’”<sup>118</sup> The Guatemalan National Civil Police (PNC) are trained to describe transgender women as transvestite or homosexual men rather than use the correct terminology.<sup>119</sup>

Since 2013, IACHR has urged Guatemalan leaders to implement data collection procedures to better document crimes against LGBTIQ persons.<sup>120</sup> Despite this urging, in 2017, IACHR found that still in most cases “either no information is collected or, where information is collected, it is not properly disaggregated according to the victim’s sexual orientation or gender identity.”<sup>121</sup> For example, since 2014, the case management system used by the Office of Human Rights has included a box that officials can use to indicate that the complainant identifies as LGBTIQ.<sup>122</sup> But

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<sup>114</sup> Human Rights Watch (2021), *supra* note 4

<sup>115</sup> *Id.*

<sup>116</sup> Human Rights Watch (2021), *supra* note 4

<sup>117</sup> IACHR Report, *supra* note 5

<sup>118</sup> Inter-American Commission on Human Rights, Hearing on Discrimination based on Sexual Orientation and Gender Identity in Guatemala, 146th Period of Session, 4 November 2012

<sup>119</sup> REDLACTRANS Report, *supra* note 128

<sup>120</sup> IACHR Report, *supra* note 5

<sup>121</sup> *Id.*

<sup>122</sup> REDLACTRANS Report, *supra* note 128

in 2019, Human Rights Watch found that officials do not utilize this box effectively, and wrote, “Lucia, a lesbian who filed a report after her girlfriend became violent with her and robbed her, said, ‘the girl who took the report didn’t know where the box was to mark that I was LGBTIQ.’”<sup>123</sup> In another instance, Human Rights Watch found that a trans woman who went to file a report after she had been attacked was repeatedly referred to as a man, and the prosecutor told her that it was not possible to put “trans woman” in the file.<sup>124</sup>

This mis-categorization of LGBTIQ individuals not only makes it difficult to track and respond to anti-LGBTIQ crimes, but it also perpetuates fear and mistrust of police in Guatemala. And this fear goes beyond filing incident reports with the police. A transgender woman interviewed by REDLACTRANS, recounted an instance where she went to the Office of the Human Rights Ombudsman to file a complaint, and the staff refused to let her use the women’s toilet.<sup>125</sup> The interviewee expressed concern that the Human Rights office is unable to investigate and defend against discrimination against transgender women if the office itself is participating in discrimination. In the same way, the Overseas Security Advisory Council (OSAC) found that in 2019, “LGBTIQ groups claimed women experienced specific forms of discrimination, such as forced marriages and forced pregnancies through corrective rape,” although these incidents were rarely, if ever, reported to authorities.”<sup>126</sup> This type of erasure at the hands of Guatemalan institutions allows law enforcement officials to refrain from investigating crimes motivated by sexual orientation or gender identity.

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<sup>123</sup> Human Rights Watch (2021), *supra* note 4

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> OSAC Report, *supra* note 141



### 2.2.3. Impunity for Gang-Related LGBTIQ Violence

In some instances, inadequate police investigation is a result of the police's fear of gangs.<sup>127</sup> The UN High Commissioner for Refugees (UNHCR) explains that, for LGBTIQ individuals in Guatemala, gang violence has made life “nearly impossible.”<sup>128</sup> The Washington Office on Latin America (WOLA) describes the climate in Guatemala as one in which “police rarely investigate gang-related violence, and most killings are never prosecuted.”<sup>129</sup> A lesbian woman interviewed by Human Rights Watch in 2019 described an instance where the police refused to investigate her friend's murder because the alleged aggressor was a gang member.<sup>130</sup> In 2014, a gay man was forced to flee Guatemala and seek asylum in the United States after surviving three, brutal sexual assaults at the hands of gang members who targeted him because of his sexual orientation.<sup>131</sup>

The unwillingness of Guatemalan authorities to investigate and prosecute gang-related, anti-LGBTIQ crimes has exacerbated the violence against the country's LGBTIQ community, and has forced many citizens to leave their homes.<sup>132</sup> Human Rights Watch posts that gangs have increasingly targeted LGBTIQ individuals because their “perceived vulnerability” makes them “easy prey for gangs bent on extortion or forced collaboration.”<sup>133</sup> Additionally, many LGBTIQ

