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# No Justice for Guatemalan Women: An Update Twenty Years After Guatemala's First Violence Against Women Law

*Héctor Ruiz\**

## I. INTRODUCTION

A culture of violence and impunity pervades all of Guatemalan society today, harboring an environment in which patriarchal repression is the norm. Violence against women and children is no new concept in Latin America and is anchored on broad notions of patriarchy throughout the region; however, the thirty-six-year long internal armed conflict, which resulted in at least 200,000 mostly indigenous casualties, perpetuated attitudes towards women and children as objects—rather than subjects with rights.<sup>1</sup> Guatemala ratified the Inter-American Convention to Prevent, Sanction, and Eradicate Violence Against Women (Belém Do Pará Convention) in 1995,<sup>2</sup> which established, for the first time, a woman's right to live free of violence, defined violence against women, and called for the development of laws and policies designed to combat gender-based violence.<sup>3</sup> In 1996, at the end of the conflict, the Law Against Intrafamilial Violence ("1996 Law")<sup>4</sup> was enacted, but it did not criminalize violence against women. Rather, it was

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\*J.D. 2017, University of California, Hastings College of the Law. The author worked on immigrant, refugee, and human rights issues before and during law school at various agencies in California, Texas, and Washington, D.C. The author would like to extend his gratitude to Karen Musalo, Professor of Law and Director of the Center for Gender & Refugee Studies at the University of California, Hastings College of the Law, and Blaine Bookey, Co-Legal Director at the Center for Gender & Refugee Studies, for their invaluable review and comments, as well as Ariane Mota for her research contributions.

1. See Interview with Guatemalan Women's Rights Expert, Attorney, and Law Professor, Elisa Portillo Nájera, in Guat. City, Guat. (Oct. 12-13, 2015) (on file with author) [hereinafter Nájera Interview].

2. *Procurador de los Derechos Humanos - Cartilla de los Derechos de la Mujer*, [Procurator for Human Rights - Record of the Rights of Women] 45 (2013), <http://www.pdh.org.gt/archivos/flips/cartillas/cartilla7/cartilla01.pdf>.

3. *Informative Pamphlet on the Inter-American Convention to Prevent, Sanction, and Eradicate Violence Against Women (Belém do Pará)*, Organization of American States, 3, <http://www.oas.org/es/mesecvi/docs/Folleto-BelemdoPara-ES-WEB.pdf> (last visited Oct. 26, 2016).

4. *Guatemala: Decreto No. 97-1996 de 1996, Ley para prevenir, sancionar y erradicar la violencia intrafamiliar* [Decree No. 97-1996, Law to Prevent Sanction and Eradicate Intrafamilial Violence], National Legislative Bodies/National Authorities (Nov. 28, 1996), <http://www.refworld.org/docid/3dbe6f367.html>.

preventative in nature and only sought to provide protection for victims from future abuse through protective orders.<sup>5</sup> In April 2008, Guatemala passed the Law Against Femicide and other Forms of Violence Against Women (hereinafter, "2008 Law")<sup>6</sup> in response to one of the highest rates of femicide,<sup>7</sup> or gender motivated murders of women, in the world.

In short, the 2008 Law criminalized several acts of violence against women, including femicide, and other physical, sexual, psychological, and economic violence. It also incorporated and expanded upon the protective measures from the 1996 Law. The specialized framework of the 2008 Law called for the strengthening of existing government entities in charge of investigating and addressing incidents of violence by way of initiatives involving sensitivity training, and specialized services models with a gender perspective. In addition, it established the creation of new agencies and expanded the scope of services of those already existing to provide additional support for survivors of violence, and codified the government's responsibility to provide the funding necessary for the implementation of this law. Moreover, the 2008 Law created a specialized court scheme in which (at least some) cases being prosecuted under this law would be heard by specially trained members of the judiciary; whether a case reaches a special court depends largely on how a criminal case is categorized at the onset and whether there are specialized courts available with jurisdiction over the geographic area. The progress of the fight to end violence against women is measured largely by the implementation of this specialized legislation. This includes evaluating the creation and strengthening of institutions and impunity rates, and evaluating whether the levels of violence have diminished.

