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**Violence Against Women in Guatemala:
Femicide, Violence and Political Discrimination against Indigenous Women, Violence
Against Women in Prisons, and Human Rights Violations within the *Maquila* Factories**

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1. This report is submitted by MADRE (an ECOSOC accredited NGO), the International Women's Human Rights Clinic at the City University of New York School of Law, Muixil, Barcnas Women Workers Committee, Colectivo Artesana, Women's Link Worldwide, and the Guatemala Human Rights Commission. It highlights main areas of concern including femicide (the killing of women because of their gender); violence and political discrimination against Indigenous women; violence against women in prisons, and human rights violations within the *maquilas* or sweatshops.

I. Background and Context

2. Despite continued efforts by the State to ensure compliance with Guatemala's international human rights obligations, the situation of women and girls remains critical with a persistent lack of accountability for continued violations and impunity. The information contained in this report was gathered through interviews, field visits, and documentation of personal testimonies gathered in Guatemala in March 2011 and through phone interviews during November 2011.

3. Despite protections under the Guatemalan Constitution and several conventions relevant to the eradication of torture and other violence against women, violence and discrimination against women in Guatemala remains rampant. This report highlights main areas of concern including femicide (the killing of women because of their gender); violence and political discrimination against Indigenous women; violence against women in prisons, and human rights violations within the *maquilas* or sweatshops. Despite some legal reforms in recent years, the Government of Guatemala has failed to ensure effective remedies in cases of violations and to prevent widespread impunity.

II. Failure to Prosecute and Investigate Reported Cases of Femicide and Failure to Enforce the Law Against Femicide

4. Violence against women in Guatemala remains a widespread problem, primarily due to the overall failure of members of the justice system to investigate, prosecute, and remedy the harm, in addition to a lack of enforcement of the Law Against Femicide.

5. Femicide is the systematic killing of women, murdered solely because of their gender. The failure of the civil justice system and lack of adequate protections by the government has created a climate of impunity that perpetuates violence against women. Gender also determines the way in which women are murdered. Femicides generally include rape, torture, and dismemberment before and after death.

6. In Guatemala, the State should be commended for its passage of the Law Against Femicide and Other Forms of Violence Against Women, which criminalizes femicide. However, the law remains severely underfunded, resulting in ineffective implementation of the legislation. Although the Law Against Femicide officially recognizes femicide as a punishable crime by the State, since passing the law, the number of women murdered continues to rise and the State still fails to investigate and prosecute these crimes. Utter lack of enforcement of the law is highly problematic. Cases involving femicide and violence against women are not prioritized due in part to persistent gender-based discrimination.

7. Teenager Rosemary González was brutally murdered in July 2008. Her mother received a threatening phone call that she had been kidnapped, but police waited until the following day to visit the home of the suspect. The Public Ministry and medical examiners conducted investigations one year after Rosemary's body was found. Law enforcement personnel and medical examiners failed to engage in the most rudimentary protocols in investigating this crime. In many cases, they fail to investigate at all.

8. The Guatemala National Civil Police ("PNC") is responsible for investigating crimes of violence against women. However, corruption undermines police efficiency. Rampant corruption in the PNC was reflected in the 2010 Guatemala Country Report on Human Rights Practices, in which the U.S. State Department reported that the PNC is understaffed, underfunded, and inadequately trained; in addition, there are credible reports that PNC officers have solicited bribes and have kidnapped, assaulted, and raped victims.¹

9. The Office of Professional Responsibility (ORP) for the PNC received 1,009 complaints of PNC criminal activity in 2010, including three forced disappearances, five kidnappings, 34 illegal detentions, 46 thefts, five rapes, 60 threats and 224 cases of abuse of authority. During 2010, 787 officers were investigated by the ORP; and 10 of those investigations involved murder cases. Although cases with sufficient evidence of criminal activity were forwarded to the Public Prosecutor's Office for further investigation and prosecution, no officer has been fired, and few cases have gone to trial.² Strong gender bias within the police force often results in lack of enforcement in cases of domestic violence. Victims of sexual violence have routinely been subject to re-victimization at police stations, from psychological violence due to poor interview techniques by police, to repeated physical abuse, including rape, by the officer taking the report.³