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<sup>127</sup> *Id.*

<sup>128</sup> Tim Gaynor, “I’m not going to hide what I am anymore,” United Nations High Commissioner for Refugees (2021), <https://www.unhcr.org/news/stories/2021/5/60a259b24/im-hide-anymore.html>

<sup>129</sup> Adriana Beltrán, “Children and Families Fleeing Violence in Central America,” WOLA, February 1, 2017, <https://www.wola.org/analysis/people-leaving-central-americas-northern-triangle>

<sup>130</sup> Human Rights Watch (2021), *supra* note 4

<sup>131</sup> Michael Lavers, “Gang rape prompts gay Guatemalan to seek asylum in U.S.,” The Washington Blade (2014), <https://www.washingtonblade.com/2014/12/23/gang-rape-prompts-gay-guatemalan-seek-asylum-u-s/>

<sup>132</sup> Human Rights Watch (2021), *supra* note 4

<sup>133</sup> *Id.*

individuals tend to be economically marginalized,<sup>134</sup> which may force them to live in gang-controlled neighborhoods, further exposing them to violence.<sup>135</sup>

Human Rights Watch interviewed four LGBTIQ people who had experienced violence or death threats from gang members or those who they believed to be gang members.<sup>136</sup> One trans woman was raped by seven gang members who targeted her because her brother was a rival gang member.<sup>137</sup> The same woman had also engaged in sex work and experienced extortion from gangs and police officers linked to gangs, fearing she would be killed if she did not pay them almost all of her money.<sup>138</sup> Another interviewee, a trans woman, left Guatemala in 2018 due to extortion and threats from gang members after receiving an “inadequate and discriminatory police response” to her complaints.<sup>139</sup> The same woman had also been violently attacked by gang members in previous years for performing in a drag show wearing women’s clothing.<sup>140</sup> Another interviewee, also a trans woman, fled Guatemala after declining to report a gang-related attack to the police because, “they never do anything, a friend of mine was beaten...and [the police] never did anything.”<sup>141</sup>

#### **2.2.4. Police Violence Against LGBTIQ Individuals**

In addition to denying due process to victimized members of the LGBTIQ community, Guatemalan police often use their power to perpetrate violence against the community. Officers of the Guatemalan PNC regularly harass, extort, and brutalize LGBTIQ individuals.<sup>142</sup> This abuse is

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<sup>134</sup> While few statistics exist on the economic situations of LGBTIQ people in Guatemala, interviews conducted by Human Rights Watch indicate that “family rejection and discrimination lead to a higher likelihood of economic marginalization, particularly for trans women” who can only find sex work. Human Rights Watch (2021), *supra* note 4.

<sup>135</sup> Human Rights Watch (2021), *supra* note 4

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> Human Rights Watch (2021), *supra* note 4

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

often especially directed at individuals whom the police perceive to be sex workers.<sup>143</sup> There is limited statistical data available on LGBTIQ related incidents of police violence because the lack of anonymity in reporting causes LGBTIQ people to fear being victimized and harassed for filing reports against police.<sup>144</sup> Therefore, much of the available research presents only anecdotal personal accounts illustrating the abuse LGBTIQ people suffer at the hands of police.

In October 2020, Human Rights Watch published interviews with ten transgender people about incidents in which police officers abused them “because of their presumed sexual orientation or identity.”<sup>145</sup> Examples of police abuse against LGBTIQ people included sexual assault, robbery, harassment, violent assault, and rape.<sup>146</sup> The ten interviews shared several common elements: most of the incidents occurred at night, many of them occurred when groups of LGBTIQ individuals were walking outside, more than one officer usually was involved, and police officers frequently used their position of authority to threaten the victim.<sup>147</sup>

One interviewee recounted several instances when she experienced police abuse.<sup>148</sup> In 2019 she was walking and saw police officers aggressively detaining a man.<sup>149</sup> When the officers noticed she was watching, they called her over and forced her to the ground.<sup>150</sup> The interviewee stated, they then “violently opened my legs” and shouted, “you’re a man” before taking her money out of her bag and letting her go.<sup>151</sup> Two years before this incident, she was at a bar with another trans