The Center for Gender and Refugee Studies (hereinafter, CGRS), in collaboration with internationally renowned women's rights advocates and law students at the University of California, Hastings College of the Law, has documented the trajectory of the women's rights movement in Guatemala, having published a series of articles on the alarming levels of gender-motivated violence before the enactment of the 2008 Law. Starting

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5. *Decreto No. 97-1996*, *supra* note 4, at Art. 2.

6. *Decreto 22-2008 del Congreso de la República de Guatemala, Ley Contra Femicidio y otras Formas de Violencia Contra la Mujer* [Decree 22-2008 of Congress of the Republic of Guatemala (Law Against Femicide and other Forms of Violence Against Women)] (2008), [https://www.oas.org/dil/esp/Ley\\_contra\\_el\\_Femicidio\\_y\\_otras\\_Formas\\_de\\_Violencia\\_Contra\\_la\\_Mujer\\_Guatemala.pdf](https://www.oas.org/dil/esp/Ley_contra_el_Femicidio_y_otras_Formas_de_Violencia_Contra_la_Mujer_Guatemala.pdf) [hereinafter *Decreto 22-2008*].

7. As CGRS explained in its 2010 article, *Crimes Without Punishment*, this type of murder is often referred to as "femicide" (femicidio) or alternatively as "feminicide" (feminicidio) and there is no accepted definition of either term which creates complications in efforts to maintain reliable data and assess the problem accurately. See Karen Musalo, Elisabeth Pellegrin, & S. Shawn Roberts, *Crimes Without Punishment: Violence Against Women in Guatemala*, 21 HASTINGS WOMEN'S L.J. 161, 172 (2010), [http://repository.uchastings.edu/faculty\\_scholarship/564http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1563&context=faculty\\_scholarship](http://repository.uchastings.edu/faculty_scholarship/564http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1563&context=faculty_scholarship).

with its 2005 article, *Getting Away with Murder: Guatemala's Failure to Protect Women and Rodi Alvarado's Quest for Safety*, CGRS joined other organizations of the international community in calling for an end to the culture of impunity surrounding violence against women in Guatemala. Among other things, the report called on the United States to use its influence to pressure Guatemala to offer real protection to victims.

Since the first report was published over a decade ago, CGRS has continued to follow up on the Guatemalan government's efforts to combat the high rates of violence against women in subsequent reports in 2006, 2010, and 2013, each time confirming that conditions remained dangerous for women for the same reasons as before. The 2006 report, titled *Guatemala's Femicides and the Ongoing Struggle for Women's Human Rights: Update to CGRS's 2005 Report Getting Away With Murder*, highlighted that there were still no concrete guidelines established for the investigation and prosecution of crimes of violence against women,<sup>8</sup> and that criminal penalties for domestic violence still did not exist.<sup>9</sup> In 2010, CGRS published *Crimes Without Punishment, Violence Against Women in Guatemala*, which for the first time attempted to document the progress of the 2008 Law—enacted two years prior—and any effects it had on the culture of violence and impunity towards this type of crime in Guatemala. This report noted that successful prosecutions occurred in no more than 2% of the cases brought before the courts, meaning that 98 out of 100 killers of women continued to get away with murder.<sup>10</sup> CGRS also highlighted the first of what would become a recurring pattern in the women's rights movement in Guatemala when it identified the backlash that the lawfully mandated Presidential Secretariat of Women received. It was disbanded shortly after it released a critical study on the government and its response to the femicide crisis.<sup>11</sup>

The last CGRS report, *Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala*<sup>12</sup> examines some of the progress, or lack thereof, regarding the implementation of the obligations set forth by the 2008 Law five years after its adoption. Making critical observations, the report hones in on some of the most prevalent barriers women face in access to justice, and makes concrete recommendations for the Guatemalan government and the international community. In this 2013 update, CGRS echoed many of the observations recorded in the 2010 version

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8. Katharine Ruhl, *Guatemala's Femicides and the Ongoing Struggle for Women's Human Rights*, Center for Gender & Refugee Studies 12 (Sept. 2006), [http://cgrs.uchastings.edu/sites/default/files/Guatemalas\\_femicides\\_ongoing\\_struggle\\_Ruhl\\_2006\\_0.pdf](http://cgrs.uchastings.edu/sites/default/files/Guatemalas_femicides_ongoing_struggle_Ruhl_2006_0.pdf).

