



UNIVERSITY OF TORONTO  
FACULTY OF LAW

INTERNATIONAL  
HUMAN RIGHTS  
PROGRAM

# Guatemala

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Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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| <b>Table of Contents</b> |
|--------------------------|

|                                                                             |    |
|-----------------------------------------------------------------------------|----|
| Introduction.....                                                           | 3  |
| Legislation.....                                                            | 3  |
| Case Law.....                                                               | 5  |
| Government Reports .....                                                    | 5  |
| Reports from International Agencies and Non-Governmental Organizations..... | 8  |
| Newspaper and Media Reports.....                                            | 10 |
| Scholarship.....                                                            | 12 |
| Links to Active LGBT Organizations in Guatemala.....                        | 13 |

## I. Introduction

While Guatemala has seen increased LGBT activism in the last decade, this has not been met with increased security for LGBT people. LGBT people continue to experience societal discrimination, including difficulty retaining employment. In some cases, the stigma is so severe that family members have refused to recognize or protect their own family members who identify as LGBT.

Violence is an on-going theme in this report, particularly against LGBT activists and transsexual people. The murder and physical assault of transsexuals has been alarmingly high over the past decade. The police have not been willing or able to protect these individuals, and have been accused of perpetrating some of this violence. Violence against LGBT activists is characteristic of the growing victimization of human rights defenders in Guatemala, although this targeting has distinctly homophobic overtones.

The government has simply not intervened to stop homophobic violence and discrimination, despite an equality clause in the Guatemalan constitution. The police have either directly perpetrated the violence or failed to investigate allegations.

While the gay community has come together over the past decade, and several gay bars have opened in Guatemala City, there are still grave consequences to coming out as LGBT in Guatemala.

## II. Legislation

1. Daniel Ottosson, *State-sponsored homophobia: a world survey of laws prohibiting same sex activity between consenting adults* (May 2010), online: International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) <[http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2010.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf)>.

- **Homosexual acts lawful in Guatemala**
- **Equal age of consent for homosexual and heterosexual acts**
- **No constitutional prohibition of discrimination based on sexual orientation**

There are no legal prohibitions against homosexuality in Guatemala (page 44). Moreover, the age of consent is equal for homosexual and heterosexual acts (see Código Penal de Guatemala, June, 1986, art. 189, online at [http://www.unhcr.org/refworld/country\\_NATLEGBOD\\_GTM\\_3dbe6dd54.0.html](http://www.unhcr.org/refworld/country_NATLEGBOD_GTM_3dbe6dd54.0.html)). While Guatemala's Constitution and Labour Code prohibit discrimination, sexual orientation is not a prohibited ground. Guatemala's Código de Trabajo prohibits discrimination based on race, religion, political belief or economic class (see Código de Trabajo, September 1995, articles 14, 89, 137, online at <http://www.cosibah.org/codigos%20de%20trabajo%20Guatemala.pdf>).

2. *Constitución de 1985 con las reformas de 1993* (Guatemala), online: Georgetown University Political Database of the Americas

<<http://pdba.georgetown.edu/Constitutions/Guate/guate93.html>>.

- **Guatemala's constitution includes guarantees of equality**
- **No provisions related to sexual orientation**

Guatemala's constitution dates from 1985 and was amended in 1993. It includes general guarantees of liberty and equality, but never explicitly mentions sexual orientation. However, this may not be a pointed omission, since the constitution does not specifically list *any* potential grounds of discrimination (such as race, religion, or disability) in the manner of our Charter s 15. We were unable to find any jurisprudence interpreting this provision to include sexual orientation.

Article 4 deals with "liberty and equality." (Please note that the English version, below, is a rough translation.)

**ARTICULO 4. Libertad e igualdad.** En Guatemala todos los seres humanos son libres e iguales en dignidad y derechos. El hombre y la mujer, cualquiera que sea su estado civil, tienen iguales oportunidades y responsabilidades. Ninguna persona puede ser sometida a servidumbre ni a otra condición que menoscabe su dignidad. Los seres humanos deben guardar conducta fraternal entre sí.

