

ANZSOG Case Program

Fighting an invisible crime: protecting girls in Guatemala

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Dr Mirna Montenegro was wondering how to keep up the momentum in her campaign against unwanted teenage pregnancies in Guatemala. As the Director of the NGO, the Sexual and Reproductive Health Observatory (OSAR), Montenegro had played a major role in developing the policy interventions which to date had met with some limited success. However, she was convinced much more could be done. The Observatory was established in 2008 to gather statistical data to monitor Guatemala's compliance with its legal framework for reproductive health as well as the obligations the country needed to meet in this area created by its international agreements and commitments. OSAR was also a response to the demand by Guatemalan citizens for quality information and analysis for decision making, generating alliances, and monitoring reproductive health policies. Could she or should she use this role to press for more action?

Guatemala

The Republic of Guatemala is a lower middle income developing country located in Central America. It borders the north of the Pacific Ocean between El Salvador and Mexico, and borders the Gulf of Honduras between Honduras and Belize. After gaining independence from Spain in the first half of the nineteenth century, the country has for long periods been subject to chronic political instability and serial dictatorships.

This case was written by Sara Hurtarte, a postgraduate student from Guatemala studying Public Policy at Carnegie Mellon University Australia. In writing the case study, she has drawn upon her experiences in working in social policy areas in the Guatemalan Government. The preparation of the case study was guided by Tim O'Loughlin, Carnegie Mellon University of Australia, as a basis for class discussion rather than to illustrate either effective or ineffective handling of a managerial situation.

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Today, Guatemala is the biggest economy in Central America, although it is heavily reliant on agricultural exports such as coffee, and remittances from nationals living overseas, mainly in the United States. The country has a population of 15.5 million people, with a GDP per capita income of \$3,341.00, a Gross Domestic Product (GDP) of \$54 billion and a GDP annual growth rate of 3.7% as of 2013.¹

Between 2000 and 2006, Guatemala was able to reduce poverty by 5%, from 56% to 51%.² Yet, despite these improvements, the levels of poverty and inequality remain among the highest in the region.³ In 2013, it ranked 133 of 187 countries in the United Nations Human Development Index.

One of Guatemala's distinguishing features is the high proportion of indigenous people in its population. Some forty per cent of Guatemalans are of Mayan descent. The Mayan people have created a rich cultural inheritance for the country. However, from the time the country was colonised, they have suffered from high levels of social exclusion. Their descendants today are discriminated against in employment and they lack access to other opportunities and services. Over 70% of the indigenous population lives in poverty, especially within the 'poverty-belt', Guatemala's Western Plateau and Northern Region.

The population of Guatemala has suffered from violence throughout its history. In 2013, there were 34 homicides per 100,000 people, one of the highest rates in the world.⁴ The people have little trust in the police with only one quarter of them regarding the police positively.⁵ These alarming figures are backgrounded by Guatemala's 36 year civil war which ended in 1996. The war, which had its origins in a US Central Intelligence Agency-backed coup in the mid-1950s, was waged between government military forces and left-wing guerrilla groups. Apart from its scale and duration, the war was infamous for the military government's use of forced disappearances as a terror tactic. It is estimated that over 200,000 Guatemalans, mostly indigenous people, were killed during this time.⁶ According to the Commission of Historical Clarification (CEH), approximately one quarter of the victims of human rights violations and acts of violence during the war were women.⁷ It has been estimated that 'more than 100,000 women and young girls fell victim to the systematic rape by government forces', often as a consequence of their participation in progressive causes.⁸

The signing of the Peace Accords in 1996 presented Guatemala with an opportunity to rebuild its society. Particular emphasis was given to creating effective policies for accelerating the country's political and economic development and for creating greater national unity and identity. The transition is having mixed success with a significant impediment being the government's failure to purge the military services for crimes committed during the civil war.

¹ World Bank Data online <http://data.worldbank.org/country/guatemala>, accessed October 7, 2014. All currency in US dollars.

² World Bank Report No. 43920-GT *Guatemala Poverty Assessment: Good Performance at Low Levels*, March 18, 2009. Poverty is defined by the World Bank as those living below the national poverty line, or the cost of a basic national food bundle.

³ U.N. Economic Commission for Latin America and the Caribbean (ECLAC), *Statistical Yearbook for Latin America and the Caribbean*, 2013, December 2013, p. 78.