9. *Id.* at 25.

10. Musalo et al., *supra* note 7, at 163.

11. *Id.* at 203.

12. Karen Musalo & Blaine Bookey, *Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala*, 10 HASTINGS RACE & POVERTY L.J. 265, 265 (2013), [http://cgrs.uchastings.edu/sites/default/files/Musalo\\_Bookey\\_CrimesWithoutPunishment\\_2013.pdf](http://cgrs.uchastings.edu/sites/default/files/Musalo_Bookey_CrimesWithoutPunishment_2013.pdf).

of the report, namely the generalized apathy towards women's rights in the midst of a *machista* society, and the devastating implications that biases against women have had on the implementation of the 2008 Law.

This report is an update to the series of previous reports on the situation of violence against women in Guatemala published by CGRS, whose aim is to provide a current context of the developments of the movement, and with specific emphasis on the implementation of the specialized 2008 Law in light of some of the most recent events facing the country's sociopolitical environment. It draws primarily upon the findings of CGRS's most recent trip to Guatemala, in which it met with advocates from nongovernmental organizations, government officials, members of the judiciary, and international agency representatives; CGRS monitored the ongoing situation through reports, the media, and continued discussions with advocates and scholars.<sup>13</sup> Specifically, this analysis aims to explain—with concrete examples told to us by our Guatemalan sources—at what stage the infrastructure described in the 2008 Law is in as related to what the law requires, and to expose some of the barriers associated with the fulfillment of the law. Moreover, this article will guide the reader through the progression of a criminal case when an incident is reported to authorities

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13. From October 12 through October 16, 2015, CGRS Founder and Director Karen Musalo and Co-Legal Director Blaine Bookey travelled to Guatemala with two Juris Doctor candidates from the University of California, Hastings College of the Law, Héctor Ruiz (author) and Ariane Mota. They met with individuals from the following agencies: Governmental Organizations: Ombudsman (or Procurator) of Human Rights (*Procuraduría de los Derechos Humanos*) - Defender of Women (*Defensoría de la Mujer* or DEFEM) (October 12, 2015); Office of Attention to the Victim (*Oficina de Atención a la Víctima* or OAV) at the National Civilian Police (*Policía Nacional Civil* or PNC)(October 13, 2015); National Institute of Statistics (*Instituto Nacional de Estadística* or INE) (October 14, 2015); Unit of Early Decision (*Unidad de Decisión Temprana* or UDT), Unit of the Directorate for Investigation (*Unidad de Dirección de la Investigación* or UDI), and Office of Attention to the Victim (*Oficina de Atención a la Víctima* or OAV) at the Public Ministry (*Ministerio Público* or MP) (October 14, 2015); Presidential Secretariat for Women (*Secretaría Presidencial de la Mujer* or SEPREM) (October 15, 2015); National Institute of Forensic Science (*Instituto Nacional de Ciencias Forenses* or INACIF) (October 15, 2015); Specialized Organs for Femicide and Other Forms of Violence Against Woman (*Organos Especializados de Femicidio y Otras Formas de Violencia Contra la Mujer*) at the Judicial Organ (*Organismo Judicial* or OJ) (October 16, 2015); Institute of Public Penal Defense (*Instituto de la Defensa Pública Penal*) (October 14, 2015); National Commission for Monitoring and Supporting the Strengthening of Justice (*Comisión Nacional para el Seguimiento y Apoyo al Fortalecimiento de la Justicia*) (October 15, 2015); Non-Governmental Organizations: Guatemalan Group of Women (*Grupo Guatemalteco de Mujeres* or GGM) (October 12, 2015); ECPAT Guatemala (October 13, 2015); The Children's Shelter (*El Refugio de la Niñez*) (October 13, 2015); Guatemalan Institute for the Comparative Study of Criminal Law (*Instituto de Estudios Comparados en Ciencias Penales de Guatemala* or ICCPG) (October 13, 2015); Survivors Foundation (*Fundación Sobrevivientes* or FS) (October 14, 2015); Women Transforming the World (*Mujeres Transformando el Mundo*)(October 16, 2015). International Organizations: Project Counselling Services (PCS) (October 15, 2015); UN Women (October 15, 2015); Caribbean and Latin American Committee for the Defense of the Rights of Women (*Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer* or CLADEM) (October 16, 2015).

including some of the challenges faced at each step. Finally, the report will offer recommendations to the Guatemalan government and recommendations for the United States and others involved in international cooperation.

