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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This submission raises concerns with Guatemala's Law Against Femicide and other Forms of Violence Against Women, whose overbroad definition of 'psychological violence' opens the door to arbitrary and unjustified restrictions of freedom of expression. Furthermore, the report highlights the need to strengthen maternal health care, particularly in rural areas, to tackle Guatemala's high maternal mortality rate while remaining steadfast in its commitment to protecting and promoting the right to life.

### (a) Freedom of Opinion and Expression

#### *Background*

3. Article 35 of the Constitution of Guatemala guarantees the right to freedom of expression. In particular, it states that 'publications which contain denunciations, criticism, or censure against officials or public employees for actions effected in the performance of their duties do not constitute a crime or misdemeanor.'<sup>1</sup>
4. In 2008, Guatemala adopted Decree 22-2008, known as the Law Against Femicide and other Forms of Violence Against Women (hereafter 'the Law').<sup>2</sup> The Law's objective is to prevent and eliminate violence and discrimination against women, in compliance with the State's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 'Convention of Belem do Para' (CBP).<sup>34</sup>
5. The CBP defines violence against women as 'any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.'<sup>5</sup> However, neither the CBP nor CEDAW explicitly define what the different forms of violence entail.
6. Building on these two conventions, the Law provides specific definitions for different forms of violence. In particular, it defines psychological violence as 'actions that can produce harm or suffering, psychological or emotional, to a woman [...] with the purpose of intimidating her, undermining her self-esteem or controlling her, who,

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<sup>1</sup> Constitution of Guatemala 1985, art. 35.

<sup>2</sup> 'Act Against Femicide and other Forms of Violence Against Women' Decree 22-2008 (2008) <http://ww2.oj.gob.gt/justiciadegenero/wp-content/uploads/2014/07/Ley-contra-el-femicidio-y-otras-formas-de-violencia-contra-la-mujer.pdf>.

<sup>3</sup> Convention on the Elimination of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

<sup>4</sup> Organization of American States, 'Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women' (1994). (Convention of Belem do Para, CBP) <https://www.oas.org/juridico/english/treaties/a-61.html>.

<sup>5</sup> Id., art. 1.

subjected to this emotional climate, may suffer a progressive psychological weakening with depressive symptoms.<sup>6</sup>

7. While the Law has the commendable purpose of preventing violence against women, including by officially recognizing femicide as a punishable crime, the overbroad definition of psychological violence opens the door to arbitrary and unjustified restrictions on the right to freedom of expression.
8. Over the past few years, there have been several cases of female public servants and politicians invoking the Law to silence political opponents and the media, including by filing complaints against journalists for allegedly incurring psychological violence against them or their families by publishing or attempting to publish investigative reports that present them in an unfavourable light. The complainants obtained precautionary measures from courts, which issued injunctions against members of the media and news outlets to bar them from publishing critical information with respect to the complainants.<sup>7</sup>
9. By failing to precisely define the conduct that shall be deemed to constitute psychological violence, and giving inadequate consideration to the elements of intent and causal nexus, the law in question may be an illegitimate restriction on freedom of expression, and impose a chilling effect on debate of any kind, including of sensitive issues of public interest.

#### *Freedom of Expression in International Law*

10. Article 19 of the ICCPR articulates the right to freedom of expression, including the 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'<sup>8</sup>
11. Article 19(3) allows restrictions on freedom of expression only where they are necessary 'for the respect of the rights and reputations of others' or 'for the protection of national security, public order or public health or morals.'<sup>9</sup> As also clarified by the Human Rights Committee in its General Comment No. 34, restrictions on free expression must be provided by law, must be imposed on one of the permissible grounds provided, and 'must conform to the strict tests of necessity and proportionality.'<sup>10</sup>

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<sup>6</sup> 'Act Against Femicide and other Forms of Violence Against Women' Decree 22-2008 (2008) <http://ww2.oj.gob.gt/justiciadegenero/wp-content/uploads/2014/07/Ley-contra-el-femicidio-y-otras-formas-de-violencia-contra-la-mujer.pdf>, art. 3(m).

<sup>7</sup> See e.g. S. Pérez 'Guatemala: Judge bans journalist from addressing foreign minister' (17 July 2018) AP News, <https://apnews.com/article/3f962784a56745fd83596c88d736ffba>;

D. Cuevas 'Another official uses the law against femicide as a shield to avoid press scrutiny' (20 December 2021) Prensa Libre, <https://www.prensalibre.com/guatemala/justicia/otra-funcionaria-se-escuda-en-la-ley-contra-el-femicidio-para-evitar-la-fiscalizacion-de-la-prensa/>;

J. Román 'Guatemalan Association of Journalists rejects new censorship of elPeriódico by the Femicide Tribunal' (17 May 2022) Prensa Libre, <https://www.prensalibre.com/guatemala/justicia/asociacion-de-periodistas-de-guatemala-rechaza-nueva-censura-al-elperiodico-por-parte-del-tribunal-de-femicidio-breaking/>.