**ARTICLE 4. Liberty and equality.** In Guatemala all human beings are free and equal in dignity and rights. Men and women, no matter their marital status, possess equal opportunities and responsibilities. No person may be submitted to servitude nor to another condition that infringes his or her dignity. Human beings must maintain brotherly conduct amongst themselves.

3. *Global Legal Information Network*, online: Law Library of Congress  
<<http://www.glin.gov/search.action>>.

*GLIN* seems to be the best available, searchable database of Guatemalan legislation for English users (although the full text of legislation is available only in Spanish). Guatemala appears not to have any statutes that touch on homosexuality or sexual orientation. There *are* laws aimed at countering discrimination in other areas. For instance, the *Law for the Dignity and Integral Promotion of Women*, 1999 (Guatemala) *Diario de Centro América* vol 241 no 29 "penalizes discrimination toward women based on sex, indigenous background, age, religion, or social status, among others." No similar legislation exists with regards to sexual orientation.

### III. Case Law

*H.A.Y. (Re)* [2006] R.P.D.D. No. 246.

- **No discussion of risk to homosexuals living in Guatemala**
- **Personalized risk based on family response to claimant's sexual orientation**

Lesbian woman claimed to be targeted by gangs and exiled by the community because of her sexual orientation. Her family also intimidated her and refused to protect her, threatening to take away her daughter. IRB found the claimant not credible based on her lack of evidence and explanation of events. The Board member did not address the country conditions in Guatemala as a possible source of risk for a lesbian woman.

*Contreras v. Canada (Minister of Public Safety and Emergency Preparedness)*. [2009] F.C.J. No. 648, 2009 FC 525.

- **Internal Flight Alternative in Guatemala City found by both IRB member and PRRA officer**

In 2005, Applicant claimed refugee protection based on fear of persecution for being an HIV positive gay male. His claim was rejected by the Board because he did not have a subjective fear of persecution and could have sought an Internal Flight Alternative ("IFA") in Guatemala City. On August 19, 2008, the Pre-Removal Risk Assessment (PPRA) Officer rejected his claim because the Applicant failed to disprove the Board's finding that an IFA was available in Guatemala. In his PRRA application, the claimant also failed to provide evidence that he would not receive HIV treatment in Guatemala.

### IV. Government Reports

1. United States Department of State, *2009 Country Reports on Human Rights Practices – Guatemala* (11 March 2010), online: <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136114.htm>.

- **Societal discrimination in Guatemala against lesbian, gay bisexual and transgendered persons**
- **Lack of trust in the judicial system**
- **Police abuse of authority and harassment of LGBT persons**

Although the Guatemalan government generally and officially respects the rights of its citizens, this has not translated into protection for LGBT people. Social discrimination affects LGBT people in their daily activities. Homosexual rights groups have alleged that "members of the

police regularly waited outside clubs and bars frequented by sexual minorities and demanded that persons engaged in commercial sexual activities provide protection money.”

A lack of trust in the judicial system and fear of further persecution discourages many victims from reporting harassment and assaults. This lack of trust in the judicial system is not isolated to the LGBT community. The report discusses many problems associated with the judicial system as a whole, including arrests without warrants, corruption, insufficient personnel and funding, and intimidation of judges, prosecutors and witnesses.

NOTE: these findings are very similar to US reports from 2005-2008.

2. Immigration and Refugee Board of Canada, *Guatemala: Treatment of gay, lesbian, bisexual and transgendered/transsexual individuals and availability of state protection; police attitudes towards same-sex domestic violence and state protection available to victims (2003 - September 2006)* (26 October 2006), online: <<http://www.unhcr.org/refworld/docid/45f1473e11.html>>.

- **There is a “surprisingly large gay scene” in Guatemala City**
- **Guatemala is still characterized by “deep-rooted homophobia”**
- **Many transsexual and transgendered people have been killed in purported hate crimes**

Despite the identifiable and active gay community in the country, numerous transgendered and transsexual persons have been killed. This report details several of these killings and speculates that more than a dozen such murders have occurred over the last decade. LGBT organizations and activists have also been harassed and intimidated. Government officials have not prevented or properly investigated these attacks, and have been accused of surveilling LGBT organizations.