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<sup>143</sup> *Id.*

<sup>144</sup> Human Rights Watch (2020), *supra* note 1

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Human Rights Watch (2020), *supra* note 1

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

woman when on-duty police officers began harassing them by pulling off her friend's wig and then attempting to put them into the officer's patrol car.<sup>152</sup> In another encounter in 2014 or 2015, the same woman was assaulted by transit police who approached her and another trans woman and began beating them with a baton and threatening to kill them.<sup>153</sup>

Several interviewees were victims of sexual assault at the hands of police.<sup>154</sup> One, a gay man, described a night in 2017 when four officers in a patrol car stopped him on the street and ordered him to get into the car when they realized he was gay.<sup>155</sup> The officers eventually pulled over and three of them got out of the car, leaving him with one officer who forced him to perform oral sex.<sup>156</sup> Another interviewee, a trans woman, described being forced to perform oral sex on six soldiers of the Guatemalan Armed Forces.<sup>157</sup>

A transgender woman interviewed by REDLACTRANS discussed an incident in which a policeman approached her on the street and began hitting her.<sup>158</sup> The interviewee decided not to file a complaint against the officer because, "he's the police officer in the area where I work and I have to see him all the time. I'm afraid that later he would take reprisals against me."<sup>159</sup> A trans activist shared a similar sentiment in an interview with Human Rights Watch, "if you file a report against a police officer, he will know that same day who filed a report against him. That makes you afraid they'll kill you."<sup>160</sup>

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<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Human Rights Watch (2020), *supra* note 1

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup>

In 2006, two transgender women were shot on a street in Guatemala City by four people who were allegedly police officers.<sup>161</sup> One of the women died from her injuries, and the survivor was subject to harassment and undue police surveillance following the incident.<sup>162</sup> The IACHR is concerned that this incident and similar incidents indicate a pattern of “social cleansing.”<sup>163</sup> Trans women have also reported being attacked by armed neighborhood security groups, known as Juntas Locales de Seguridad.<sup>164</sup> These groups take on police duties within their communities and are believed to have been involved in the brutal killings of three trans women in July 2011.<sup>165</sup>

Police abuse is often targeted at LGBTIQ gatherings as well. In April 2019, 14 police cars drove up to a gay nightclub and officers wearing face coverings raided the establishment with assault rifles to intimidate the patrons.<sup>166</sup> Later that year, in July 2019, police officers raided a celebration at the offices of the LGBTIQ organization Gente Positiva, following a pride parade in Guatemala City.<sup>167</sup> The police entered the office building and pepper-sprayed into the enclosed space.<sup>168</sup> Victims of police violence rarely obtain redress for their suffering and this persistent impunity contributes to the hostility suffered by LGBTIQ individuals in Guatemala.<sup>169</sup>

### **2.2.5. Protection of LGBTIQ Individuals in Prisons**

The conditions in many Central American prisons are harsh and often life threatening for all incarcerated individuals, but the conditions are considerably more dangerous for those who

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<sup>161</sup> Human Rights Watch, “Guatemala: Transgender People Face Deadly Attacks” (2006), <https://www.hrw.org/news/2006/02/20/guatemala-transgender-people-face-deadly-attacks>

<sup>162</sup> *Id.*

<sup>163</sup> IACHR Report, *supra* note 5

<sup>164</sup> *Id.*

<sup>165</sup> REDLACTRANS Report, *supra* note 128

<sup>166</sup> Human Rights Watch (2020), *supra* note 1

<sup>167</sup> U.N. High Commissioner for Human Rights, The Situation of Human Rights in Guatemala (January 17, 2020). <https://undocs.org/en/A/HRC/43/3/Add.1>

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

identify as LGBTIQ.<sup>170</sup> According to the UN Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment, LGBTIQ individuals in Central American prisons “are at the bottom of the informal hierarchy in detention facilities, which results in double or triple discrimination, and they are disproportionately subjected to torture and other forms of ill treatment.”<sup>171</sup>

