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GUATEMALA

The Center for Family and Human Rights (C-Fam) is a nongovernmental organization which was founded in 1997 and has held Special Consultative Status with the UN Economic and Social Council since 2014. We are headquartered in New York and Washington, D.C. and are a nonprofit, nonpartisan research and advocacy organization that is dedicated to reestablishing a proper understanding of international law, protecting national sovereignty and the dignity of the human person.

INTRODUCTION

1. Guatemala's international human rights obligations and commitments do not require Guatemala to change its laws with regards to marriage, family, and the protection of life before as well as after birth, or grant access to legal abortion or recognize marriages between persons of the same sex. Human rights treaties ratified by Guatemala do not require such changes, nor has Guatemala undertaken such commitments through other UN agreements.

GUATEMALA'S LAWS AND POLICIES TO PROTECT LIFE AND FAMILY

2. Guatemala's laws comprehensively protect the life of children in the womb from the moment of conception.¹ Guatemala, however, does not penalize a premature pregnancy termination when it results from efforts by a doctor to save the life of the mother, and without the intent to cause the death of the unborn child.²
3. President Alejandro Giammattei announced a comprehensive government policy to protect life and the family in July 2021, including through Guatemala's foreign policy. Guatemala's recent policies advance protections for motherhood, unborn children, the strengthening of family life, and the promotion family values. These new initiatives align with Guatemala's Constitution which declares that "the State guarantees and protects human life from its conception, as well as the integrity and security of the person."³

THE GENEVA CONSENSUS DECLARATION

4. As part of Guatemala's commitment to the promotion of the inherent dignity of human life from the moment a human life is conceived, President Giammattei added Guatemala to the list of signatories of the Geneva Consensus Declaration (GCD) on Promoting Women's Health and Strengthening the Family, which commits Guatemala to protecting life and the family.⁴
5. The language of the GCD is drawn exclusively from documents agreed by consensus, including core UN human rights treaties, the founding documents of the UN such as the Universal Declaration of Human Rights (UDHR), and major meeting outcomes such as the Beijing Declaration and Platform for Action and the Programme of Action of the International Conference on Population Development.

PROTECTING WOMEN'S HEALTH

6. At the 1994 International Conference on Population and Development (ICPD), nations pledged "to enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant." This commitment is echoed in the GCD, alongside reaffirmations of the importance of women's equal rights and their contributions to society, both in terms of education, employment, and civic engagement and through the family. The unique and essential role of women as mothers was recognized in the Beijing Declaration and Platform for Action adopted at the 1995 UN Fourth World Conference on Women. Both of these landmark conferences, as well as the

subsequent Millennium Development Goals and Sustainable Development Goals, include commitments to reduce maternal and child mortality, and while significant progress has been made around the world, critical gaps remain, especially for those in the poorest, most remote, and resource-deprived areas.

7. Maternal deaths have declined significantly in Guatemala since the early 2000s, but the maternal mortality rate remains among the highest in the region.⁵ The proportion of births that take place without a skilled birth attendant has also declined significantly from over 50% to less than 32% since the year 2000. Because of access to healthcare and infrastructure for women who live in rural areas, women in rural areas, including indigenous women, continue to account for a disproportionate share of maternal deaths and births that are not attended by a skilled maternal health practitioner.
8. The improvements in maternal health in Guatemala were achieved without significant changes to the law regarding abortion, which remains illegal in all circumstances. Post-abortion care is available to women suffering complications from miscarriage or induced abortion, regardless of the legality of the procedure.
9. Guatemala's progress on maternal health, and commitment to further improvement, while continuing to restrict the practice of abortion, is entirely in keeping with international standards adopted by consensus and in alignment with Guatemala's commitments as stated in the GCD: "Improve and secure access to health and development gains for women, including sexual and reproductive health, which must always promote optimal health, the highest attainable standard of health, without including abortion."

PROTECTING HUMAN LIFE

10. Guatemala's laws protecting the life of the unborn are consistent with its human rights obligations as set out in the binding human rights treaties ratified by Guatemala as well as other international agreements. The 1994 International Conference on Population and Development (ICPD), as quoted in the GCD, states that "any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process." The standard set at the ICPD has been repeatedly reaffirmed by international consensus, including at the adoption of the Sustainable Development Goals. No international human rights treaty ratified by Guatemala asserts a human right to abortion, or could reasonably be interpreted as including such a right.
11. As mentioned previously, Guatemala's laws protect life from conception without exception. However, illegal, clandestine abortions continue to be performed, leading to maternal injury and death in some cases. In keeping with Guatemala's commitments outlined in the GCD to promote optimal health without including abortion, and the ICPD agreement that "governments should take appropriate steps to help women to avoid abortion," efforts must be taken to identify the root causes of abortion and ensure the needs of women and their families are met when faced with crisis pregnancies.
12. Unborn children cannot be said to be excluded from the right to life under international law. To say or imply otherwise is not consistent with the text and history of international human rights treaties. Specifically, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) prohibits the application of the death penalty to pregnant

mothers, precisely out of concern for the innocent unborn child, and the Preamble of the Convention on the Rights of the Child (CRC) explicitly recognizes that human rights protections apply both before and after birth. Guatemala has ratified both these treaties and may implement them through protections for children from induced abortion, including complete prohibitions on abortion.