10. In 2004 the National Coordinator for the Prevention of Domestic Violence Against Women (CONAPREVI)⁴ embarked on a 10-year mission to end violence against women. This plan, entitled the National Plan for the Prevention of Intra-Family Violence and Violence against Women (PLANOVI),⁵ establishes guidelines, policies and concerted actions to prevent, address, punish and reduce domestic violence.⁶ However, more than five years after this plan was implemented, families and victims who report gender-based violence are still confronted with "corrupt or indifferent police, strong gender bias, and a dysfunctional judicial system."⁷

¹ UNITED STATES DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, WESTERN HEMISPHERE, GUATEMALA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES 8 (Apr. 8, 2011), <http://www.state.gov/documents/organization/160166.pdf>.

² *Id.* at 9.

³ EDDA GAVIOLA ARTIGAS, INFORME DE SISTEMATIZACIÓN: SOLO SE HACE JUSTICIA, EL CASO DE DOÑA JUANA MÉNDEZ RODRÍGUEZ VS. EL AGENTE DE LA POLICÍA NACIONAL, ANTONIO RUTILO MATÍAS LÓPEZ 28 [SYSTEMATIZATION REPORT: JUSTICE IS DONE ALONE, THE CASE OF MRS. JUANA MÉNDEZ RODRÍGUEZ V. THE NATIONAL POLICE AGENT, ANTONIO RUTILO MATÍAS LÓPEZ] (Instituto de Estudios Comparados en Ciencias Penales de Guatemala – ICCPG ed. 2008).

⁴ Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y contra las Mujeres.

⁵ Plan Nacional de Prevención y Erradicación de la Violencia Intrafamiliar y Contra las Mujeres.

⁶ UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL (ECOSOC), *Development Strategies That Work, National Plan for the Prevention of Domestic Violence and Violence Against Women (PLANOVI)* (2010), <http://webapps01.un.org/nvp/indpolicy.action?id=2465#>.

⁷ GUATEMALA HUMAN RIGHTS COMMISSION (GHRC), GUATEMALA'S FEMICIDE LAW: PROGRESS AGAINST IMPUNITY? 6 (2009), http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf.

11. The Guatemalan government has not properly implemented structures to keep women safe from violence and harm committed by private actors. Women in parts of Guatemala report that while restraining orders may be issued, they are often not enforced and sometimes police send women back to the homes of their aggressor because of a lack of shelters. The existing State shelters are inadequate and severely underfunded. The Government Minister, Mr. Carlos Menocal, recently announced an increase in budget for 2012 for domestic violence intake centers (Centers for Comprehensive Support for Female Survivors of Violence, or CAIMU), in response to a rise in reports of domestic violence. Domestic violence makes up 40% of the present overall crime rate.⁸ CAIMU has five domestic violence shelters in Guatemala. However, none of the shelters are located in the departments that have the highest levels of domestic violence, namely Totonicapán, Izabal, Huehuetenango, Quiché and Alta Verapaz.⁹ In addition, protection for the women living and working in CAIMU's domestic violence shelters is severely lacking. For example, women within the shelters have reported receiving threatening phone calls in the early morning hours and of seeing men in vehicles without license plates parked in front of these centers.¹⁰

III. Failure to Provide Humane Treatment of Women Deprived of their Liberty

12. The State has continually failed to ensure humane treatment of women deprived of their liberty in Guatemala in accordance with international law. The State infrastructure for ensuring humane treatment is weak and severely under-resourced. Consequently, the state fails to ensure female detainees are safe from violence and receive adequate health care.

13. The National Civil Police enforce criminal laws and function as guards in state prisons. Abuses against women by police are frequent. Women who enter the criminal justice system experience a pattern of gender bias and abuse. Women are particularly at risk of police violence during transit between detention facilities. In October 2010 three police officers raped a female prisoner during her transit from the Izabál prison to Guatemala City. She was transferred to a psychiatric hospital in Guatemala City, and upon arrival, a doctor examined her and reported that she was recently raped. An investigation is still pending against the three police officers.

