

**Universal Periodic Review of Guatemala
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Joint Stakeholder Report**

Joint submission by:

Red juvenil de Asociación de Mujeres Gente Nueva -REDJUAMUGEN-

REDJUAMUGEN addresses the lack of leadership of Latino youth living with and/or affected by HIV, focusing on implementing three programs: Leadership training, Empowerment, and Advocacy

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The PACT

A Vibrant Coalition of 152+ youth Organizations working collaboratively and strategically in the global HIV response. Since 2013, we have been building solidarity across youth organizations to ensure the health, well-being and human rights of all young people.

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Sexual Rights Initiative

The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Argentina, and Southern Africa that work together to advance human rights related to sexuality at the United Nations.

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Introduction

1. The consultation convened to contribute to the UPR in Guatemala, led and implemented by REDJUAMUGEN, was carried out through a multisectoral analysis. This identified the needs and demands of Guatemalan youth, guaranteeing the gender approach by investigating the current national situation in different sectors, forming a holistic analysis, then generating milestones to formulate recommendations for the country and the diverse Guatemalan youth.
2. The influence of religion, patriarchal customs, and adult centrism in society and public policies restrict the enjoyment of sexual and reproductive rights by girls, adolescents, young women, and young men due to the lack of decentralization of access to education, socioeconomic factors, and misinterpretation of laws. They reinforce myths and taboos about sexuality. This makes the gender approach inaccessible and not guaranteed for all adolescent and youth populations due to the lack of representation in key spaces and decision-making, as well as the lack of a national youth law.
3. Guatemala must implement inclusive laws with an intersectional approach to guarantee the human rights of the entire population, prioritizing the sexual and reproductive rights of children, adolescents and youth through multisectoral programs that facilitate the gender approach in education, employment and health.
4. Guatemala's national and political context is constrained by laws passed by the Congress of the Republic that specifically affect women, LGBTQI+ people, and CSOs, limiting freedom of expression, enjoyment of sexual and reproductive rights, and freedom of association.

Legal and policy context

Restricted CSO space and the right to Freedom of Association and NGOs

5. Guatemala received accepted a number of recommendations on protecting human rights defenders and their right to freedom of association, including the following relevant recommendations:
 - 111.40 Strengthen protection measures for human rights defenders (El Salvador)
 - 111.42 Further strengthen measures to protect human rights defenders (Georgia);
 - 111.43 Support the work of civil society by implementing public policies to protect it and end the misuse of penal and administrative law against human rights defenders, including indigenous peoples' human rights defenders, especially in the context of hydroelectric and mining projects (Germany);
 - 111.63 Implement safeguards for human rights defenders by introducing legislation to protect freedom of association and assembly (Australia);

6. Unfortunately, not only has Guatemala failed to implement the recommendations, since the third review cycle the situation for NGOs has deteriorated.
7. The right to freedom of association is recognized in the Universal Declaration of Human Rights (art. 20), in the International Covenant on Civil and Political Rights¹ (art. 22), and in the American Convention on Human Rights² (art. 16). Guatemala has either acceded to or ratified each of these treaties as a State party, and domesticated them. The right is also included in the Declaration on Human Rights Defenders³ (art. 5.a), which includes the right for people to interact and organize among themselves, and to collectively express, promote, pursue, and defend common interests⁴.
8. The right to freedom of association has both an individual and a collective dimension. Under the provisions of article 22 of the International Covenant on Civil and Political Rights, individuals have the right to form an association with like-minded persons or to join an existing one. The Article also encompasses the collective right of an existing association to carry out activities based on the common interests of its members⁵. Under this framework, the right to freedom of association protects associations from their creation until their dissolution, guaranteeing members of the organisation the right to establish them, the right to recruit others or have others join them, the right to freely carry out their activities and receive protection against undue interference, the right to access financing and resources, and the right to participate in the conduct of political affairs.
9. States have the obligation to take all measures aimed at both protecting and guaranteeing the right to freedom of association. Restrictions to this right must be provided by law, be strictly justified, and demonstrate that they are necessary, proportional, and reasonable in the context of a democratic society, to achieve legitimate purposes that guarantee permanent and effective protection of these rights⁶.
10. However, Guatemala has introduced legislation that directly contradicts the norms of international human rights law, set out above through the promulgation of **Decree**

¹ Guatemala adopted the International Covenant on Civil and Political Rights through Decree No. 9-92 of the Congress of the Republic of 21 February 1992 and acceded on 1 May 1992.