13. It should also be noted that UN political agreements recognize abortion laws as an exclusively national prerogative. In 2015, when the General Assembly adopted the Sustainable Development Goals, it reaffirmed that any policies related to sexual and reproductive health must be in accordance with the Programme of Action of the International Conference on Population and Development (ICPD), which explicitly rejected an international right to abortion and prohibited interference by the UN system in domestic policymaking on abortion.⁶
14. Many experts in international law and policy agree that abortion is not a right and that international law “may, and indeed should be used” to protect the life of the unborn. Experts also declare that “there exists no right to abortion under international law, either by way of treaty obligation or under customary international law. No United Nations treaty can accurately be cited as establishing or recognizing a right to abortion.” UN bodies that promote abortion of acting beyond their mandate.⁷
15. The government of Guatemala is moreover one of 36 government signatories of the Geneva Consensus Declaration,⁸ which expressly reaffirmed that abortion is not an international right and that it is an exclusive domestic prerogative and committed countries to treat it as such.

SUPPORT FOR THE FAMILY

16. Signatories to the GCD committed to “support the role of the family as foundational to society and as a source of health, support, and care.” The constitution of Guatemala recognizes “the State guarantees and protects human life from its conception, as well as the integrity and security of the person.”
17. Guatemala does not have an obligation under human rights treaties to protect or recognize same-sex marriage, adoption by homosexual couples, or legal recognition of transgender change based on subjective self-identification. Nor has Guatemala made any such commitments in non-binding international human rights agreements.
18. International law reserves singular protections for the natural family to which relations between individuals of the same sex are not entitled. As the civil society platform “The Family Articles” states, international law and policy defines the family as “the natural and fundamental group unit of society.”⁹ As such, it is “entitled to protection by society and the State” and it is a proper subject of human rights.
19. Relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy. Textually, the language on the *right of men and women* to marry and found a family in the ICCPR (Article 23) and the International Covenant on Economic, Social, and Cultural rights (ICESCR) (Article 10) *predicates that “they are entitled to equal rights* as to marriage, during marriage, and at its dissolution” (emphasis added). This is also reflected in the

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (Article 16), which refers to equality within marriage as between “men and women” and “husband and wife” in the context of the family. The European Convention on Human Rights (ECHR) (Article 12) and the Inter-American Convention on Human Rights (IACHR) (Article 17) also mirror the language of the Universal Declaration of Human Rights (UDHR) on the right to marry and found a family verbatim.¹⁰

20. All human beings possess the same fundamental rights by virtue of their inherent dignity and worth. UN Member States have no obligation to enact laws that give individuals any special benefits or protections on the basis of their sexual preferences and behavior or to sanction an individual’s feeling about their gender identity.¹¹
21. There is no consensus among UN member states on the use of the term “sexual orientation and gender identity.” UN declarations and resolutions that mention these categories are all non-binding in nature and have never been adopted on a consensual basis. Moreover, while treaty bodies, including this committee, have stated their support for including “sexual orientation and gender identity” as categories of non-discrimination alongside race and religion they do not have the power to alter the obligations of State Parties under the ICCPR.
22. There is no textual support or any historical record to indicate that State parties ever intended UN human rights treaties to require gender identity change laws. The promotion of this notion is particularly egregious in the context of children because of the interest of the rise in reported gender dysphoria among children and the growing practice of supplying them with powerful and expensive treatment and drugs. These drugs and surgeries can have lasting negative effects on their health. It is especially egregious when one notes the subjectivity and fluidity of the notions of “gender identity” and the lack of any scientific or legal precision.¹²
23. The UDHR and binding international human rights treaties recognize that many children are deprived of one or both of their natural parents and must be provided with adequate protection, by providing that “[m]otherhood and childhood are entitled to special care and assistance” and that “all children, whether born in or out of wedlock, shall enjoy the same social protection” (UDHR, Article 25). This provision requires that children be protected regardless of whether they are living with their intact family. It does not entitle adults in a homosexual relation to adopt children.