## II. QUANTITATIVE RESEARCH: LIMITATIONS AND ISSUES WITH RELIABILITY

Article 20 of Congressional Decree 22-2008, known as the Law Against Femicide and Other Forms of Violence Against Women (*Ley Contra Femicidio y Otras Formas de Violencia Contra la Mujer*) (“2008 Law”) obligates the National Institute of Statistics (*Instituto Nacional de Estadística* or INE) to gather and generate statistical information regarding violence against women from any agency handling situations of violence against women, and to create a National System of Information regarding Violence Against Women (*Sistema Nacional de Información sobre Violencia contra la Mujer*) that publishes this information.<sup>14</sup> By way of methodology, INE requests the data from the institutions, each of which sends the information to INE periodically in accordance with its own guidelines.<sup>15</sup> INE then reviews and analyzes the data received for inconsistencies; once those are resolved, the information is tabulated and organized for publication in accordance with the law.<sup>16</sup> In April 2014, the office of the Procurator (or Ombudsman) of Human Rights, Defender of Women (*Defensoría de la Mujer* or DEFEM *de la Procuraduría de los Derechos Humanos*) signaled in its report on Guatemala’s implementation of the Beijing Plan of Action for the Fourth World Conference on Women<sup>17</sup>

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14. *Decreto 22-2008, supra* note 6.

15. INE receives data from the Judicial Organ, the Public Ministry, the National General Procurator (*Procuraduría General de la Nación*), the Procurator of Human Rights (*Procurador de los Derechos Humanos* or PDH), the Ministry of the Interior (*Ministerio de Gobernación*), the National Civilian Police (*Policía Nacional Civil* or PNC), the Institute of Public Penal Defense (*Instituto de la Defensa Pública Penal*), the University of San Carlos Law Clinic (*Bufete Popular de USAC*), Rafael Landívar University Law Clinic (*Bufete Popular de la Universidad Rafael Landívar*), the National Institute of Forensic Sciences (*Instituto Nacional de Ciencias Forenses* or INACIF), General Directory for the Penitentiary System (*Dirección General del Sistema Penitenciario*), Ministry of Education (*Ministerio de Educación*), and the Ministry of Public Health and Social Assistance (*Ministerio de Salud Pública y Asistencia Social*). See Instituto Nacional de Estadística (National Institute of Statistics – INE), *Violencia En Contra de la Mujer 2008-2013* (Violence Against Women 2008-2013) (2014) (Guat.) (on file with author).

16. *Id.*

17. In September 1995, several member states of the UN adopted the Beijing Declaration and Platform for Action in efforts to advance equality, development, and peace for women. Article 120 of the Platform for Action states, in relevant part, “[t]he absence of adequate gender-disaggregated data and statistics on the incidence of violence makes the elaboration of programs and monitoring of changes difficult. Lack of or inadequate documentation and research on domestic violence, sexual harassment and violence against women and girls in private and in public, including the workplace, impede efforts to design specific intervention strategies.” See Beijing Declaration and Platform for Action, 50 (1995), <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.

that INE's efforts to comply with the National System of Information regarding Violence Against Women have shown major deficiencies in the integration of registries used by the various agencies required to submit information, and that consequently, INE maintains outdated and inconsistent data.<sup>18</sup> According to the report, neither the National Civilian Police (*Policía Nacional Civil* or PNC), nor the National Institute of Statistics (*Instituto Nacional de Estadísticas* or INACIF), Public Ministry (*Ministerio Público* or MP), or the Judicial Organ (*Organismo Judicial* or OJ) count on methods to keep disaggregated data regarding violence against women by ethnic groups, which makes it even more difficult to analyze this data as it varies ethnically.<sup>19</sup>

INE's primary issues with data gathering are that not all of the relevant agencies cooperate in sharing their data, there is an insufficient budget for their work, and there are dramatic inconsistencies in the data it does receive.<sup>20</sup> One of the resulting consequences is scarce data available that accurately depicts the magnitude of crimes of violence against women in Guatemala. As of the date of the drafting of this report, the INE had only published statistics related to violence against women from 2008 to 2013.<sup>21</sup>