⁴ Instituto Nacional de Estadística. Indicadores online accessed 22 July 2015.

⁵ Taft- Morales M., (2014), August 7, Congressional Research Service: Guatemala: Political, Security, and Socio Economic Conditions and U.S Relations, retrieved 27 September 2014 from, fas.org/sgp/crs/row/R42580.pdf

⁶ Commission of Historical Clarification. *Guatemala, Memory of Silence: Tzinil Natabal: Report of the Commission for Historical Clarification: Conclusions and Recommendations*. 1999.

⁷ Ibid

⁸ Ospina, G. A. *Why is Guatemala's Teenage Pregnancy Rate So High?* Council on Hemispheric Affairs. 31 July 2015. <http://www.coha.org/why-is-guatemalas-teen-pregnancy-rate-so-high/>

Violence towards women and children

One of the legacies of the civil war is a general tolerance of violence, particularly violence against children and women. It is estimated that seven of every ten children in Guatemala are abused, physically, sexually, emotionally or through neglect. Of those abused, 54% are boys and 46% are girls and, of these cases, it is estimated that physical abuse represents 43%, neglect 41% and sexual abuse 10%.⁹ During the first half of 2007, 287 women were killed, over 10% more than in the corresponding period of 2006. The rates of femicide continued to rise as did the incidence of other forms of sexual violence and intra country trafficking. In 2008, there were 39,400 reports of domestic violence, and in 95% of the cases, the victim was a woman.¹⁰

Notwithstanding the high rates reported, the true incidence of violence towards women is likely to be significantly higher. Under-reporting is the result of several related factors: the strong stigma associated with being the victim of sexual attack; very low levels of trust in the police; and a lack of confidence in prosecution and judicial authorities to punish crimes of sexual violence. Women are effectively sentenced to silence, preventing them from reporting or talking about the crimes. Those who do report are often excluded from the community, which can lead to more isolation and negative consequences.

Another aspect of violence towards women is the high number of teenage pregnancies. One in every five Guatemalan mothers is aged between 10 and 19 years, one of the highest fertility rates in Latin America.¹¹ The teen pregnancy rate in Guatemala is estimated to be 98 per thousand women aged 15-19, a figure substantially above the average for Latin America and the Caribbean (52 per thousand women aged 15-19), the only region in the world where the rate of teenage pregnancy has increased in the last 20 years.¹² UNICEF estimated that 'in 2012 around 4,000 girls between the ages of 10 to 14 became pregnant'. The Human Rights Ombudsman in Guatemala reported that, of these 4,000 girls, 30% were raped by their own fathers.¹³ It is believed that most of the other perpetrators are immediate family members.¹⁴ According to the Council on Hemispheric Affairs:

in Guatemala, half of all women are married by the age of 20, and 44 percent become mothers by the same age. Among indigenous and uneducated women, the latter statistic rises to 54 and 68 percent, respectively. By the age of 30, many of these women have seven or eight children, and even though a federal mandate provides reproductive health education and healthcare, only 5 percent of women in Guatemala consistently use an effective method of birth control, mainly due to cultural norms and the influence of the Catholic Church's ban on contraceptive use.¹⁵

The push for reform

In the aftermath of the civil war, the Guatemalan Government faced an enormous task to rebuild the nation. The whole society needed to be cleansed, and new political and economic institutions created. Following the Peace Accords, the Government focussed its attention on reforms relating to education, armed forces and the economic and agrarian system. Tackling the problem of violence

⁹ Procurador de los Derechos Humanos. 'Muertes violentas de niñez, adolescencia y juventud y propuestas para su prevención'. Guatemala. PDH, 2004. p. 100.

¹⁰ Ospina op. cit.

¹¹ Plan International. *Because I Am a Girl: So, What About Boys?* Plan International. 2011.

¹² Consejo Nacional de la Juventud. Plan Nacional para la Prevención de Embarazos en Adolescentes y Jóvenes de Guatemala PLANEA 2013-2017. CONJUVE. 2013.

¹³ Cited in Ospina op.cit.

¹⁴ Ibid.

¹⁵ Ibid.

against women was not a priority on the reform agenda, despite the fact that the death rate resulting from violence against women was the highest in Latin America and one of the highest in the world.¹⁶

It was civil organisations and NGOs who pushed for improvement in women's and children's rights. Montenegro, as the director of OSAR, had been involved with the development of the Family Planning Law (2005). This law aims to provide access for men and women to family planning services, including provision of information, counselling, education on sexual and reproductive health, and the provision of all methods of family planning.