In Guatemala, prisoners who identify as LGBTIQ experience inhumane and violent treatment at the hands of both prisoners and prison staff. In 2019, the U.S. State Department found that all prisoners in Guatemala are at significant risk due to “sexual assault, inadequate sanitation and medical care, and gross overcrowding.”<sup>172</sup> The report found these conditions to be significantly worse for prisoners who identify as LGBTIQ.<sup>173</sup> Guatemalan authorities often facilitate this violence by purposefully placing trans women in men's prisons.<sup>174</sup> There are very few on-the-record accounts of sexual violence against Guatemalan LGBTIQ prisoners for the same reasons it is difficult to collect data on police brutality in the country. However, LGBTIQ activist organizations have reported several such instances, including the violent sexual assault on a young gay man by seventeen male prisoners and guards, and a trans woman who was allegedly raped upwards of eighty times while in detention.<sup>175</sup> In another personal account, a transgender activist said of their time in a men’s prison: “Always, at night, someone got in my bed and forced me to have sex with him.”<sup>176</sup> Another trans woman who had been detained by Guatemalan police eighteen times for participating in sex work, described being the victim of “several rapes” and

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<sup>170</sup> IACHR Report, *supra* note 5

<sup>171</sup> *Id.*

<sup>172</sup> U.S. Department of State Report, *supra* note 89

<sup>173</sup> *Id.*

<sup>174</sup> Human Rights Watch, *supra* note 1

<sup>175</sup> IACHR Report, *supra* note 5

<sup>176</sup> Human Rights Watch, *supra* note 1

other abuse.<sup>177</sup> She also described being treated as a man by the prisoners and prison guards who would victimize, insult, and taunt her for her “bad habit” of identifying as a woman.<sup>178</sup> She continued that “[h]aving a trans identity is very challenging, and assuming oneself as trans comes with great responsibility...some [trans women] prefer to cut their hair short because they would rather pass as gay and not as trans women, because we are victimized the most.”<sup>179</sup> OTRANS reports that this type of mental abuse, which results from housing trans women in men’s prisons, “can produce substantial mental distress that amounts to torture.”<sup>180</sup>

In recent years, several Guatemalan prisons have created separate compounds in male prisons for trans women and gay men.<sup>181</sup> While this appears to be an improvement that prisons have made out of concern for the safety of LGBTIQ inmates, the IACHR expressed several concerns about these segregated cells.<sup>182</sup> Activist organizations have reported that these cells feature inferior living conditions and being placed in these units limits LGBTIQ inmates’ access to benefits and programs otherwise available to the general prison population.<sup>183</sup> Further, this type of segregation exacerbates the stigmatization of LGBTIQ individuals and places greater restrictions on their rights compared to those of the general prison population.<sup>184</sup> Despite the reports of these separate compounds, in 2019 the U.S. Department of State concluded that Guatemala lacked sufficient facilities to protect LGBTIQ individuals in custody.<sup>185</sup> The Department further found that prison staff did not implement admittance procedures for LGBTIQ

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<sup>177</sup> IACHR Report, *supra* note 5

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> OTRANS Report, *supra* note 6

<sup>181</sup> IACHR report pg 103

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> U.S. Department of State Report, *supra* note 89

detainees, and noted concern about this lack of procedure specifically for transgender individuals.<sup>186</sup>

In 2015, officials in Guatemala made efforts to provide better training to their prison guards and staff on the treatment of detained LGBTIQ persons.<sup>187</sup> Guatemalan officials conducted an assessment of seven detention centers to document and understand the discrimination faced by LGBTIQ detainees.<sup>188</sup> The Directorate of the Penitentiary System in Guatemala then signed a Letter of Understanding with the National Network of Sexual Diversity and HIV of Guatemala “REDNADS” and the Lambda Association.<sup>189</sup> This purpose of this agreement was to “socialize and raise awareness about the rights and obligations of LGBTIQ people” and to “promote the development of a care protocol for this segment of the prison population.”<sup>190</sup>

### **3. TREATMENT BY NON-STATE ACTORS**

#### **3.1. General Societal Climate**

Guatemalans who identify as LGBTIQ face significant socio-cultural barriers, as non-state actors and cultural attitudes lead to nationwide discrimination. Public opinion surveys suggest that seventy percent of Guatemalans view homosexuality as a “medical condition,” and seventy-four percent would never vote for an LGBTIQ presidential candidate.<sup>191</sup> Familial acceptance of LGBTIQ persons is low – under forty percent of respondents said they would accept an LGBTIQ