14. Another way female detainees are made vulnerable within detention centers is by the regular practice of male guards conducting searches on female prisoners. Under international law, female staff that have been properly trained in appropriate search methods must conduct searches. Furthermore, screening methods, such as scans, should replace strip searches and invasive body searches, in order to avoid the harmful psychological and physical effects of invasive searches. However, men regularly perform strip searches on female detainees in direct violation of international law. In prisons, the PNC conducts searches for contraband such as illicit substances, drugs, or weapons. These searches occur up to three times per week and

⁸ Sofia Menchú, *Crece número de denuncias de violencia intrafamiliar [Number of Domestic Violence Reports Grows]*, DIARIO DE CENTRO AMÉRICA, Aug. 25, 2011, available at <http://www.dca.gob.gt/es/20110825/Nacionales/4710/Crece-n%C3%BAmero-de-denuncias-de-violencia-intrafamiliar.htm..>

⁹ *Id.*

¹⁰ Diana Choc, *La vida de 120 mujeres de los Caimus corre peligro [The Lives 120 Women at the Caimus are in Danger]*, EL PERIODICO, June 14, 2010, available at <http://www.elperiodico.com.gt/es/20100614/pais/157468/>.

frequently include vaginal or rectal searches. In January of 2011, at the Zacapa detention center, the PNC conducted a search of twenty female prisoners in which the women were forced to undress and squat in front of the guards. The guards uncovered two grenades that were hidden in prisoners' vaginal cavities. Despite this discovery, the searches constitute sexual violence under Belem do Para and violate the principles of humane treatment and respect for dignity. Another specific incident of violence occurred in 2010, when the director of the same prison facility hit a female prisoner in her face. The blow required the detainee to receive five stitches.

15. In addition, women do not receive basic medical services, and the State fails to provide gender-specific health care to women prisoners. In November 2009, a woman died of pneumonia because she was not given adequate medical attention in the prison facility and was not taken to the hospital. Incarcerated women also do not receive services for disabilities. In November 2011, a female prisoner could not properly feed her newborn child because of a disability, and she lacked the presence and support of her family to properly care for her child.

16. Guatemala also uses preventive imprisonment, which authorizes detention for people who have been accused of committing a crime but whose cases have not yet been reviewed. People may remain in prison between two and six years during this preventive period before a court determines their guilt or innocence.¹¹ Women held in preventive detention may be accompanied by their children aged four years or younger. However, once their children turn five, women lose custody of their children to the State, regardless of whether a court has ruled on the women's guilt or innocence. Mothers who lose custody of their children may not retrieve their children even if found innocent, due to the difficulty in finding the child in the state system.

IV. Failure to Ensure Indigenous Women's Right to be Free from Violence

17. Mayan women suffered various forms of persecution and sexual violence during Guatemala's thirty-six year internal armed conflict. The rape and torture of women as a weapon of war has been used worldwide for purposes including political terror, extracting information, and ethnic cleansing. In Guatemala, this form of abuse and torture was used as a counterinsurgency tactic. More than 1,400 cases of rape, mutilation, sexual slavery, femicide, and other grave crimes were documented. There were at least 9,411 female victims of human rights violations, of which 1,465 women reported being victims of sexual assault.¹² Mayan women made up 88.7% of the cases of this type of violence. Indigenous women were also subjected to sexual slavery. Violence against women was intended to destroy the social fabric of Indigenous communities and eliminate the Maya Indigenous group. Sexual violence was perpetrated as a massive and systematic part of the strategic planning by the military.

18. Mayan women continue to face discrimination because of their gender, Indigenous identity, poverty, and marginal social status within Guatemalan society. Despite having formally

¹¹ Gustavo Villagrán y Alejandro Pérez, *Información del Sistema Penitenciario evidencia saturación en centros carcelarios del país [Evidence Shows Overpopulation in the Country's Detention Centers and Penitentiary System]*, NOTICIAS DE GUATEMALA, Sept. 7, 2010, available at <http://noticias.com.gt/nacionales/20100907-informe-del-sistema-penitenciario-evidencia-saturacion-en-centros-carcelarios-del-pais.html>.

¹² The Commission for Historical Clarification (CEH) identified 9,411 female victims of human rights violations and documented a total of 1,465 reported sexual assaults against women in its report, COMMISSION FOR HISTORICAL CLARIFICATION, GUATEMALA: MEMORY OF SILENCE Ch. II, ¶¶ 38–39 (Vol. 3 1999).

recognized the human rights of Indigenous women, Guatemala remains in violation of its international duties to safeguard Indigenous women's right to be free from violence based on social origin, race and gender, to the fair administration of justice, and to be free from political discrimination.