Another leader was Norma Cruz, Director and founder of *Fundación Sobrevivientes*. *Fundación Sobrevivientes* provides counselling, social and legal assistance to victims of violence and those seeking justice and protection. Cruz, who started the organization in 2003 when she saw little support from government institutions to seek justice when her daughter was a victim of sexual violence, saw the fundamental problem as both entrenched and unrecognised:

In the Guatemalan reality, beyond the official figures of domestic violence, the attacks against women constitute an invisible reality and are justified by the patriarchal structure of the society, despite the efforts made in the past two decades by women organisations fighting against violence towards women. In two words, violence against women in the Guatemalan society is still an 'invisible crime'.¹⁷

As well, existing legal frameworks for the prevention and prosecution of sexual abuse fell well below international standards,¹⁸ and were not sufficient to guarantee the protection of rights for children and youth. As Mirna Montenegro reflected, 'The topic of childhood rights was complicated because there was no institution or regulation that protects them. There was no legal framework or standards for policies and actions'. It was essential that a legal framework addressing sexual violence should be included in the reform agenda.

Montenegro was appointed as OSAR's inaugural chief executive in 2008. She brought to the role a reputation as an imposing character and a strong communicator. Together with the NGOs, she started to force the issue of sexual violence onto the agenda. In the first place, this was achieved by collecting relevant data and disseminating it to decision makers within government and opinion-makers across the media. The next steps were to push for action.

One of the early difficulties in getting traction was the low representation of women in Congress, with the 20 elected candidates making up only 13% of its membership. A group of NGOs, including Montenegro, approached Congresswomen Zury Rios and Sonia Segura, to present their arguments for a legal framework to address sexual violence. Rios had been elected for four terms as a member of *Frente Republicano Guatemalteco* (FRG),¹⁹ a conservative political party. She had served as vice president of the congressional commission for foreign affairs where most of her work had focussed on reproductive health issues, the control of HIV-AIDS, and the fight against tobacco consumption. Segura, in her first term with the centre-right party *Centro de Acción Social* (CASA)²⁰, had participated in several congressional commissions including culture, women, cooperatives and NGOs.

¹⁶ Amnesty International. *Guatemala: No protection, No Justice: Killings of Women in Guatemala*. Amnesty International. London. 2006.

¹⁷ Fundacion Sobrevivientes. *Annual Report 2008*. Retrieved 16 July 2015
http://www.sobrevivientes.org/informes/delabores/inf_fs_2008.pdf

¹⁸ According to Felipe Garcia, Director of the Movimiento Social (MS), a civil organisation that focuses on protecting the rights of children, adolescents and youth.

¹⁹ Guatemalan Republican Front (FRG) was created in 1989 by former president and dictator Efraim Rios Montt. In 1994, FRG gained 32 seats in Congress and became the largest single party in the legislature. In 1999, Alfonso Portillo won the Presidential elections, while FRG, with 63 seats, had a majority in Congress. Rios Montt's daughter, Zury, is the party's floor leader.

²⁰ Social Action Centre (CASA) was a political party in Guatemala. In the legislative elections in 2007, the party secured 5 seats in the 2008-2012 Congress. In the legislature elections held on 2011, the party failed to secure a minimum of 5% of the popular vote or one seat in Congress and forfeited its registration as a party.

Montenegro had worked previously with Rios on the Family Planning Law. She now set out to work with Rios and Segura to create momentum for a broader, more ambitious agenda.

A new law against sexual violence, trafficking and exploitation

Due to constant pressure from Montenegro and leaders of the other NGOs, and with the support of congresswomen Rios and Segura, new legislation was drafted in 2008. Bill 3881 'Law against sexual violence, trafficking and exploitation', was prepared to bring Guatemala up to international standards by implementing the rules of the Palermo Protocol.²¹ That Protocol has a broad scope, focussing on prevention, punishment, generating mechanisms and adding the tools needed to facilitate compliance.

The legislation, enacted in 2009, provided new legal definitions of child abuse, sexual violence, sexual exploitation, labour exploitation, trafficking and child pornography. In particular, the Bill defined the crime of sexual violence:

[Any person] Who with physical or psychological violence has sexual intercourse vaginal, anal or buccal with another person, or who enters any part of the body with objects, by any of the aforementioned ways, or forces another person to do so, shall be punished with imprisonment from eight to twelve years.