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<sup>186</sup> *Id.*

<sup>187</sup> IACHR Report pg. 106; [Ministerio de Gobernación de Guatemala, SP Comprometido con Sensibilizar Necesidades de Reclusos LGBTIQ, February 19, 2015] [http://sistemapenitenciarioguatemala.blogspot.com/2015/02/sp-comprometido-con-sensibilizar\\_18.html](http://sistemapenitenciarioguatemala.blogspot.com/2015/02/sp-comprometido-con-sensibilizar_18.html)

<sup>188</sup> [http://sistemapenitenciarioguatemala.blogspot.com/2015/02/sp-comprometido-con-sensibilizar\\_18.html](http://sistemapenitenciarioguatemala.blogspot.com/2015/02/sp-comprometido-con-sensibilizar_18.html)

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> OTRANS Report, *supra* note 6. In the United States, by contrast, 70 percent of voters in a 2019 poll said they would vote for a gay president. Chris Johnson, *Poll: 70 Percent of U.S. Voters Willing to Vote for Gay Male President*, The Washington Blade (April 30, 2019) <https://www.washingtonblade.com/2019/04/30/poll-70-percent-of-u-s-voters-willing-to-vote-for-gay-male-president/>



family member.<sup>192</sup> Even the international travel guide, Frommers, warns foreign LGBTIQ travelers that Guatemala is “considerably homophobic” and that despite a relatively positive climate in Guatemala City, social attitudes toward LGBTIQ persons “gets radically worse outside the capital.”<sup>193</sup> Activists in Guatemala City, meanwhile, are vocal in their opposition to the cultural attitudes that lead to hate crimes and discrimination. One activist, Eduardo Aguilar, told the Spanish news agency EFE that “stigma and discrimination becomes verbal, psychological and physical violence, culminating in hate crimes.”<sup>194</sup>

### **3.2. Discrimination by Fellow Citizens**

The experience of Aldo Dávila, the first openly LGBTIQ member of the Guatemalan Congress, provides a glimpse into the type of persecution openly LGBTIQ-identifying Guatemalans may face. Davila said in 2020 that he is “constantly scared for my life” and regularly receives death threats. According to Davila, he faces these threats “because I stand up for my rights. They want to silence me. I believe I am on the right path.”<sup>195</sup>

These adverse conditions manifest in the day-to-day lives of LGBTIQ Guatemalans. The 2021 report from Human Rights Watch highlights the experiences of several LGBTIQ people in recent years.<sup>196</sup> A lesbian woman, who is affiliated with the lesbian organization ODISCEA, reported that her organization regularly receives hate mail.<sup>197</sup> The woman told Human Rights Watch, the mail often says “‘why do you exist if you give nothing back to society’--referring to

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<sup>192</sup> *Id.*

<sup>193</sup> *Tips for Gay and Lesbian Travelers in Guatemala*, Frommer’s <https://www.frommers.com/destinations/guatemala/planning-a-trip/tips-for-gay-and-lesbian-travelers>.

<sup>194</sup> *La Población LGBTIQ de Guatemala Exige Acabar con los ‘Crimines de Odio,’* EFE (May 18, 2019) <https://www.efc.com/efe/america/sociedad/la-poblacion-LGBTIQi-de-guatemala-exige-acabar-con-los-crimenes-odio/20000013-3979105>

<sup>195</sup> Enrique Anarte, *Being Gay in Guatemala is ‘A Political Issue’*, Deutsche Welle (Jan. 15, 2020).

<sup>196</sup> Human Rights Watch (2021), *supra* note 4

<sup>197</sup> *Id.*

the fact that we [lesbians] wouldn't have children.”<sup>198</sup> In another interview, a gay man told Human Rights Watch, “I don't dare go out alone at night, for fear of what might happen. Even six and seven-year-old children shout ‘faggot’ at me in the street.”<sup>199</sup> The practice of “corrective rape,” or the sexual assault of women intended to alter their sexual orientation, was also reported as prevalent throughout the country and even more difficult to track because of low rates of reporting these crimes to Guatemalan authorities.<sup>200</sup>