#### A. SCARCE STATISTICS SHOW FEWER PUNITIVE SENTENCES PER COMPLAINT

Statistics from INE from 2008 to 2013 indicate that the 2008 Law has not deterred perpetrators of violence against women, as the MP has received a growing number of complaints for crimes under its jurisdiction. While this could be due to greater confidence in the system and the implementation of the law involving the right of women to report newly codified crimes, rather than higher incidences of crimes, there is little evidence that this is the case. Table 1 below shows a comparison of the complaints received by the MP—one of the principal complaint intake points—yearly from 2008 to 2013.

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18. *Informe del Procurador de los Derechos Humanos de Guatemala para el 20 aniversario de la Cuarta Conferencia Mundial sobre la Mujer*, [Report from the Procurator of Human Rights of Guatemala for the 20th anniversary of the Fourth World Conference Regarding Women], 33 (1995) (on file with author) [hereinafter *Procurador*].

19. *Id.* at 34.

20. Interview with representatives of the National Institute of Statistics (*Instituto Nacional de Estadística*) in Guat. City, Guat. (Oct. 14, 2015) (on file with author) [hereinafter *INE Interview*].

21. *Violencia En Contra de la Mujer 2008-2013* [Violence Against Women 2008-2013], Instituto Nacional de Estadística, [National Institute of Statistics] 5 (2014), <https://www.ine.gob.gt/sistema/uploads/2014/11/25/ggH7sQso5HbIWZSesco9OUeZqAcHPHYz.pdf>.

TABLE 1. *COMPLAINTS (OF ALL CRIMES CONTEMPLATED UNDER THE 2008 LAW)<sup>22</sup> RECEIVED BY THE MP BETWEEN 2008-2013<sup>23</sup>*

|                                        | 2008   | 2009   | 2010   | 2011   | 2012   | 2013   |
|----------------------------------------|--------|--------|--------|--------|--------|--------|
| COMPLAINTS RECEIVED UNDER THE 2008 LAW | 12,431 | 30,280 | 34,638 | 39,277 | 40,948 | 51,525 |

Despite the consistent increase in complaints of crimes contemplated under the 2008 Law, INE statistics do not signal to even a proportionately decreasing rate of impunity. The number of sentences handed down for crimes under the 2008 Law in Guatemala are displayed in Table 2 below.

TABLE 2. *PUNITIVE SENTENCES UNDER THE 2008 LAW BETWEEN 2011-2013 BY TYPE OF CRIME (AS COMPARED TO TOTAL COMPLAINTS CITED ABOVE)<sup>24</sup>*

| TYPE OF CRIME                                      | 2011 | 2012 | 2013 |
|----------------------------------------------------|------|------|------|
| FEMICIDE                                           | 15   | 18   | 41   |
| GENERAL VIOLENCE AGAINST WOMEN (NOT DISAGGREGATED) | 227  | 265  | 346  |
| PHYSICAL VIOLENCE                                  | 7    | 56   | 421  |
| SEXUAL VIOLENCE                                    | 2    | 7    | 11   |
| PSYCHOLOGICAL VIOLENCE                             | 9    | 25   | 113  |
| PHYSICAL AND PSYCHOLOGICAL VIOLENCE                | 2    | 4    | 25   |
| ECONOMIC VIOLENCE                                  | 2    | 2    | 6    |
| OTHER TYPES AND COMBINATIONS                       | 7    | 9    | 20   |
| TOTAL PUNITIVE SENTENCES                           | 271  | 386  | 983  |

Although the available statistics relating to final sentences do not cover

22. The range of crimes contemplated under the 2008 Law includes femicide, physical violence, sexual violence, psychological violence, economic violence, combinations of these crimes, as well as crimes of violence against women not disaggregated by type of violence. Disaggregated complaints by type of crime are not available. See *Violencia En Contra de la Mujer 2008-2013*, *supra* note 21, at 23.

