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## General situation of LGBTI people

Homo- and transphobia and human rights violations, including violence, against lesbian, gay, bisexual and transgender persons are widespread and systematic in Guatemala. Human Rights Defenders advocating for LGBTI rights are subject to threats, harassment and physical violence. The organisation OASIS has registered numerous attacks and murders against members of LGBTI communities. These attacks are under-reported in the formal system because victims know they will face institutional discrimination, impunity and social rejection. At least 70 LGBT persons were murdered in Guatemala between 1996 and 2011 on the basis of their sexual orientation or gender identity. Transgender women are particularly exposed to this violence. Only in September 2014 three fatal hate crimes against transgender women were reported. The case of Guatemala is typical in the region, Latin America actually accounts for almost 80% of the world's reported murders of transgender people (UNDP). The Guatemalan state fails to adequately prevent, to investigate and/or to prosecute incidents against LGBTI individuals despite an equality clause in the Guatemalan constitution. Particularly serious is how the police have either directly perpetrated the violence or failed to investigate allegations of homophobic violence and discrimination.

The Shadow report to the UN Human Rights Committee (2012) states, that LGBTI persons lack access to healthcare and education services. They are denied the right to a fair trial and judges may refuse to hear controversial cases concerning rights violations based on sexual orientation and gender identity because they fear public reprisal. Transgender women are denied their gender identity by the state and experience discrimination in access to housing, education and the job market. Lesbian women are treated with hostility by health staff at clinics, something that creates unwillingness to seek medical assistance and increase the risks for not detecting breast, uterus cervix cancer soon enough.

The predominately conservative view by religious groups and the dominant political parties on LGBTI rights is also reflected in the public opinion; in a survey in 2010 (Cid-Gallup) 85% of the country's population opposed same-sex marriage. When the Organisation of American States (OAS) discussed same-sex marriage in 2013 the Guatemala president also strongly opposed this right.

Mainstream media generally does not take a stand for LGBTI rights and the tabloid magazines report on the human rights abuses against the LGBTI persons from a sensational perspective.

Against this background it is a great achievement that in 2014, the Defensoría de la Diversidad Sexual (part of the Human Rights Ombudsman) together with the Presidential Commission is developing a national Public Law on LGBTI. The same office of the Human Rights Ombudsman has managed to influence the format of the records from the Office for Victims of the National Civil Police. At present they also specify acts of violence against LGBTI persons and SOGI hate crimes.

## Legal and human rights instruments

### Constitutional provisions and legal framework

Since 1871, it has been legal to have same-sex sexual activity in Guatemala, but the rights of LGBTI persons are neither recognised nor defended by the legal system. Neither same-sex unions nor marriages are recognised; adoptions are not allowed.

The constitution recognises the rights and freedoms of all persons. Article 1 obligates the State to protect all persons and the family. The Constitution establishes the right to life (article 3), the right to equality and freedom (article 4), health to all persons (articles 93, 94, 95 and 100), as well as the obligation of the State to guard for the health and social assistance, social security of all inhabitants; the Health Code (Decree 90-97) reaffirms the right to health (articles 1, 4, 6, 7, 18, 55 and 62) and that all habitants have

the right to respect for their person, human dignity and intimacy. Article 46 in the constitution states the pre-eminence of international law over national law.

There are also anti-discrimination laws in the Guatemala, but these do not explicitly mention sexual orientation or gender identity<sup>1</sup>. This means that there is no protection against discrimination on the basis of sexual orientation or gender identity in areas such as employment, education, housing, health, care or access to restaurants, nightclubs or similar.

In terms of **national laws and policies**, the following have the most direct bearing on the rights of LGBTI persons:

The National Plan of Human Rights: 2007-2017 (Presidential Commission of Human Rights Guatemala) recognises the “importance of developing a social culture of tolerance, of respect of difference...to create and promote public policies that allow the integration and acceptance of people of diverse sexual orientation in society.”

Decree 27-2000, General Law on Aids, guarantee the respect, promotion, protection and defence of the human rights of persons living with HIV. Of particular importance are the articles 2 (protection of human rights of PLWHA); 14 (ethics and confidentiality); 35 (attention), 36 (human rights in general); 37 (non-discrimination) and 48 (right to health care). Governmental agreement 317-2002 regulates the law.

Decree 81-2002, the Law of promotion of education against discrimination gives the Ministries of Education and of Culture and Sports the responsibility to promote programmes that aim to eliminate all forms of discrimination.

Decree 330, Labour legislation (Código de Trabajo) prohibits (Article 137) employers to discriminate in any form due to sex, race, religion, political conviction, economic situation, educational background or any other reason.