<sup>8</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 19.

<sup>9</sup> Id.

<sup>10</sup> UN Human Rights Committee, General Comment No. 34 (2011), CCPR/C/GC/34, 22.

12. While speech that threatens or incites violence can be easily defined and identified, the Law's ambiguous determination as to what constitutes 'psychological or emotional harm', or the 'undermining of self-esteem' can create significant obstacles to the legitimate exercise of freedom of expression.
13. There is certainly a need to regulate forms of communication that can credibly and reasonably be said to constitute violence or incitement to violence or discrimination. However, this objective should not be used as a pretext to curb the liberty to openly and candidly debate ideas and belief systems of all varieties. The ambiguity within the Law's definition of psychological violence and its susceptibility to misuse could effectively flout the possibility of honest debate and undermine the pursuit of a vibrant and diverse public square, and ultimately risks contravening Guatemala's obligations relating to freedom of expression.
14. During its third Universal Periodic Review cycle, Guatemala supported seven recommendations on protecting freedom of expression.<sup>11</sup> Consistent with these commitments and in compliance with its regional and international human rights obligations, Guatemala should take steps to amend the Law.

## **(b) Right to Life**

### *Background*

15. Article 3 of the Guatemalan Constitution affirms that 'The State guarantees and protects the human life from its conception, as well as the integrity and security of the person.'<sup>12</sup>
16. The Guatemalan Penal Code criminalizes abortion from the moment of conception.<sup>13</sup> Article 137 provides for an exception in the case of an established danger to the life of the mother, verified by an additional doctor and after having exhausted all other means.<sup>14</sup>
17. Guatemala has one of the highest rates of maternal mortality in Latin America, with an estimated 95 maternal deaths per 100,000 live births in 2017.<sup>15</sup> This can be attributed primarily to low levels of prenatal and delivery care and the lack of access to trained health professionals, as well as a preference for traditional birth practices. Only one in four rural births take place in a hospital or clinic, and the majority of maternal deaths take place among the indigenous population.<sup>16</sup> Positively, the maternal mortality rate has been steadily declining over the past decade.<sup>17</sup>

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<sup>11</sup> Human Rights Council 'Report of the Working Group on the Universal Periodic Review – Guatemala' (2 January 2018) UN Docs A/HRC/37/9, 111.41, .44, .46, .47, .51, .53, .66.

<sup>12</sup> Constitution of Guatemala 1985, art. 3.

<sup>13</sup> Penal Code of Guatemala 1973, ch. 3.

<sup>14</sup> *Id.*, art. 137.

<sup>15</sup> World Bank 'Maternal Mortality Ratio – Guatemala' (2019) <https://data.worldbank.org/indicator/SH.STA.MMRT?locations=GT>.

<sup>16</sup> World Bank 'Improving Maternal and Neonatal Health in the Department of Sololá, Guatemala' (23 March 2017) <https://www.worldbank.org/en/results/2017/03/23/improving-maternal-neonatal-health-solola>.

<sup>17</sup> World Bank 'Maternal Mortality Ratio – Guatemala' (2019) <https://data.worldbank.org/indicator/SH.STA.MMRT?locations=GT>.