23. *Id.*

24. *Id.*

the same time period as those for complaints received and cases are not always completed the same year the complaint is filed, the three years available for comparison demonstrate key information on the impact of the specialized judicial scheme on the rate of impunity for gender-based violence, namely, the alarmingly disproportionate relationship between the number of complaints received and the number of sentences issued. In 2011, 271 out of the approximate 39,277 filed complaints of crimes under the 2008 Law resulted in a sentence—a roughly 99.32% rate of impunity. By 2013, the numbers were 983 out of 51,525 cases resulting in a sentence, pointing to an approximate rate of impunity of 98.1%. Even though from 2011 to 2013, the number of complaints received by the MP of this type of case rose an average of 31%, the rate of sentences issued only rose by 1.22%.

#### B. UPDATE ON NATIONAL SYSTEM OF STATISTICS REGARDING VIOLENCE AGAINST WOMEN

While other statistics certainly exist, the information is largely inconsistent and confusing, reflecting the complicated nature of statistic-keeping and the lack of both willpower and resources to execute the task effectively. This is no surprise, given that Guatemalan infrastructure obligates the INE to calculate these statistics manually, and that these statistics are reported using systems that vary depending on which contributing institution is reporting them.<sup>25</sup> Efforts to create a uniform system of data compilation are infant, the latest of which is a publication by INE that standardizes definitions of key terms and variables used in the National System of Information Regarding Violence Against Women and provides a context for each.<sup>26</sup> The usefulness of standardizing terminology for purposes of combatting violence against women is illustrated in cases involving words such as “femicide”—the violent killing of a woman because she is a woman—in which the misogynist nature of the act warrants an investigation with a gender-based approach. The importance of differentiating such an act from a mere homicide of a woman lies in highlighting that the act was committed because the victim is a woman. The fruits of these efforts are yet to be reflected in any published indication of the current levels of violence against women. As a consequence, most of the

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25. INE Interview, *supra* note 20.

26. See *Variables Generales Para el Sistema Nacional de Información sobre Violencia en contra de la Mujer*, [General Variables for the National System of Information regarding Violence Against Women], *Secretaría Presidencial de la Mujer*, [Presidential Secretariat for Women], *Instituto Nacional de Estadística or INE* [National Institute for Statistics], <http://www.ine.gob.gt/sistema/uploads/2015/12/28/f0q5130o8QZI3FwCCMFEigvT9NF9KvGJ.pdf> (last accessed Nov. 2015). Representatives from INE also indicated that their uniform computer system was entering its pilot stage through which four institutions would enter their statistical data, which would then provide uniformity to the data compiled. Some agencies required by law to report data currently do not count on a functional system to facilitate this task, while others' systems do not meet the INE's standards or align with INE's standardization efforts.

available information on the status of violence against women in Guatemala and the impact of the specialized legislation on femicide is portrayed in qualitative rather than quantitative terms. Other barriers to adequate quantitative information are the lack of commitment to a substantial budget for INE<sup>27</sup> for this task, and the debilitating red tape surrounding publishing data as a nongovernmental agency.<sup>28</sup>

### III. STATUS OF IMPLEMENTATION OF THE 2008 LAW

Without a strong, supportive, and functional entity to coordinate and drive the implementation of the 2008 Law, it is no surprise that the development and implementation of the rest of the specialized social and judicial elements established by the law has taken a regrettably slow course. The 2008 Law called for specialized criminal courts, specialized units and services at Prosecutor's Offices and the police, expanded legal services from the government, and government-supported shelters and other centers for integral support for victims of gender-based violence. The implementation of each element of the specialized scheme of the 2008 Law is discussed as follows.

#### A. NATIONWIDE IMPLEMENTATION OF COURT WITH GENDER FOCUS AND SPECIAL JURISDICTION IS VASTLY UNEQUAL

With the enactment of the 2008 Law, the Supreme Court of Guatemala was mandated to create specialized courts that adjudicate cases of criminal activity contemplated under the law. These specialized courts were intended to overcome the bias against women in the system by providing training for judges on women's rights issues and capacity-building on approaching women's rights abuses with an eye towards the unequal power dynamics between men and women. Some of these courts were created to function for twenty-four hours, and to prosecute these cases along with the ordinary courts (Peace Courts or *Juzgados de Paz*) which are also given jurisdiction for crimes under this law.

