



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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31 March 2004

### GTM42338.E

Guatemala: Information on domestic violence, including recourse, remedies and services for victims 2003-2004 (Replaces GTM40575.E of 19 December 2002)

Research Directorate, Immigration and Refugee Board, Ottawa

According to a representative of Tierra Viva, a women's group based in Guatemala City, there was an [translation] "alarming" increase in violence against women in 2003 (20 Jan. 2004). The non-governmental Network for Non-Violence Against Women (Red de No Violencia contra la Mujer) claimed that more than 25,000 domestic violence complaints were registered in 2003 (*La Hora* 17 Mar. 2004), although the Prosecutor's Office reportedly received only 4,580 complaints, none of which were brought to trial (*Country Reports* 2003 25 Feb. 2004, Sec. 5).

Domestic violence legislation outlines a number of bodies, including the "Prosecutor's Office, the national police, family courts, legal clinics, and the Human Rights Ombudsman's Office [that] may receive [victims'] complaints ... [as well as providing] for the issuance of restraining orders against alleged aggressors" (ibid.). While legislation also requires police officers to intervene in cases of domestic violence, in many cases they allegedly failed to respond to requests for assistance (ibid.). In correspondence dated 23 January 2004, a Tierra Viva representative claimed that while the 1996 Law on Domestic Violence (Ley de Violencia Intrafamiliar) provides for the implementation of measures that afford physical protection to victims, domestic violence is itself not typified as a crime. This information could not be corroborated among the sources consulted by the Research Directorate.

Support services are available to domestic violence victims through the state-run Program to Prevent and Eradicate Domestic Violence (Programa de Prevención y Erradicación de la Violencia Intrafamiliar, PROPEVI) (Tierra Viva 20 Jan. 2004). The program's emergency hotline for battered women and children receives between 40 and 50 calls per day (*Country Reports* 2003 25 Feb. 2004, Sec. 5).

Although not mandated to deal specifically with domestic violence cases, the National Network for Victim Assistance (Red Nacional de Derivación de la Víctima) was established jointly by a number of governmental and non-governmental agencies in 2003 with the objective of providing comprehensive assistance (*atención integral*) to people who report acts of violence (*InterRedes* Oct. 2003).

In the view of a Tierra Viva representative, there is a growing willingness on the part of women to report violence and abuse, and in some cases the police have taken action (23 Jan. 2004). However, currently available domestic violence services are insufficient to meet victims' needs, and the effectiveness of police and prosecutors remains limited, particularly given the lack of shelters and many victims' social and economic dependence on their abusive partners (Tierra Viva 23 Jan. 2004).

On 13 February 2004, the government publicly released its National Plan to Prevent and Eradicate Domestic Violence and Violence Against Women (Plan Nacional de Prevención y Erradicación de la Violencia Intrafamiliar y contra las Mujeres) (*La Hora* 13 Feb. 2004). To be implemented over ten years, the plan calls

for the strengthening of the capacity of state institutions, including those involved in the administration of justice, to combat such violence (ibid.). No information on the current status of the plan's implementation could be found among the sources consulted by the Research Directorate.

In July 2002, an analysis of state protection available to victims of domestic violence in Guatemala was provided by the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) in its *Report for the United Nations' Special Reporter on Violence against Women, its Causes and Consequences*:

A long patriarchal tradition persists in the administration of justice, expressed in the discriminatory treatment towards women, the use of gender stereotypes (marianism), the non-observance of international human rights standards, and the breaking of the internal law norms related to equality between men and women. The formalism increases the problem of access to justice, conspires against the protection of fundamental rights and freedoms through an efficient and timely recourse, and propitiates impunity. The women of the indigenous towns are specifically affected in terms of access to justice. Likewise, poverty and not knowing the rights on the part of Guatemalan women seriously affects their capacity to exercise their rights before the administration of justice.

Due to recent reforms, the removal from the internal law of several discriminatory laws has been achieved. Among those still subsisting, it is worthwhile noting Article 80 of the Civil Code, which establishes the prohibition of authorizing a new marriage for the woman until 300 days have elapsed, counted as of the date of dissolution of the former marriage. There are normative voids to adequately confront several types of gender violence. In matters of family violence a regulation is urgently needed.

In a United Nations report of 12 August 2002 from the Committee on Elimination of Discrimination against Women, Guatemala's Presidential Secretary of Women, Lily Caravantes Tobias, stated that a number of "institutional mechanisms" had been introduced to assist women in regard to domestic violence. Those mechanisms included entities such as the Office of the Public Defender for Women's Rights, the Prosecutor's Office for Women, the Department of Women within the State Attorney's Office, the Presidential Secretariat for Women, the Prosecutor's Office for Indigenous Women and one for the prevention of violence, as well as the "CONAPREVI," an organization that coordinates work for the prevention of violence against women (UN 12 Aug. 2002).