3. Immigration and Refugee Board of Canada, *Guatemala: Update to GTM33228.E of 3 December 1999; treatment of gays, lesbians and bisexuals in Guatemala City; police attitude towards same-sex domestic violence and state protection available to its victims (1999-2003)* , (14 November 2003), online: <<http://www.unhcr.org/refworld/docid/403dd1f64.html>>.

- **First Gay Pride Parade occurred in June, 2000**
- **Discrimination and violence towards LGBT persons characterized as “social cleansing”**
- **Four LGBT groups condemn police harassment**

This report discusses the tension between the gay rights movement in Guatemala and the state. The first gay pride parade occurred in 2000 but included significant safeguards to protect participants. Homosexual sex workers and transsexual Guatemalans have been murdered, and one prominent activist was kidnapped. The police have shown an unwillingness to investigate and some allege police participation in this violence. These attacks have been characterized as 'social cleansing' – the systematic targeting of gays, lesbians, bisexuals and particularly transsexuals.

4. Presidencia de la República de Guatemala, *Promueven la prevención del VIH/SIDA entre jóvenes* (21 April 2010), online:

<[http://www.guatemala.gob.gt/noticia\\_busqueda.php?codigo=7168&titulo2=Retalhuleu](http://www.guatemala.gob.gt/noticia_busqueda.php?codigo=7168&titulo2=Retalhuleu)>

- **Government-sponsored program to help spread information about HIV/AIDS to vulnerable youth**

An organization, Colectivo Amigos Contra el Sida (CAS), is working with the Department of Health to bring information about these diseases to vulnerable youth, specifically gays, lesbians, bisexuals, and transsexuals. The group implemented a face-to-face educational program to discuss the prevention of these and other sexually transmitted diseases in parks and shopping centres of the region of Retalhuleu.

5. United Nations Human Rights Council, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Mission to Guatemala* (16 February 2009), online:

<<http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.10.12.Add.3.pdf>>

- **Number of attacks against human rights defenders has nearly doubled in the last five years**
- **Human Rights defenders have been criminalized**
- **Possible police participation in these attacks**
- **Failure to prosecute cases: judicial incapacity**

This report notes the deteriorating condition of human rights in Guatemala from 2002 to 2008. Violence against human rights activists had increased substantially, nearly doubling over the past five years to an average of one attack against a defender every other day. Such attacks include killings, threats to personal integrity, intimidation, harassment, stigmatization, and criminalization of human rights defenders. Human rights defenders have been charged with crimes including terrorism, activities against the security of the nation, and aggravated theft of land. In two cases, court proceedings have already resulted in convictions. Considering the overall paralysation of the justice system, prosecutions against human rights defenders appear to be conducted with inexplicable speed and efficiency.

Protection offered by the police is selective and inefficient, and police have been implicated in some attacks. The UN Human Rights Council advised Guatemala in 2002 to increase protection for fighting for the rights of gay, lesbian, bisexual and transsexual persons. Despite this recommendation, attacks and intimidation continue.

## **V. Reports from International Agencies and Non-Governmental Organizations**

**Writenet** (a network of researchers and writers on human rights, forced migration, ethnic and political conflict)

1. WRITENET, *Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations* (August 2008), online:

<<http://www.unhcr.org/refworld/docid/48ad1eb72.html>>

- **Harassment and discrimination against gays and lesbians**
- **Murders of gays and a transgender woman**
- **“Social cleansing” death squads involving private citizens or even local police officers.**
- **Government failure to protect its citizens**

“Homosexuals and lesbians are routinely harassed by family members, the church, the military, police forces, the media, the education system, and Guatemalan society at large” (p. 13). Alleged abuse of homosexuals by governmental authorities includes theft, beatings, rape, imprisonment and death. Those who are openly gay may lose status in their employment.