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<sup>1</sup> El Decreto 57-2002, que reforma el Código Penal, en el artículo 202 bis, establece sanciones a cualquier forma de discriminación basada en motivos de género, raza, etnia, idioma, edad, religión, situación económica, enfermedad, discapacidad, estado civil, o en cualesquiera otro motivo, razón o circunstancia.

Decree 9-2009, the Law against Sexual Violence, Exploitation or Trafficking (2009), aims to prevent, repress, sanction and eradicate sexual violence, exploitation and trafficking, to attend to and protect the victims and to compensate the damages inflicted upon them (Article 1).

### **Regional and international human rights instruments**

- Inter-American Convention against All Forms of Discrimination and Intolerance (2013) has yet not been signed by Guatemala.
- Inter-American Resolution on Human Rights Sexual Orientation and Gender Identity and Expression, (AG/RES. 2807, XLIII-O/13, June 6, 2013). Guatemala supported the resolution with the comment that “Guatemala considers that not granting legal recognition to marriage between persons of the same sex does not constitute a discriminatory practice.”
- The UN Human Rights Council resolution 17/19 Human rights, sexual orientation and gender identity (July 2011) was backed by Guatemala, then member of the Council. The General Assembly Declaration on sexual orientation and gender identity 2008 was initially not supported by Guatemala but has now been signed.
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994), particularly relevant to human rights abuses against lesbian women.
- As a member of UN Guatemala has ratified all the main international human rights instruments. Guatemalan citizens may also turn to the UN Human Rights Committee through procedure 1503, to the Special Rapporteurs for violations of specific human rights, to ECOSOC for women's rights violations and use the UNESCO procedure for human rights violations in UNESCO's fields of mandate.

There are two Accountability mechanisms that LGBTI organisation could use for the protection of human rights for LGBTI people:

*La Comisión Interamericana de Derechos Humanos* (CIDH), the Inter-American Human Rights Commission. Since 2012 Guatemalan LGBTI organisations are granted hearing at the IACHR. Both the government and the LGBTI movement report to the commission on the situation of LGBTI rights and situation. The CIDH has special thematic sessions on the situation of LGBTI rights (by country or by different groups within the LGBTI community). It also has a special LGBTI unit that receives reports on human rights abuses against LGBTI persons, facilitates space for dialogue and technical assistance to the member states.

Since April 2014, *Defensoría de la Diversidad Sexual*, is part of the Ombudsman for Human Rights in Guatemala, Procuraduría de los Derechos Humanos de Guatemala, and is responsible for the protection and the follow-up of the rights of LGBTI community and shall promote the equality, inclusion, the participation and non-discrimination of the LGBTI persons. It is also responsible for capacity building of other governmental entities, to carry out advocacy efforts in relation to LGBTI rights and to conduct research on specific themes of interest in the defence of sexual diversity. According to this entity the LGBTI community is increasingly using the Defensoría to report discrimination against LGBTI persons or to seek advice. The Defensoría has also served as an intermediary between the LGBTI movement and other governmental bodies in some advocacy processes.

### **Sexual and Reproductive Health and Rights and HIV/AIDS**

Guatemala has a national STI, HIV and Aids programme under the Ministry of Public Health (2011-2015) including men who have sex with men (MSM) and transgender women among the specific target groups. Policy planning and implementation is coordinated with LGBTI organisations, including transgender women's organisations. The prevalence was 0.6% in 2013 (UNAIDS) and 93.6% of the cases are transmitted through sexual relations. HIV prevalence among MSM (8.9%) and for female sex workers (1.1%) is recorded, but may or may not accurately reflect numbers among the population of transgender women sex workers (regarded as men

under Guatemalan law). The lack of accurate national statistics makes it difficult to fully call attention to the problems faced by the transgender community in Guatemala. The inaccessibility to health services for transgender women and high rates of violence against them increase their vulnerability to HIV and STI.

The most recent report on the status of HIV prevalence in the country (*Informe Nacional sobre los Progresos Realizados en la Lucha Contra el VIH y sida*, March 2014) is a step forward however and has a special section on transgender women. It refers to three smaller studies in Guatemala City (2003, 2010 and 2013) in which the latter showed a HIV prevalence of 23.8%. The study raises that one of the main achievements since 2011 has been the increased participation of LGBTI organisations and that the population of transgender women has become visible in the work. This is a great achievement on behalf of the LGBTI community. The report states that there is no special attention to transgender women, they are attended as MSM. Likewise there are no special measures to increase the accessibility of health service to transgender women or MSM.