² Guatemala approved the American Convention on Human Rights through Decree No. 6-78 of the Congress of the Republic of 30 March 1978, ratified on 27 April 1978.

³ The Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (known as the "Declaration on Human Rights Defenders") was adopted on December 9th, 1998 through United Nations General Assembly resolution 53/144.

⁴ A/59/401, para. 46.

⁵ The United Nations Special Rapporteur on the Situation of Human Rights Defenders Commentary on the Declaration on Human Rights Defenders, Office of the United Nations High Commissioner for Human Rights, Guatemala, Mexico, and Colombia, July 2011, p. 56.

⁶ Article 22. 2 of the International Covenant on Civil and Political Rights

4-2020: Law 5257, "Law on Non-Governmental Organizations for Development"⁷ which expressly violates the rights of the Guatemalan people.

11. On February 11, 2020, Guatemala's Congress enacted Decree 4-2020 (formerly known as Law 5257). This authoritarian initiative imposes undue restrictions, sanctions, and controls on non-governmental organizations (NGOs). On June 21, 2021, Decree 4-2020 came into force. The law seeks to maintain control of social entities⁸ discreetly and arbitrarily. Article 1 expressly states that the purpose of the law is to "regulate the constitution, registration, regulation, operation, supervision, control, and liquidation of non-governmental organizations (NGOs) in the Republic of Guatemala pursuant to the Law on Non-Governmental Organizations for Development."
12. The law reforms⁹, which originated in 2017 with the previous legislative period, order the control and supervision of NGOs in Guatemala, even if they do not manage public funds. If an NGO uses donations or outside funding to "alter public order"¹⁰, it will quickly be disbanded.
13. The requirements for NGOs that receive any national or foreign funding are onerous. Per article 15: where NGOs receive national or foreign financial donations for any purpose, they must issue certifying receipts in the name of the donor persons or entities. This must be done using forms authorized by the Superintendency of Tax Administration. Additionally, within thirty days of receiving donations and financing from external sources, the Ministry of Foreign Affairs must be informed about the amounts received, their origins and destination, with the purpose of rendering accounts to the corresponding entities.
14. Article 15 also restricts NGO programming, as no donations or external funding may be used to carry out activities deemed to disturb public order in the country. If an NGO uses donations or external funding to affect public order, it will be immediately dissolved by the Registry of Legal Persons (REPEJU) of the Ministry of the Interior, and its directors will be charged in accordance with Guatemala's criminal law¹¹ and civil law¹².
15. As a result, the disbanded NGO will not be able to operate under its name, and its associates will not be able to form part of any NGO for a minimum period of two years.

⁷ On Friday, February 28, 2020, Decree 04-2020 of the Congress of the Republic of Guatemala was published in the Central American Newspaper. <https://t.ly/9BcY4>

⁸ Article 1, Decree 4-2020

⁹ Considering that in the considerative part of Decree 4-2020, it is necessary to establish that organizations do not carry out activities in accordance with their statutes, with such transparency of the case through registration in the different entities of the state that are related to their purposes, so that they are obligatorily accountable for their efforts and activities for which they were created and to avoid the use of the resources they have, regardless of their origin, which can be national or foreign, clearly establishing their action based on their statutes and not engaging in biased activities for which they were created, thereby facilitating the fulfillment of their purposes and objectives.

¹⁰ Per article 15

¹¹ Decree No. 17-73

¹² Decree Law 106

16. The Political Constitution of the Republic of Guatemala, the Supreme Law, establishes the principle that treaties and conventions ratified and accepted by the Guatemalan State take precedence over domestic law in the area of human rights. Accordingly, there has therefore been a violation of article 46 of the constitution as international human rights standards have been superseded in order to pass Initiative No. 5257, which called for revisions to Congressional Decree No. 02-2003 on the Law on Non-Governmental Organizations.