### **3.3. Discrimination by Family Members**

Beyond discrimination by community members, LGBTIQ individuals face serious discrimination at the hands of their own families. One gay man interviewed in August 2019 by Human Rights Watch reported that “this year, ten [LGBTIQ people in my town] have tried to commit suicide so far.”<sup>201</sup> A lesbian woman remembered that her friend who committed suicide didn't know what to do after her family rejected her because of her sexual orientation.<sup>202</sup> LGBTIQ individuals have also reported that their families have pushed them into conversion therapy.<sup>203</sup> One gay man also interviewed by Human Rights Watch in 2019 reported that he was forced to attend conversion therapy camp at age seventeen, where he had to watch videos of heterosexual sex, and ultimately he had to pretend that he had changed in order to leave the camp.<sup>204</sup> Further, rejection or pressure from family members may lead gay men and lesbians into heterosexual marriages in order to “reduce the risk of violence” and social isolation.<sup>205</sup> Young people also may face domestic

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> U.S. Department of State Report, *supra* note 89

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> Pia Flores, “Being Gay: They Wanted to ‘Cure’ Me Through Exorcism and Placement in a Children’s Home” (“Ser gay: Quisieron ‘curarme’ con un exorcismo y con el Hogar Seguro”), *Nómada*, February 7, 2018, <https://nomada.gt/identidades/ser-gay-quisieron-curarme-con-un-exorcismo-y-con-el-hogar-seguro>

<sup>204</sup> Human Rights Watch (2021), *supra* note 4

<sup>205</sup> *Id.*

violence at the hands of parents or siblings on account of their gender or sexual orientation.<sup>206</sup> Other LGBTIQ individuals may flee their homes to escape familial violence or discrimination. For example, one trans woman reported that her family didn't believe she was raped as a young child and she ended up leaving her home at twelve years old.<sup>207</sup>

### **3.4. Discrimination in School and Employment**

The discrimination described above can follow LGBTIQ Guatemalans throughout their lives. Anti-LGBTIQ stigma leads to many children dropping out of school because of the intense bullying they face for their gender or sexual orientation.<sup>208</sup> These disadvantages become even worse later into adulthood, when educational disadvantages combine with anti-LGBTIQ workplace discrimination to make finding desirable employment opportunities much more difficult for LGBTIQ persons than for the average Guatemalan citizen.<sup>209</sup> Nearly one-quarter (22 percent) of LGBTIQ respondents in a 2019 survey said they were “certain” that their sexual orientation or gender identity was a reason they did not get a job, while 31 percent said they had faced workplace discrimination.<sup>210</sup> Many trans individuals report that this marginalization leads many trans women to sex work.<sup>211</sup> Despite this, Guatemalan labor law does not provide recourse for the victims of discrimination on account of their sexual or gender orientation.<sup>212</sup>

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<sup>206</sup> United States Department of State, Guatemala 2019 Human Rights Report 22 (2019), <https://www.state.gov/wp-content/uploads/2020/02/GUATEMALA-2019-HUMAN-RIGHTS-REPORT.pdf> [hereinafter “U.S. Department of State Report”].

<sup>207</sup> Human Rights Watch (2021), *supra* note 4

<sup>208</sup> Human Rights Watch (2020), *supra* note 1

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* (citing Proyecto Convivimos, Violence in the Workplace Against Lesbians, Gays, and Trans People in Guatemala City (Violencia en espacios laborales hacia lesbianas, gais, y personas trans en la ciudad de Guatemala), October 2019, <https://www.flacso.edu.gt/publicaciones/wp-content/uploads/2019/10/Violencia-en-espacios-laborales-LGBTIQ.pdf>).

<sup>211</sup> Human Rights Watch (2021), *supra* note 4

<sup>212</sup> *Id.*

### 3.5. Discrimination Based on HIV/AIDS-Related Stigma

Discrimination against LGBTIQ persons extends beyond their sexual orientation and also affects those who are HIV-positive. LGBTIQ persons – especially transgender women – are “disproportionately affected by HIV in Guatemala,” but both social barriers and governmental inefficiencies have made access to critical resources such as testing and therapeutics very difficult.