19. A culture of impunity exists with respect to the extensive violence practiced against Indigenous women. This occurs in the country's alarmingly high rates of violence based on social origin, race and gender, intra-family violence and femicide. In 2011, 705 women died as a result of gender-related violence and more than 41,000 reports of violence were filed.¹³ Government statistics demonstrate that women constitute the overwhelming majority of the victims of intra-family violence in Guatemala, and approximately a quarter of these victims are Indigenous women. Violence against Indigenous women must be understood within the larger context of femicide in Guatemala, a country in which 99% of femicide cases go uninvestigated and unpunished.¹⁴

20. The State has failed to adequately prosecute sexual crimes against Indigenous women as aggravated criminal offenses. Moreover, it has also failed to disaggregate data on femicide according to race and social origin to allow for a fuller understanding of the extent to which Indigenous women are being victimized. The culture of impunity in which violence against Indigenous women occurs and the State's failure to provide disaggregated data on femicide are indicative of its neglect of the rights of Indigenous women.

V. Unfair Administration of Justice and Political Discrimination Against Indigenous Women

21. The current culture of impunity surrounding violence against Indigenous women stems from patriarchal norms reinforced by widespread rapes and massacres, committed during the period of the civil war. The lack of access to justice can be traced to the de facto exclusion of Indigenous peoples from the judiciary and the dearth of court-appointed translators of Indigenous languages—another expression of the racism that culminated in the genocide against Indigenous people during the period of armed conflict. Many Indigenous women also feel detached from the political process, lacking birth certificates or other forms of identification that would facilitate political participation. These items were lost to fires, or as a result of forced displacement during the civil war.

22. Several Guatemalan government institutions address the concerns of Indigenous women.¹⁵ Yet, these agencies are plagued with severe under-funding, limited resources, and unclear mandates and scope of authority. Indigenous women are disproportionately harmed by the State's failure to provide them with free legal counsel in criminal and civil contexts, equal access

¹³ Sandra Valdez, *Mujeres Protestan Pidiendo Cese a la Violencia* [Women Protest for an End to Violence], PRENSA LIBRE, Nov. 25, 2011, available at http://www.prensalibre.com/noticias/justicia/protesta-marcha-mujeres-violencia-Guatemala_0_597540408.html. See also, Danilo Valladares, *Guatemala Heeds the Cries of Femicide Victims*, INTERPRESS SERVICE (Jan. 31, 2012), <http://ipsnews.net/news.asp?idnews=106607>.

¹⁴ *Fact Sheet: Femicide and Femicide*, THE GUATEMALA HUMAN RIGHTS COMMISSION/USA, <http://www.ghrc-usa.org/Programs/ForWomensRighttoLive/femicide.pdf>.

¹⁵ Such as the Secretariado Presidencial de la Mujer [Presidential Secretariat for Women] and Defensoría de la Mujer Indígena [Defender of Indigenous Women].

to the judicial system, and free language interpreters in criminal actions and law suits. Free legal counsel is still lacking in non-criminal areas, particularly for women victims of violence and Indigenous peoples. Additionally, in order to secure fair access to the tribunals for this socially marginalized and geographically isolated population, the State should provide more court forums in underserved Indigenous communities. The State has an obligation to ensure that Indigenous women are provided with interpreters at judicial proceedings.

VI. Failure to Ensure the Political Rights of Indigenous Women

23. The extensive repression of Indigenous women human rights defenders, the near exclusion of Indigenous women's voices from the media, and the gross underrepresentation of Indigenous women in the legislature constitute Guatemala's violations of obligations under international law and treaties.

24. Such repression is evidenced by the fact that those who advocate for the political empowerment of Indigenous women regularly suffer harassment, intimidation and severe acts of brutality. Furthermore, exclusion from the political process is demonstrated by the fact that only one Guatemalan television station broadcasts political information in Indigenous languages and the State provides no direct funding for its operations. A final indication that Guatemala still has not ensured the equal enjoyment of women's right to participate fully and fairly in the political life of the nation is revealed by the fact that only a fraction of the Guatemalan legislature is Indigenous, and it is mostly male. This exclusion and repression of indigenous women violates international law and standards requiring the right of political participation to be enjoyed by members of minorities and, in particular, Indigenous women.