The specialized organs mandated under the law have not been created in all of Guatemala's twenty-two departments, which continues to pose a challenge to victims' access to justice. The last two specialized Courts of First Instance of Crimes of Femicide and other forms of Violence Against Women (*Juzgados de Primera Instancia Penal en delitos de Femicidio y Otras formas de Violencia Contra la Mujer*) were created in Quiché and Sololá in 2014, increasing the total number of departments with specialized

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27. INE Interview, *supra* note 20.

28. Human Rights attorney Ana María Méndez Dardón completed a very comprehensive report on violence against women as a consultant with the National Commission for Monitoring and Supporting the Strengthening of Justice (*Comisión Nacional para el Seguimiento y Apoyo al Fortalecimiento de la Justicia*), which was not authorized for publication because the agencies whose labor it depicted did not agree with those numbers. See Interview with Ana María Méndez Dardón, Via Skype (Oct. 9, 2015) (on file with author).

organs to eleven, with one Court of First Instance and one Sentencing Tribunal in each, and several in the department of Guatemala.<sup>29</sup> This leaves an additional eleven departments without specialized courts to receive or hear cases under the 2008 Law.<sup>30</sup> Where there are no specialized courts, ordinary courts receive and hear the cases. This creates a large disharmony between the final results of cases processed in specialized courts compared to those in the ordinary courts, with specialized courts handing down punitive sentences much more often due to inconsistent interpretation of the laws between both courts, misapplication of the laws in ordinary courts, and providing inadequate training to employees in ordinary courts.<sup>31</sup>

A criminal case begins at the lower level First Instance Court (*Juzgado de Primera Instancia*), where a judge may issue an order of apprehension, supervise a preliminary investigation, and is presented with evidence of grounds for trial (i.e., sufficient evidence to believe that the accused has committed a crime).<sup>32</sup> Based on that evidence, the judge then decides whether the case will go to trial, which is heard by a three-judge panel at the Sentencing Tribunal (*Tribunal de Sentencia*). Because the availability of lower-level specialized courts largely depends on proximity to urban centers, many of Guatemala's cases of violence against women in rural areas must be heard in ordinary courts.<sup>33</sup> If a case moves on to the trial phase, then it will be heard in the Sentencing Tribunals for Femicide and other forms of Violence Against Women (*Tribunales de Sentencia Penal de Femicidio y otras formas de Violencia Contra la Mujer*), but the availability of these tribunals is also limited to eleven departments, which means trials are often also conducted in ordinary tribunals.<sup>34</sup> The specialized courts are typically far from rural areas, which adds a transportation burden to many victims of violence.<sup>35</sup> Because of other inefficiencies related to the entire criminal process, victims are oftentimes forced to return to court multiple times; this

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29. *Organos Jurisdiccionales Especializados de Delitos de Femicidio y otras formas de Violencia Contra la Mujer* [Specialized Jurisdictional Organs for Crimes of Femicide and other forms of Violence Against Women], Centro de Información, Desarrollo, y Estadística Judicial [Guatemala Judicial Organ - Center for Information, Development, and Judicial Statistics], <http://ww2.oj.gob.gt/estadisticafemicidio/> (last accessed Jan. 30, 2017).

30. Interview with Pamela Spiegel of National Commission for Monitoring, Supporting, and Strengthening Justice (*Comisión Nacional Para el Seguimiento y Apoyo al Fortalecimiento de la Justicia*) Guat. City, Guat. (Oct. 16, 2015) (on file with author).

31. Report of the U.N. High Commissioner for Human Rights on the activities of his office in Guatemala, at 13, U.N. Doc. A/HRC/28/3/Add.1, (Jan. 12, 2015) (on file with author).

32. *Guatemalan Criminal Procedure, Embassy of the United States in Guatemala*, [https://guatemala.usembassy.gov/acs\\_criminal\\_procedure.html](https://guatemala.usembassy.gov/acs_criminal_procedure.html) (last visited Feb. 17, 2017).