Legislating against sexual and reproductive rights

17. During the third cycle Guatemala received multiple recommendations on sexual and reproductive health and rights including one that it accepted:
- 111.93 Adopt effective measures to address widespread child pregnancy and ensure access to sexual and reproductive health rights, as well as education programmes (Germany)

And others that Guatemala noted:

- 112.18 Create a legislative framework and implement public policies and social awareness campaigns to eliminate violence and discrimination based on sexual orientations and gender identity (New Zealand)
- 112.43 Adopt an intercultural health policy and strategy with an approach based on gender rights and sensitivity ensuring, inter alia, universal access to sexual and reproductive health, particularly in rural areas (Honduras)

18. Since the last review, there has been an almost successful attempt to further curtail sexual and reproductive rights in the country through legislative means.

19. **Decree 18-2022: "Law 5272: The Family and Life Protection Law"** is a law that poses a serious threat to lives, human rights, and families in Guatemala. On March 8, Congress approved the law by a large majority although three days later the president requested that the bill be shelved¹³ on the grounds that it violated two treaties to which Guatemala is a state party. On March 15 it was officially shelved¹⁴. Even though Governmental Agreement 149-2021¹⁵ is already in effect and is in line with Decree 18-2022, there is a risk that this decree will become effective and criminalize women before they undergo any type of abortion, prohibit the discussion of comprehensive sexuality education in public and private spaces, and make it impossible to advocate for equal marriage.

20. However, given that the Bill first made an appearance in 2017, and managed to make its way through Congress, there is always the possibility of a resurgence. Particularly

¹³<https://peoplesdispatch.org/2022/03/11/following-outrage-guatemalan-president-reverses-controversial-life-and-family-protection-bill/>

¹⁴ <https://www.amnesty.org/en/wp-content/uploads/2022/03/AMR3453752022ENGLISH.pdf>

¹⁵ The Ministry of Education implemented a public policy to protect family life and institutions between 2021 and 2032. <https://t.ly/Jlxx>

when given the popularity of the bill amongst legislators - with only 8 voting against it.

21. The bill provides us with a useful case illustration of the ways in which oppressions are interlinked and normalised in Guatemalan society, as the law fostered hatred and discrimination, endangering the lives and rights of countless LBGTQI people and women in all their diversity. Additionally, the bill “institutionalizes discrimination, especially against people who are not heterosexual, but also towards heterosexual people who live in family units other than those defined in this law.”¹⁶
22. The bill proposed an exclusionary and discriminatory definition of the family and ‘dangerously formulated a supposed "right" to "not accept sexual diversity or gender ideology as normal," de facto’ allowing for discrimination against people on the basis of their real or imputed sexuality or gender identity. Additionally, the bill aimed to inhibit the rights of children and young people to access to comprehensive sexuality education, as it prohibited "teaching sexual behaviors other than heterosexuality as normal."¹⁷
23. Under Chapter II of the bill, direct reforms would have been made to the articles of the Penal Code relating to abortion, with the insertion of the idea that the "The State ensures and safeguards life from its conception" thereby criminalising miscarriage.¹⁸ Additionally, the Bill proposed an increase in criminal penalties for voluntary abortion, and an introduction of penalties for spontaneous abortion, creating a mandatory minimum sentence of five years¹⁹, thereby putting the lives of women and girls at risk and further criminalising women and denying their right to bodily autonomy.
24. Chapter III of the bill was to reform the Civil code, in which Family Law is contained, and introduce a definition of marriage and De facto Union - as referring only to “biological” men and women, thus introducing a ban on same-sex marriage, where previously it just wasn’t provided for. The fourth article of the Constitution refers to the equality in dignity and rights of all human beings, yet there is an additional exclusion of transgender people through the emphasis on the idea of gender as a biological construct. While no one is forced to accept non-heterosexual behaviors and practices as normal, article 35 of the constitution states that rights will not be restricted by law or any government provision. However, it prohibits “disrespect for private life or morality”, which is often interpreted according to individual beliefs.
25. Against this backdrop, the work of NGOs is vital and NGOs work to address issues of sexual and reproductive health and HIV through STI prevention, based on comprehensive sexuality education, developing processes to advocate for the sexual and reproductive rights of children, adolescents, and youth, and lowering stigma and