### **Civil society organisations active in LGBTI field**

The LGBTI community is quite well organised in Guatemala. The 5th National Congress on LGBTI Human Rights, a joint initiative by the LGBTI organisations and the Ombudsman for Human Rights, was held last August 2014 in which a national campaign against homophobia was launched. Annual Pride marches are realised both at national and local levels (in 2014 the 14<sup>th</sup> Pride was organised). There are a number of different national and local activist LGBTI organisations in Guatemala such as:

- OASIS. Organización de Apoyo a una Sexualidad Integral frente al Sida, [www.oasis.org.gt](http://www.oasis.org.gt) ([www.facebook.com/OasisGuatemala/info](https://www.facebook.com/OasisGuatemala/info))
- REDNADS, Red Nacional de la Diversidad Sexual de Guatemala, ([www.facebook.com/red.nacional.9](https://www.facebook.com/red.nacional.9))

- Asociación LAMBDA, [www.lambda.org.gt](http://www.lambda.org.gt) or [lambda.guatemala@gmail.com](mailto:lambda.guatemala@gmail.com)
- Colectivo Amigos Contra el SIDA, CAS, [www.casgt.org](http://www.casgt.org)
- Asociación Gente Positiva (www.facebook.com/gente.positiva.9)
- OTRANS, Organización Trans Reinas de la Noche, [www.reinasdelanoche.org.gt/web/](http://www.reinasdelanoche.org.gt/web/)
- ODISCEA Guatemala. Asociaciónlésbica (www.facebook.com/ODISCEA)

## What Sweden can do – 9 questions

Within the broader context of support to democracy, human rights, human rights defenders, gender equality and the fight against gender based violence Sweden has a great opportunity to include issues related to the rights of LGBTI persons and their access to justice. When addressing LGBTI in a country as Guatemala, where the government still fail to protect the rights of LGBTI persons, it is important to consult LGBTI organisations in the country to make sure not to overrule their agenda. Questions to consider:

- Could Sweden do more to stay updated on the legal and security situation and the judgements and priorities of the LGBTI movement? Can Sweden offer protection to activists and attend court cases? Can Sweden contribute to protection of organisations at risk?
- Could Sweden do more to seek effective strategic alliances with other agencies and continue to bring up LGBTI rights in the dialogue with the government? Especially in relation to follow up of the progress and contents of the Public Law on LGBTI being drafted.
- Could Sweden do more to follow up and develop its support to human rights institutions that are defending human rights of LGBTI persons and activists (e.g. the support in 2014 to the Defenso-

ría de la Diversidad Sexual in coordination with the LGBTI movement)?

- Could Sweden do more to encourage and support capacity building, cooperation and synergies between LGBTI organisations? How can their organisational capacities be built so that they can improve their effectiveness and networking?
- Could Sweden do more to reach organisations outside the larger cities, in order to reach LGBTI persons in marginalised areas?
- Could Sweden do more to encourage and support partners working for democracy and human rights in Guatemala to engage with LGBTI rights? Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and mainstream Human Rights organisations?
- Could Sweden do more to promote inclusion of LGBTI persons, particularly transgender women, as a more visible part of the work against gender based violence in Guatemala?
- Could Sweden do more to systematically include LGBTI persons in initiatives related to health, HIV/AIDS, SRHR and social exclusion?
- Could Sweden do more to open up doors for LGBTI organisations to participate in cultural, social and professional networks and events?

For further advice on dialogue regarding LGBT issues, download the [Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#). Also refer to the [EU tools](#) and guidelines in the reference list.

More specific advice and support measures, as well as contact information to mentioned groups, can also be provided through ILGA or RFSL, should the Embassy wish for a dialogue.

## References

### General references

RFSL, *LGBT in Development*, An introduction in how to include LGBT in programming in development: [http://www.rfsl.se/public/LGBT\\_in\\_development.pdf](http://www.rfsl.se/public/LGBT_in_development.pdf)

EU news, tools and guidelines: [http://eeas.europa.eu/human\\_rights/lgbt/index\\_en.htm](http://eeas.europa.eu/human_rights/lgbt/index_en.htm)

The EU Guidelines (2013): [Guidelines for supporting LGBTI persons' human rights](#)

Sida 'Human Rights of Lesbian, Gay, Bisexual and Transgender persons - Conducting a Dialogue' and the Ministry of Foreign Affairs [Dialogue brief](#).

ILGA: <http://africa.ilga.org>

ILGA, *State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults*. (see updated version at [www.ILGA.org](http://www.ILGA.org))

MSM Global Fund <http://www.msmsgf.org/>

### Specific references

Organización Trans Reinas de la Noche Organizacion (OTRANS), et.al, 2012, *Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Guatemala: A Shadow Report, Submitted for consideration at the 104th Session of the Human Rights Committee*, New York,

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Ministerio de Salud Pública y Asistencia Social Programa Nacional de Prevención y Control de ITS/VIH/SIDA, 2014, *Informe Nacional sobre los Progresos Realizados en la Lucha Contra el VIH y sida*

United Nations of Human Rights Office of the High Commissioner, 2012, *Born free and equal, Sexual Orientation and Gender Identity in International Human Rights Law*, , New York and Geneva,

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The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, guidance notes have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.