VII. Failure to Ensure Women *Maquila* Workers' Rights

25. Discriminatory employment practices against women *maquila* factory workers and discriminatory practices against workers participating in unionization efforts violate international law and standards.

26. The Guatemalan Labor Code contains no provisions that protect the rights of *maquila* workers. While the State should be applauded for its efforts in drafting Bill 4075 that includes such provisions and strengthens conditions of employment and hiring for pregnant women, the Bill has remained in a bureaucratic deadlock since May 2010.¹⁶

27. Women *maquila* workers are subjected to discriminatory hiring procedures such as pregnancy testing as a threshold for employment. Women *maquila* workers also experience post-partum discrimination. For example, women have difficulty receiving their salary after the baby is born as well as getting the legally prescribed two extra rest periods for breastfeeding. The

¹⁶ Announcement published on May 9, 2010 by ATRAHDOM presenting the results of the organization's investigation of workers in the home and discussing the status of Bill 4075, which has remained with the Congressional Women's Commission since May 2010 and has yet to be presented before the other two members of the tripartite committee, *available at* <http://atrahdom.files.wordpress.com/2011/02/situacion-de-las-trabajadoras-del-hogar-20101.pdf>.

State's failure to investigate such employment practices is in violation of the Guatemalan government's obligations under international law and standards.

28. While Guatemala has codified certain protections for women joining unions, the reality is that *maquila* employers continue to dismiss and stigmatize workers who attempt to unionize. For example, when a woman is terminated for joining a union, she is stigmatized by the *maquila* industry preventing her from being hired by other *maquila* companies in the future. Employers also threaten closure of the *maquila* if the workers unionize and employ verbal abuse to stifle union activity. The State's failure to sanction employers and its tolerance of discriminatory employment practices against women *maquila* workers violate international law and standards.

VIII. Recommendations

29. We respectfully request that the Human Rights Council urge the Guatemalan government to do the following:

- The Government should take all actions to uphold the United Nations Declaration on the Rights of Indigenous Peoples.
- The State should fully fund domestically established institutions whose purported goal is to address rampant corruption, confront official impunity, and strengthen law enforcement.
- The Government should provide law enforcement personnel with proper and comprehensive training in gathering evidence for the purpose of documenting gender-based crimes.
- Shelters should be available for women who report abuse or threats of abuse and seek to flee potential abuser(s). At a minimum, this should include increased funding for the Immediate Attention Centers for Women Survivors of Violence to create centers in all departments and ensure that these have the resources to sufficiently meet the needs of survivors.
- The State should ensure that police and prison guards who conduct searches of women deprived of liberty are female guards who have been properly trained in appropriate search methods and in accordance with established procedure. Furthermore, alternative screening methods should replace strip searches and invasive body searches, in order to avoid psychological and physical harm.
- The State should only permit female police officers to transport female detainees between facilities, as transportation creates the highest risk for sexual or physical assault by guards.
- The State should take stronger measures to protect Indigenous women's rights defenders, particularly those in the employment of the government, from violence and harassment, and to prosecute those responsible for such violations.
- The Government should work to end impunity in relation to gender-based violence, to ensure the fair administration of justice, and to eliminate political discrimination. To this end, the State should strengthen government institutions whose mission consists in whole or in part of

preventing, punishing, and redressing violence against Indigenous women and girls.

- The State should increase the number of court translators, decentralize the judicial system so as to facilitate access and strengthen legal aid services to reduce the cost of bringing lawsuits.
- The State should launch an intensive campaign to document Indigenous women whose birth certificates or identification cards were lost during the civil war, so that they may register to vote and exercise their constitutional right to participate in the political process.
- The State should initiate affirmative action programs designed to promote the hiring of qualified Indigenous women in politically relevant positions and to subsidize radio and television broadcasting in Indigenous languages to ensure that Indigenous women will have access to balanced and reliable information with respect to political developments in their country.
- The State should take legislative measures to combat labor rights violations, specifically employer's interference with union activities and pregnancy based discrimination, and to conduct timely and unannounced visits to *maquilas* to ensure that employers are in compliance with such legislation.