### **International Federation for Human Rights**

1. International Federation for Human Rights, *Observatory for the Protection of Human Rights Defenders Annual Report 2005 - Guatemala* (22 March 2006), online:

<<http://www.unhcr.org/refworld/docid/48747cb885.html>>

- **Report of an attack against members of pro-gay organization OASIS by men in police uniforms.**

"On 17 December 2005, four men in police uniforms fired at two workers for the NGO OASIS which provides support for lesbian, gay, transgender and bisexual people." One activist died and the other remained in critical condition.

### **International Gay and Lesbian Human Rights Commission**

1. International Gay and Lesbian Human Rights Commission, *Action Alert -- Guatemala: ILGA demands a stop to aggressions against human rights activists* (9 July 2003), online:

<<http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/globalactionalerts/594.html>>

- **President of the NGO OASIS kidnapped likely due to the organization’s support of the LGBT community**
- **State unwillingness to prevent and penalize violations of the human rights of homosexual individuals**

“In the last few years harassment, violence, kidnapping, and murder have spread in Guatemala against organisations and individual activists who demand protection and equal rights for LGBT individuals.”

### **HIV/AIDS Alliance**

1. HIV/AIDS Alliance, *Special Report: Transphobia and Hate Crimes in Guatemala* (6 April 2010), online: <<http://www.aidsalliance.org/NewsDetails.aspx?Id=543>>

- **Claim that there have been human rights violations carried out by security staff and uniformed persons**
- **Threats and violence carried out against transgender persons**
- **Lack of support from family (who won't even identify bodies)**

Threats against transgendered and transsexual people are overwhelming and can be characterized as hate crimes based on transphobia. According to this article, 13 transgender people had been killed in 2010 at the time of publication.

### **Human Rights Watch**

1. Human Rights Watch, *Letter to the President of Guatemala, Oscar Berger Perdomo* (20 February 2006), online: <<http://www.hrw.org/english/docs/2006/02/21/guatem12698.htm>>

- **Reports that police officers murdered two transgender persons**
- **Murders and robberies of gay men -- none of these cases have been prosecuted**
- **Threats to NGOs who work with the LGBT community**
- **Pattern of violence, reportedly by even local police, against members of the LGBT community**

“I am writing in regard to disturbing reports that we have received of repeated acts of violence against and intimidation of transgender women, lesbians, and gay men in Guatemala...”

2. Human Rights Watch, *World Reports: Guatemala* (2009), online: <<http://www.hrw.org/en/node/87522>>

- **Weak and corrupt law enforcement institutions unable to prevent crime**
- **Militant groups involving police carry out “social cleansing”**
- **Police accused of carrying out arbitrary detentions and extrajudicial killings**
- **98% of all crimes in the country go unpunished**

### **Amnesty International**

1. Amnesty International, *Guatemala: Fear for Safety: Sulma, other transvestite sex workers in*

Guatemala City and members of Integral Sexuality AIDS Support Organisation (OASIS) (21 December 2005), online:

<<http://www.amnesty.org/en/library/asset/AMR34/044/2005/en/2f773836-d474-11dd-8743-d305bea2b2c7/amr340442005en.html>>

- **LGBT community regularly faces attacks and threats**
- **Police often allegedly involved in crimes against LGBT community members**
- **Threats against NGO OASIS for promoting the rights of the LGBT community**

Two transvestite sex workers were attacked - one died and one was hospitalized. This attack was allegedly carried out by police. There has been no response from authorities or protection forthcoming for the surviving victim. Police are apparently intimidating witnesses.

## **VI. Newspaper and Media Reports**

1. Ins Bentezm, "Guatemala: Same-Sex Couples to Lose Rights Under New Bill," *Global Information Network*, Oct. 5 2007, p. 1

- **Guatemalan Congress prepares to pass a law (the "Integral Protection for Marriage and Family Act") which eliminates single parents, as well as same-sex couples, from the official definition of "family."**
- **The rights of gays and lesbians in Guatemala are "often trampled because of their sexual orientation."**
- **The new law may threaten crucial health services for single-parent families and same-sex couples.**

2. Karla Mantilla, "Lesbiradas: Lesbian Activism in Guatemala," *Off Our Backs*, Mar/Apr 2004, Vol. 34, Iss. 3/4 pp. 27-31.