¹⁶<https://edgarortizromero.com/2022/03/14/constitutional-problems-of-law-initiative-5272-in-guatemala>

¹⁷ <https://www.amnesty.org/en/documents/amr34/5334/2022/en/>

¹⁸ <https://www.amnesty.org/en/documents/amr34/5334/2022/en/>

¹⁹ <https://www.civicus.org/index.php/media-resources/news/interviews/5681-guatemala-anti-rights-groups-seek-to-maintain-the-privileges-of-some-at-the-expense-of-the-rights-of-others#:~:text=Bill%205272%2C%20passed%20by%20the,of%20sexual%20diversity%20in%20schools.>

discrimination for those who live with or are affected by HIV. Civil society employs strategies to prevent the right to freedom of movement and expression from being restricted or censored within the context of these issues, despite being in hostile times when advocating. However civil society must continue to organize, as there is still a risk that Decree 18-2022 will be reactivated during the 2023–2027 election process.

Context of HIV in Guatemala

26. Based on data from the Epidemiological Department of the Ministry of Public Health and Social Assistance (MSPAS), until 2020 there were 33,000 people living with HIV (PLHIV)²⁰ registered. When analyzing the epidemiological data of recent years, primarily the year 2017, the data do not add up because in that year, 37,717 people with HIV were registered. This demonstrates an epidemiological control failure reflected in the 2020 annual report, where the number of individuals reported decreases due to the coronavirus pandemic. In 2021, 2 015 people acquired HIV, of which 51% are under 30 years old²¹.
27. Despite being outlined in the Ministry of Health and Social Assistance's (MSPAS)²² care policy, the psychological care provided to girls, adolescents, young women, and women with HIV in comprehensive care centers is inadequate. Because health professionals overlook and criticize them when they use their sexual rights due to their conscientious objection. Although there are helpful tools supported by the MSPAS²³ that enable health professionals to have an adequate approach to family planning, contraception, and prevention, it has not been possible to put in place a comprehensive approach to sexual and reproductive health for adolescents, young women, and men regardless of their serologic status due to a lack of specific budget allocation for the care of adolescents and young people.

Recommendations to Guatemala

28. Protect, respect and fulfill the human rights of journalists and human rights defenders and address impunity in Guatemala by applying international human rights norms and standards to achieve a nation free from discrimination, gender inequality, racism, homophobia and classism.
29. Establish control periods every two years for the epidemiological control of HIV and the protection of human rights, focusing on the treatment, social protection, and prevention of HIV and other STIs, which ensures that the national budget is analyzed based on the requirements and priorities of those who are HIV-positive or affected by

²⁰ Report distributed to UNAIDS Global <https://bit.ly/3bulx1in>

²¹ Data retrieved from the Annual Report on HIV Epidemiological Surveillance by the Epidemiological Department of the Ministry of Public Health and Social Assistance (MSPAS).

²² Agreement 317-2002 REGULATION OF THE LAW FOR THE COMBAT OF THE HUMAN IMMUNODEFICIENCY VIRUS-HIV-AND THE SYNDROME OF IMMUNE ACQUIRED DEFICIENCY-AIDS-AND OF THE PROMOTION, PROTECTION, AND DEFENSE OF HUMAN RIGHTS AGAINST HIV/AIDS

²³ The National Guide to Contraception for Adolescents <https://t.ly/oFOL>

the virus.

30. Adapt human rights based sexual and reproductive health information so that it is culturally competent, accessible, widely disseminated, and decentralized, and defends the sexual and reproductive rights of all youth regardless of their sex, gender, serological status, or ethnic identity.