Such actions are always regarded as a crime when they are committed on a victim who is under fourteen years of age, or is a person with volitional or cognitive disability, even when no physical or psychological violence is involved.

The penalty shall be imposed without prejudice to the penalties that may apply to the other crimes.²²

The new law represented the breakthrough that the NGOs and activists had been seeking.

It raised the age of consent of the victim from 12 years to 14 years. It also imposed 6 to 12 years of imprisonment for the offenders, aggravated in cases against minors, and defined, for the first time, the offence of procuring and the production and distribution of child pornography.

Most importantly, for the first time, an offence of sexual assault could be prosecuted without having to address the issue of consent: any sexual relationship with a child under the age of 14 was now to be treated by the police and the courts as a sexual assault irrespective of whether there was consent.

Implementing the Law

Following passage of the Bill into law, a new government organisation was created to secure its implementation, the Secretariat against Sexual Violence, Exploitation and Trafficking (SVET) which reports to the Vice President. During the first three years, the Vice President at that time, Rafael Espada, met with NGOs spasmodically, and they saw little progress and sensed tepid support from him. They arrived at the view that the government could not be relied upon to provide SVET with the backing that it needed. By the time the government was nearing the end of its term, the NGOs had managed to get enough support from donors to allow SVET to create its strategic plan and other supporting policy documents. However, SVET had not been able to translate this work into improving the situation for children and adolescents.

After the election of a new conservative government in 2012, the SVET and the law had new ownership. As the first woman in the history of Guatemala to be elected as Vice President, Roxana Baldetti felt obligated to using the law Congress had given her to make genuine progress. Now,

²¹ The Palermo Protocol was adopted in 2000 in Palermo (Italy) and forms part of the United Nations Convention against Transnational Organized Crime (Palermo Convention). The Protocol came into effect on December 25, 2003 and to date, it has been signed by more than 120 countries. Guatemala ratified the Palermo Protocol in 2005, with the aim of improving the criminal prosecution of human trafficking.

²² Congreso de la República de Guatemala. Ley contra la violencia sexual, trata y tráfico de personas. Decreto 9-2009.

Montenegro saw an opportunity to use the information that OSAR had been gathering to present policy proposals and action. Together with the Vice President and the SVET, they started by focussing on the offence of sexual violence against girls under 14 years of age. This was given priority for several reasons. First, it was the most clear-cut of the offences: if a girl under 14 was pregnant, someone had committed a crime and therefore there was a *prima facie* case for prosecution. At around the same time, the Attorney-General's Office established a new prosecution office against trafficking, and the National Civil Police created a specialised trafficking unit within the Investigations Division.

Second, the social cost of unwanted pregnancies was falling disproportionately onto the poorest in Guatemalan society, particularly the indigenous population. Unwanted teenage pregnancies had become a powerful factor in the continued social exclusion of many indigenous families. The fact that this was happening at a time of nation rebuilding after the civil war made overcoming it an important priority.

Third, both the NGOs and those within government determined to do something about sexual violence, saw the reduction of unwanted pregnancies as an outcome that did not rely on prosecution alone but could also be effected through strategic communications programs targeted at changing behaviours. This required producing effective communication materials that could cope with very low levels of literacy. One NGO, the Family Welfare Association of Guatemala, has become well-known for using props such as electronic babies and pregnancy simulators (a 'strap-on garment with an enlarged bust and belly weighing 25 pounds').²³ Information targeted at young people was disseminated through schools, health centres and the many organisations established to support youth participation in social, recreational and political activities.

Rather than simply focussing on increased prosecutions, these mechanisms were seen as offering better prospects for cultural change. It also reduced concerns about possible unintended effects of increased prosecutions, such as greater use of illegal abortions, and displacement of sexual violence onto girls older than 14.

Later on, Vice President Baldetti convened a meeting with all of the departments that had a role in protecting teenage girls, and created a working group led by senior officials in the Departments of Health, Education and Social Development. The support from the departments helped to create, for the first time, an assistance route to respond to the problem of sexual violence, focussing on pregnant girls under 14 years of age. The strategy had three aspects: assistance for the girls; prosecutions in cases where the girls were willing and able to identify the offenders; and an education program aimed at preventing unwanted teenage pregnancies.