<sup>213</sup> Compounding the problem, religious taboos surrounding sex and LGBTIQ identity perpetuate the stigma of being HIV-positive. The unwillingness of prevalent Catholic and evangelical leaders to address safe sex and HIV prevention measures worsens matters, according to one leader of a rural anti-HIV NGO.<sup>214</sup> According to the U.S. National Institutes of Health, discrimination is a particular problem in improving access to care for HIV-positive LGBTIQ Guatemalans, and these stigmas “must be addressed at the family, clinic and contextual levels to reduce fear of diagnosis and improve access to care.”<sup>215</sup>

Due to how the HIV stigma is reinforced by key pillars of Guatemalan daily life, HIV-positive people are often motivated to conceal their diagnosis. HIV-positive people often fear being denied employment because of their diagnosis.<sup>216</sup> Furthermore, some public benefits are conditional on reporting requirements, which makes the incentive to report HIV positive status and receive adequate care even lower.<sup>217</sup> These patients also experience direct discrimination from

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<sup>213</sup> National Institutes of Health, HIV Diagnosis, Linkage to Care, and Retention Among Men Who Have Sex with Men and Transgender Women in Guatemala City (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5495098/>

<sup>214</sup> Michael K. Lavers, *Gay Men Fight HIV/AIDS, Taboos in Guatemalan Town*, The Washington Blade (Feb. 4, 2017) <https://www.washingtonblade.com/2017/02/04/gay-men-fight-hiv-aids-taboos-guatemalan-town/>.

<sup>215</sup> *Id.*

<sup>216</sup> U.S. Department of State Report, *supra* note 89

<sup>217</sup> *Id.*

health care professionals; reports suggest that many HIV-positive individuals risk breaches of confidentiality and other forms of discrimination if they seek care from medical personnel.<sup>218</sup>

Even individuals who are not HIV-positive may still experience the effects of HIV stigma. For example one trans woman, who is trained as a cook and pastry chef, had to leave her restaurant job and turn to sex work because customers wouldn't buy food from her based on the belief that all trans people have HIV.<sup>219</sup>

#### 4. CONCLUSION

Guatemala's record of treatment toward its LGBTIQ population, especially the trans community, is far from adequate. Even though the country has elected one openly gay and one lesbian Congressmembers, societal attitudes toward LGBTIQ-individuals have failed to shift—this is evidenced by the fact that Aldo Davila, the first gay congressman, has received homophobic insults and threats from his fellow legislators in the congressional chamber.<sup>220</sup> Further, recent efforts to pass pro-LGBTIQ legislation have been met by severe opposition and have ultimately failed.

The current legal framework is inadequate to protect the LGBTIQ population from discrimination and violence. And impunity for anti-LGBTIQ crimes is widespread as a result of heteronormative family values, deeply-held social stereotypes, LGBTIQ-phobia and stigmas, and police corruption. Currently there are no laws offering express protection to the LGBTIQ

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<sup>218</sup> *Id.*

<sup>219</sup> Human Rights Watch (2021), *supra* note 4

<sup>220</sup> Angel García, “Faced With Homophobic Insults Against Deputy Aldo Dávila, Calls to Investigate Congressmembers” (“Ante insultos homofóbicos contra diputado Aldo Dávila piden investigar a congresistas”), Emisoras Unidas, (March 2020), <https://emisorasunidas.com/2020/03/11/aldo-davila-acusa-de-diputados-de-mofarse-de-su-orientacion-sexual>

population, and law enforcement officials continuously fail to extend the country's anti-discrimination laws to LGBTIQ individuals. Police officers regularly refuse to investigate anti-LGBTIQ crimes due to personal bias or fear of gangs. Further, the Guatemalan justice system has failed to sufficiently track occurrences of LGBTIQ-related crimes. Guatemala's government must take action to comply with the recommendations made by the International Covenant on Civil and Political Rights regarding the lack of legal protection for LGBTIQ individuals and the insufficient data collection on LGBTIQ-related crimes.

If the Guatemalan government passes the proposed "Family Life and Planning" bill, LGBTIQ individuals are at risk of more severe and blatant societal discrimination. Enactment of this bill may further reduce the chances for passage of laws prohibiting anti-LGBTIQ discrimination and violence. If the government supports such discriminatory legislation, law enforcement authorities may feel empowered to continue their patterns of bias and violence toward LGBTIQ individuals. Without strong congressional opposition to Iniciativa 5272, Guatemala is at risk of severely worsening the climate toward its LGBTIQ citizens.