- **In Guatemala, the "lesbian identity is surrounded by a culture of fear and violence."**
- **A prominent lesbian rights group has been repeatedly targeted for their activity**
- **The majority of human rights violations perpetrated against lesbians occur in the private sphere.**

The article is an interview with Claudia Gonzalez (General Coordinator for the Liberated Lesbians Collective of Guatemala, aka "Lesbiradas"). Ms. Gonzalez believes it easier for gay men to be open about their sexuality (which is already very difficult) than lesbian women because of the extreme stigmatization of lesbians. Her group has been engaged in public marches and campaigns about the rights of lesbians, which have often generated in a violent reaction. Lesbiradas' office has also been broken into, ransacked and vandalized with blood and faeces five times.

Some families are discriminatory when they discover a family member is a lesbian. Families have responded by locking the woman in her room, kicking her out of the house, or forcing her

to see a psychologist. Electroshock and even rape were formerly used to "cure" lesbians and lesbians' children have been taken from them.

3. Mubarak Dahir, "Forgotten in Guatemala City: When U.S. journalist Daniel Pearl was killed in Pakistan, the world united in outrage; But when gay reporter Larry Lee was murdered in Central America, local officials treated it as a case of 'another undesirable off the streets'," *The Advocate*, June 11 2002. Iss. 865 p. 27.

- **Impunity for murderers of gay, US journalist living in Guatemala**

American journalist Larry Lee (living in Guatemala) was found dead Dec. 28, 1999, naked and pierced with multiple stab wounds. This may have been a hate crime, as Lee was openly gay. Lee's family believes he was kid because of his sexual orientation.

Lee's murder was not being properly investigated. Almost four months after his death, Lee's family walked into the apartment and found bloodied evidence still lying around. The authorities have also failed to follow up on calls made from a phone stolen from Lee the day he died.

The investigators in Lee's case have shifted blame for his death onto Lee's "dangerous lifestyle" although Lee was not known as a reckless individual.

4. Patrick Letellier, "Successful Trip to Guatemala for Rainbow World Fund Volunteers," *Bay Area Reporter* Aug 17, 2006.

- **RWF members heard about dangers to LGBT community in Guatemala**

RWF volunteers took a trip to Guatemala to bring food, medicine and basic supplies and were engaged in discussions of homosexuality and Guatemalan attitudes toward the LGBT community. Life for the LGBT community is very dangerous, as evidenced by an increase in anti-LGBT violence in the last few years. In 2005, at least 13 gay men and transgender women were murdered in Guatemala. One activist told a story of police officers surrounding and shooting at two her and another transgendered activist, who did not survive.

5. "Mientras en San Francisco las parejas del mismo sexo se casan, en Guatemala priva el temor y la discriminación. Homosexuales, travestis, lesbianas coinciden en la importancia de que se respeten sus derechos civiles," [Translation: While in San Francisco, same-sex couples can marry, in Guatemala they are subject to fear and discrimination. Homosexuals, transvestites, lesbians come together on the importance of respect for their civil rights.] *El Periódico Guatemala*, March 14 2004. <<http://www.elperiodico.com.gt/es/20040314/actualidad/3484/>>.

- **There is both a growing gay culture and extreme social discrimination against individual LGBT people**
- **Some of this discrimination comes directly from family members**
- **Those who choose to oppose this discrimination have often faced violence consequences.**
- **As a result, many choose to stay closeted.**

This article provides a good summary of the situation of LGBT people in Guatemala. It discusses the few organizations that are pushing for civil rights for LGBT people, while discussing the extreme discrimination this group experiences in the workplace and on the street. This includes violent attacks, particularly against transsexuals. The only scene that has any degree of acceptance is the nightlife, whereas living day-to-day as a gay person still involves a great deal of fear. Because of this, many gay people in Guatemala do not come out publicly.