SEXUALITY EDUCATION

24. As stated in the GCD, with regard to laws on abortion, “each nation has the sovereign right to implement programs and activities consistent with their laws and policies.”
25. With regard to other controversial subjects like comprehensive sexuality education, the same standard applies, as there is no international obligation adopted by consensus, nor any binding international human rights treaty ratified by Guatemala, that can be reasonably interpreted as creating such a right. As stated in the GCD, governments should strive to design and implement programming to achieve “optimal health outcomes.” Sadly, many programs styled as “comprehensive sexuality education” do not encourage abstinence and fidelity and unsurprisingly have been found to be ineffective.¹³

INTERFERENCE BY INTERNATIONAL MECHANISMS IN GUATEMALA'S POLICIES TO PROTECT LIFE AND FAMILY

26. President Giammattei visited Washington, D.C. in June 2022 to defend Guatemala's human rights record after the Inter-American Commission for Human Rights added Guatemala on a list of Human Rights abusers alongside Cuba and Venezuela. He said the Commission acted lawlessly and accused the Commission of threatening Guatemala to extort compliance with its ideological mandates on abortion and issues related to homosexuality and transgender rights. Among the laws that drew the ire of the Commission were Guatemala's abortion law and a recent law to protect the family, to protect adolescent children who identify as transgender from mutilation, and from being placed on hormone drugs that permanently stunt their sexual development.
27. Consistent with the commitment to protection of life and the family outlines in the GCD President Giammattei denied that Guatemala was infringing any human rights norm because of its protection of children in the womb and the protection of children from life-changing and highly questionable medical gender altering protocols.

CONCLUDING RECOMMENDATIONS

28. We urge Guatemala to continue protecting the natural family and marriage, formed by a husband and a wife, as the fundamental unit of society, as well as the unborn.
29. Guatemala should continue to improve maternal and child health outcomes, especially for those in rural areas, including indigenous women, without including abortion, in accordance with its commitments in the Geneva Consensus Declaration.
30. We encourage Guatemala to continue to affirm the principles set forth in the Geneva Consensus Declaration, call on its fellow signatories to do likewise, and encourage other countries to sign the declaration in support of women's rights, national sovereignty, the right to life, and the centrality of the family to achieving lasting and human-rights-centered development.

¹ Penal Code. Chapter III. Abortion. Art. 133-140.

² Ibid. Art. 137

³ Republic of Guatemala. Guatemala's Constitution of 1985 with Amendments through 1993. Available at https://www.constituteproject.org/constitution/Guatemala_1993.pdf?lang=en

⁴ Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family, Annex to the letter dated 2 December 2020 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family, UN Document No. A/75/626.

⁵ https://cdn.who.int/media/docs/default-source/gho-documents/maternal-health-countries/maternal_health_gtm_en.pdf

⁶ 2030 Agenda for Sustainable Development, UN Document A/RES/70/1, target 5.6; Programme of Action of the International Conference on Population and Development, UN Document A/CONF.171/13, paragraph 8.25.

⁷ The articles have been presented at UN headquarters in New York, and in parliaments across the world. The articles and footnotes are available at: www.sanjosearticles.com

⁸ Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family, Annex to the letter dated 2 December 2020 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, December 7, 2020, UN Document No. A/75/626.

⁹ This section reflects the civil society platform, THE FAMILY ARTICLES, sponsored by C-Fam, available at www.civilsocietyforthefamily.org

¹⁰ The European Court of Human Rights has interpreted its provisions on marriage and family—which are identical

to those contained in the Universal Declaration of Human Rights and the Covenant—as referring only to the union of a man and a woman. Even though the Court has repeated more than once that relations between individuals of the same sex are entitled to some form of legal recognition it has also specified that States are not required to sanction relations between individuals of the same-sex as if they can constitute a family. *See* ECHR, *Chapin and Charpentier v. France*, no. 40183/07 (Judgment (Merits and Just Satisfaction), 9 June 2016. Available at [http://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22001-163436%22%7D](http://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-163436%22%7D)]; *See also* *Hämäläinen v. Finland*, no. 37359/09, § 71, ECHR 2014; *Schalk and Kopf v. Austria*, no. 30141/04, § 101, ECHR 2010; *Rees v. UK*, no. 9532/81, § 49, ECHR 1986).

¹¹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Preamble and Article 1.

¹² Lawrence S. Mayer, M.B., M.S., Ph.D. and Paul R. McHugh, M.D., “Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences,” *The New Atlantis*, Fall 2016, available at http://www.thenewatlantis.com/docLib/20160819_TNA50SexualityandGender.pdf

¹³ United Nations Educational, Scientific, and Cultural Organization (UNESCO); Joint United Nations Programme on HIV/AIDS; United Nations Population Fund; United Nations Children's Fund; UN Women; World Health Organization. *International Technical Guidance on Sexuality Education: An Evidence-Informed Approach*. Rev ed Paris: UNESCO 2018, available at: <https://www.unfpa.org/sites/default/files/pub-pdf/ITGSE.pdf>; *See especially* p. 128 where the guidance admits that there is no evidence that curriculum based sexuality education protects children from sexually transmitted diseases, and presents data showing no impact on risk-taking behavior in a majority of CSE programs.