18. Citing the high maternal mortality rate in Guatemala, abortion advocates call for greater access to abortion as a means of reducing 'unsafe abortion'. These calls, however, are misguided.
19. Liberalizing abortion further will not make it safe. As stated by Guttmacher Institute, 'Changing the law [...] is no guarantee that unsafe abortion will cease to exist.'<sup>18</sup>
20. Indeed, women who receive abortions will still face poor conditions, the same ones faced by women who give birth and deal with similar complications, such as bleeding and infection. Thus, providing access to abortion will result in more women suffering from abortion complications.
21. Further, abortion can never be safe because it takes the life of the unborn child. Instead of giving in to pressure to liberalize abortion, Guatemala must focus on helping women get through pregnancy and childbirth safely, rather than helping them terminate their pregnancies.
22. Every maternal death is a tragedy. It devastates the woman's family, in particular the woman's children, and affects the entire community socially and economically. The high number of maternal deaths in Guatemala must be seen as an urgent human rights priority.
23. That being said, it should be acknowledged that almost all maternal deaths are preventable, particularly when skilled birth attendants are present to manage complications and the necessary medication is available, such as oxytocin (to prevent haemorrhage) and magnesium sulphate (to treat pre-eclampsia). Problems include a lack of drugs and poor infrastructure, such as no electricity or running water and inaccessibility of hospitals due to weather conditions.<sup>19</sup>
24. The World Health Organization (WHO) recommends a minimum of eight prenatal visits with trained health workers, in order to prevent, detect, and treat any health problems.<sup>20</sup> In 2016, an estimated 86 % of women in Guatemala were having a minimum of four visits.<sup>21</sup> However, a 2016 study found that among the poorest women in the country, only an estimated 18% had even a single skilled antenatal care visit within their first trimester, the lowest in the region.<sup>22</sup> This highlights the need for access to quality prenatal care, particularly in poor and rural areas, as well as increased training for maternal healthcare workers.
25. Given the maternal health crisis in Guatemala, resources must focus on improving conditions for pregnant women, women undergoing childbirth, and postpartum women.

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<sup>18</sup> See S. A. Cohen 'Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide' (2009) Guttmacher Policy Review, <http://www.guttmacher.org/pubs/gpr/12/4/gpr120402.html>.

<sup>19</sup> World Health Organization 'Fact Sheet No. 348: Maternal mortality' (19 September 2019) <https://www.who.int/en/news-room/fact-sheets/detail/maternal-mortality>.

<sup>20</sup> WHO 'WHO recommendations on antenatal care for a positive pregnancy experience' (28 November 2016) <https://www.who.int/publications/i/item/9789241549912>, xvi.

<sup>21</sup> WHO 'Global Health Observatory - Guatemala' (2016) <https://www.who.int/data/gho/data/countries/country-details/GHO/guatemala?countryProfileId=692f67e4-4826-457b-a837-d0ef31320a28>.

<sup>22</sup> E. Dansereau et al. 'Coverage and timing of antenatal care among poor women in 6 Mesoamerican countries' (19 August 2016) BMC Pregnancy and Childbirth 16(234), <https://doi.org/10.1186/s12884-016-1018-5>.

### *The Right to Life in International Law*

26. A so-called international 'right to abortion' is incompatible with various provisions of international human rights treaties, in particular provisions on the right to life. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life.'<sup>23</sup>
27. The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. Article 6(5) states that, 'the sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.'<sup>24</sup> This clause must be understood as recognizing the unborn child's distinct identity from the mother and protecting the unborn child's right to life.
28. The *travaux préparatoires* of the ICCPR explicitly state, 'the principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child.'<sup>25</sup> Similarly, other early UN texts note that the intention of the paragraph 'was inspired by humanitarian considerations and by consideration for the interests of the unborn child.'<sup>26</sup>
29. The protection of unborn life is also found through an ordinary reading of the preamble of the Convention on the Rights of the Child (CRC). Article 6 holds that 'States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.'<sup>27</sup> Article 1 defines a child as 'every human being below the age of eighteen years.'<sup>28</sup> This provides an upper limit as to who is a child but does not provide a lower limit on when the status of 'child' attaches. This is reinforced by the preamble, which asserts that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth* [emphasis added].'<sup>29</sup> Viewed in this context, both Articles 1 and 6 of the CRC indicate recognition and protection of the right to life of the unborn child.

### **(c) Recommendations**

30. In light of the aforementioned, ADF International suggests the following recommendations be made to Guatemala:
- a. Consider amending the definition of 'psychological violence' contained in Decree N. 22-2008 to prevent unjustified restrictions on freedom of expression;

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<sup>23</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 6.

<sup>24</sup> *Id.*

<sup>25</sup> UN General Assembly 'Report of the Third Committee to the 12th Session of the General Assembly' (5 December 1957) A/3764, 18.

<sup>26</sup> UN General Assembly 'Report of the Secretary-General to the 10th Session of the General Assembly' (1 July 1955) A/2929, ch. VI, 10.

<sup>27</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art. 6.

<sup>28</sup> *Id.*, art. 1.

<sup>29</sup> *Id.*, preamble.

- b. Ensure full respect for the right to freedom of expression in accordance with relevant international human rights obligations;
- c. Resist calls to liberalize abortion, and instead implement laws and policies aimed at safely getting mothers and babies through pregnancy and childbirth;
- d. Continue to protect the right to life from conception to natural end;
- e. Improve access to quality maternal health care for women from poor, rural or indigenous backgrounds.



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