Nevertheless, Tobias added that although "there had been major advances in the condition of women in the legal area and in gathering evidence of oppressive conditions in which women were living ... there was widespread ignorance of the law and the whole legal system was weak" (ibid.).

Tobias also stated that:

A strategic plan was being developed for the establishment of women's advancement agencies throughout the country, as was legislation to deal with domestic violence. One problem was the lack of gender-disaggregated data regarding violence.

No information was available on the number of perpetrators of domestic violence and there were also no State shelters for victims, although the private sector had established two such institutions, she added (ibid.).

Furthermore, the Presidential Secretary for Peace, Catalina Soberanis, noted that:

the law on domestic violence provided for police protection of assaulted persons, even in the home, if there was visible or audible evidence of violence. [However] [a]ccording to existing social patterns, police refused to enter a home and training programmes for the police were necessary (ibid.).

Earlier, a representative of the Network to Oppose Violence Against Women (Red de la No Violencia contra las Mujeres) provided the following information in correspondence dated 13 December 2002:

Domestic violence in Guatemala is the same as it has been for centuries, but it has increased due to other factors like poverty, drug addiction and alcoholism, which although not the true cause of domestic violence can trigger it.

The Government of Guatemala has not shown that it can protect victims of domestic violence. First of all, it has not recognized the scope of the problem, and those who should provide protection see complaints of domestic violence as a nuisance, a waste of time, an annoyance, something due to

"the emotional instability of women who cannot maintain harmony in the home and do not fulfil their domestic obligations." Such remarks reflect the stereotypical view of women's work. Therefore women go from one institution to another, without an immediate response to their complaints of domestic violence. Even if they receive some attention, they lack financial resources to support themselves and their children. There are no state-run shelters. The only shelter in the whole republic is run by an NGO in one of the departments (provinces).

Civil society has made efforts and in 2000 the Network to Oppose Violence Against Women (Red de la No Violencia contra las Mujeres) managed to obtain approval for the creation of a national office to prevent domestic violence and violence against women. This office is known by its Spanish acronym CONAPREVI. ... So far it has functioned with scant government funding and the rest of its support comes from international cooperation.

In 1995 the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the Belém do Pará Convention, was ratified. In 1996 the law to prevent, punish and eradicate domestic violence, Decree 97/96 of the Congress of the Republic, was passed. In 2000 the regulations under this law were approved in Government Order 831/2000. All these provisions came about because they were proposed and advocated by the women's movement.

Nevertheless, justice officials are reluctant to enforce the law and its regulations and to keep the statistics mandated by law to record the number of complaints of domestic violence. So far, the Guatemalan Congress has not shown the political will to approve the legislative proposals put forward by women's groups to amend the Criminal Code and the Code of Criminal Procedure. These proposals create new offences such as domestic violence, repeal the law that allows a judge to suspend the sentence of a perpetrator or permit him to marry the victim to avoid penalty, and introduce other legal provisions. The amendments also propose a fair and equitable way to proceed in cases of sexual and property offences against women, both in the family and in the community.

We are three women lawyers who have challenged the constitutionality of part of the Code of Criminal Procedure to obtain repeal of the provision that makes it impossible for women to obtain justice if their husbands refuse to support them and their children. We believe that the Constitutional Court will uphold our motion, but it has not yet done so, a year and three months after it should have decided.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum. Please find below the list of additional sources consulted in researching this Information Request.

#### References

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Tierra Viva (Agrupación de Mujeres Tierra Viva), Guatemala City. 23 January 2004. Correspondence from a representative.

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United Nations (UN). 12 August 2002. "Committee Experts Voice Concern Over Guatemala's Multiple Women's Agencies." <<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/4FA2ABA08AE6A83BC1256C140027843F?opendocument>> [Accessed 12 Dec. 2002]

#### Additional Sources Consulted

**Oral sources:** Fundación Guatemala, Grupo Guatemalteco de Mujeres (GGM), Oficina Nacional de la Mujer (ONAM), Red de la No Violencia Contra Las Mujeres

**Publications:** *Central America Report* [Guatemala City]. 2003, *Latinamerica Press* [Lima]. 2003, *Latin American Regional Reports: Central America & the Caribbean* [London]. 2003

**Internet sites, including:** Amnesty International, CEDAW, CIMAC, Human Rights Watch, ISIS Internacional, *La Nación* [San Jose], *La Prensa* [Tegucigalpa], Organization of American States, Pan-American Health Organization, *Prensa Libre* [Guatemala City], United Nations Development Fund for Women, WomenWatch

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