6. “Guatemala: el 85% rechaza el matrimonio gay,” *Universo Gay* July 5, 2010, online: <[http://noticias.universogay.com/guatemala-el-85-rechaza-el-matrimonio-gay\\_05072010.html](http://noticias.universogay.com/guatemala-el-85-rechaza-el-matrimonio-gay_05072010.html)>

- **In a Gallup Poll conducted in Guatemala in June, 2009, 85% of respondents opposed gay marriage. Only 12% approved.**
- **59% opposed adoption by gay couples.**

7. “INTERVIEW: Human rights activist Jorge Lopez,” *Pink Paper*, February 12, 2010, online: <<http://news.pinkpaper.com/NewsStory.aspx?id=2408>>

- **The state plays a significant role in the persecution of LGBT people**
- **The activist community is determined to oppose this violence**

**Lopez discusses his work with gay rights group OASIS, and blames the state for the slow progress of the LGBT movement. In 2006, a transgender member of OASIS was killed, and the case has yet to go to trial. Witnesses claim the attackers were members of the National Civil Police** Lopez: “The executive and judicial powers have absolutely no interest in protecting the vulnerable or enforcing justice. Attacks on gay people remain unpunished, leading to a culture condoning violence against the LGBT community. This impunity exists because of a fundamental failure of the State.”

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| <b>VII. <u>Scholarship</u></b> |
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1. Timothy J. Smith & Thomas A. Offit, “Confronting Violence in Postwar Guatemala” (2010) 15: 1 *The Journal of Latin American and Caribbean Anthropology* 1.  
< <http://onlinelibrary.wiley.com/doi/10.1111/j.1935-4940.2010.01060.x/abstract>>

- **Generally “inept justice system” in Guatemala is incapable of punishing people for crimes, e.g. discrimination**
- **Endorses the US State Department report as an apt summary of the current plight of Guatemala**

This recent article discusses the high incidence of violence in Guatemala and the failure of various societal institutions, including the justice system, to fix the problem. The article endorses and cites the US State Department Report (in particular, the relevant passage on discrimination against LGBT) and describes in more general terms the sorry state of the justice system in Guatemala.

2. Ed. C. Stewart, *The Greenwood Encyclopaedia of LGBT Issues Worldwide vol. 1* (Santa Barbara: Greenwood Press, 2010) pp126-133.

- **Different kinds of violence targeting common LGBT people and activists in Guatemala**
- **This violence not taken seriously by authorities nor criminalized**
- **High degree of social stigma causes suicides among LGBT youth**
- **Gay marriage illegal, no open military service**
- **USAID Guatemala offers psychological and medical assistance to LGBT persons**
- **Problem securing good employment/education for LGBTs. LGBTs have lost jobs because of discrimination**

This is an encyclopaedia article with information concerning the issues facing LGBT people in Guatemala (listed above).

3. Emma Mittelstaedt, "Safeguarding the Rights of Sexual Minorities: The Incremental and Legal Approaches to Enforcing International Human Rights Obligations" (2008) 9:1 *Chicago Journal of International Law* 382.

<<http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/cjil9&id=387>>

- **Violence towards LGBT community is prevalent**
- **Approximately 50 LGBT people killed and sometimes mutilated from 2005-2008 (rough dates)**
- **Trying to pass law that would exclude LGBT from the definition of family (as of 2008)**

This article discusses, among other things, a bill entitled the "Integral Protection for Marriage and Family Act," that was to be passed in October 2007, but was delayed after an uproar. I am unable to determine if the bill was ever passed. The bill attempted to eliminate single-sex couples and single parents from the definition of family. As part of this discussion, the plight of LGBT persons in Guatemala is discussed, as noted above.

#### **VIII. Links to Active LGBT Organizations in Guatemala**

- **Organizacion de Apoyo a una Sexualidad Integral Frente al SIDA OASIS**  
Contact Page:  
<http://www.wiserearth.org/organization/view/10b05187491d48ad257e3d36d95898b9>
- **Lesbiradas**  
Blog: <http://lesbiradas.blogspot.com/>