An important outcome was the agreement between the Departments and the NGOs to celebrate Teen Pregnancy Prevention Day. This initiative not only provided an educative function but also sent a signal to the rest of the Guatemalan Government that the Vice-President and those supporting her within and outside of the government were serious about responding to sexual violence generally and, specifically, using the legal means at their disposal.

The change was not well received by everyone as it represented a profound cultural shift. Montenegro recalled officials from the Health Department feeling uncomfortable and making statements like: 'It is normal to see girls pregnant. Why now do we have to report to the Attorney General's Office?'

Improvements despite some resistance

Despite some passive resistance from within the administration, significant improvements started to appear. The Department of Health and the Attorney General's Office created a better monitoring and

²³ Ospina op.cit.

information system. The increase in reported cases of teenage pregnancy was seen as a positive sign. It seemed that some victims and their families were coming to believe that the government and wider society had started seeing sexual violence as a crime, and not something normal.

This was reinforced by two campaigns, 'Protect me from pregnancy' and 'Protect me from sexual violence'. The first campaign focussed on pregnancy as a consequence of sexual violence, and aimed to show that teenage pregnancies are not natural and criminal behaviour should not be tolerated (*Exhibit 2*). The second campaign was oriented to create awareness in men, women, families and communities about sexual violence and the vulnerability of the victim (*Exhibit 3*).

In 2013, the National Plan to Prevent Teenage Pregnancies (PLANEA) was created with the overall goal to reduce by 5% between 2013 and 2017 the number of pregnancies in girls and teenagers aged between 10 and 19 (from reported total numbers of 57,000). The plan includes a proposal to audit how seriously the different agencies dedicated to preventing unwanted teenage pregnancies are addressing the issue. This is done by examining their budgetary commitments and the effectiveness of their actions.

Montenegro feels that the efforts made during the recent past, including targeted communications on available support for victims (*Exhibit 4*), have been successful in getting the issue of unwanted teenage pregnancies onto the agenda. To keep it there, she is focusing on the next challenges. First, how will she guarantee the continuity of the plan and collaborative efforts from agencies given the strong possibility of a change of both President and the make-up of Congress at the forthcoming elections? Second, how can she take the effort to the indigenous communities, where more girls are affected but the situation is still invisible in the culture? Third, how can the access in reducing the level of unwanted pregnancies be used as a lever for building a more inclusive Guatemala?

Exhibit 1



Exhibit 2



‘Protect me from pregnancy’, pregnancy in girls under 14 years is a crime.

Panel 1 – ‘I want a family that loves and respect me’

Panel 2 – ‘I want to have fun with my friends and be happy’

Panel 3 – ‘I want to study and learn’

Panel 4 – ‘I want to graduate and find a good job’

Panel 5 – ‘I want to travel and have friends’

Panel 6 – ‘I want to be a girl’

Panel 7 – Point 1: Ensure I receive sex education at school.

Point 2: Observe who is near me and don’t leave me alone.

Point 3: Don’t ignore me.

Point 4: Listen to me when I tell you someone hurt me.

Point 5: Always protect me. Inform yourself about sexual violence crimes.

Point 6: Take me to the nearest health centre if something happens.

**ÉL
ESTÁ
CERCA**



PROTÉGEME
DENUNCIA 2250-0575 MP
LA VIOLENCIA SEXUAL ES UN DELITO



'He is close, protect me' Call 2250 – 0575. Sexual Violence is a crime.

Exhibit 4 Assistance route for a comprehensive care of pregnancies in girls under 14 years



1. The girl under 14 year old is pregnant.
2. The girl is identified by any government institution such as the Department of Health, Department of Education, Ministry of Social Development, local authorities or NGOs. Immediately it should be notified to the Attorney General's Office.
3. The Attorney General's Office will facilitate the legal procedures to ensure the girl's welfare and protection.
4. The Attorney General's will refer her to the nearest health centre for medical care.
5. The Department of Health will implement their internal protocol addressing her physical, psychological and nutritional status.
6. The Department of Education will implement their internal protocol to ensure the girl is enrolled in the education system.
7. The Ministry of Social Development will implement their internal protocol to incorporate the girl in one of their social programs.
8. The Attorney General's Office will provide with monthly reports of the cases presented and their status in court.
9. Tracking criminal cases shall be the responsibility of the judiciary.