33. Spiegel Interview, *supra* note 29.

34. *Id.*

35. Interview with representative from the Guatemalan Institute for the Comparative Study of Criminal Law (*Instituto de Estudios Comparados en Ciencias Penales de Guatemala* or ICCPG) in Guat. City, Guat. (Oct. 13, 2015) (on file with authors). Interviewee, Ms. Leiva Mazariegos, explained that women are often left no other option but to take hours-long bus rides to the courts, during which they are often taunted and shamed for reporting their partners to authorities, sometimes by the bus drivers themselves. [hereinafter ICCPG Interview].

acts as a deterrent for women to report incidents to begin with.<sup>36</sup>

To ease some of the workload at Peace Courts and the First Instance Courts, and to provide round-the-clock access for women, the Judicial Organ also created 24-Hour Shift Courts. In 2013, the Procurator (or Ombudsman) of Human Rights (*Procurador de los Derechos Humanos* or PDH) monitored these courts and found that of the multiple components within the Shift Courts, the actual court was only open twelve hours, and the forensic scientist was only available for eight hours.<sup>37</sup> This means that biological evidence that should immediately be analyzed by forensic experts often goes hours without the proper attention, losing its evidentiary value.<sup>38</sup> The PDH also noted that employees typically work long shifts and have very limited time for breaks.<sup>39</sup>

B. INTEGRAL ASSISTANCE TO VICTIMS OF VIOLENCE IS AVAILABLE –  
HOWEVER INFREQUENTLY – WITHIN VARIOUS AGENCIES AT  
DIFFERENT LEVELS OF THE CRIMINAL PROCESS

Integral assistance—i.e., medical, legal, social, psychological, job training, and language assistance<sup>40</sup>—is a victim’s right under article 13 of the 2008 Law. In 2010, a special unit, called the Model of Integral Attention (*Modelo de Atención Integral* or MAI), was developed and established in the Public Ministries to provide attention to female victims of violence with specialized training and specialized facilities to suit victims’ needs in the midst of filing denunciations against their abusers, such as child care, medical attention, or psychological care with a gender lens. This special attention makes a difference in a woman’s ability to fully participate in and carry her case through the entire process. Nevertheless, there are currently MAIs in only seven departments and nine municipalities in the MPs across the nation.<sup>41</sup>

Integral assistance to victims is also offered through Centers of Integral

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36. ICCPG Interview, *supra* note 35. See also Nájera Interview, *supra* note 1.

37. *Informe Annual Circunstanciado – Situación de Derechos Humanos y Memoria de Labores 2014*, [Annual Circumstantiated Report - Situation on Human Rights and Memory of Labors 2014], Procurator of Human Rights, 40 (2014), [http://www.dip.mindef.mil.gt/inf\\_2014.pdf](http://www.dip.mindef.mil.gt/inf_2014.pdf).

38. Nájera Interview, *supra* note 1, at 8.

39. Interview with Miriam Josefina Domínguez Sebastián of Procuraduría de los Derechos Humanos – Defensoría de la Mujer or PDH, [National Ombudsman for Human Rights – Women’s Defense] in Guat. City, Guat. (Oct. 12, 2015) (on file with author) [hereinafter PDH Interview].

40. Grupo Guatemalteco de Mujeres or GGM [Guatemalan Group of Women], *Ley Contra El Femicidio Y Otras Formas de Violencia Contra La Mujer Comentarios y Concordancias* [Law Against Femicide and Other Forms of Violence Against Women Commentaries and Concordances] (Dec. 2010) 18, <http://ggm.org.gt/wp-content/uploads/2012/08/LeyCome ntada2EdFINALinteriores.pdf>.

41. Centro de Estudios de Justicia de las Américas [Center of Justice Studies of the Americas], *Evaluación del impacto del nuevo Modelo de Gestión Fiscal del Ministerio Público de Guatemala* [Evaluation of the impact of the new Model of Fiscal Management of the Public Ministry of Guatemala] (Sept. 7, 2015) (on file with author).

Assistance to Women Victims of Violence (*Centros de Apoyo Integral para Mujeres Víctimas de Violencia* or CAIMUS), which provide psychological, legal, medical, and social support.<sup>42</sup> The first CAIMU was created in 1999 by the Guatemalan Group of Women (*Grupo Guatemalteco de Mujeres* or GGM) as a response to the lack of government efforts to fill the need for this crucial resource for women. Seven CAIMUS now exist across the republic,<sup>43</sup> although with the disbandment or weakening of CONAPREVI—the coalition of representatives from governmental institutions and NGOs responsible for helping carry out Guatemala's obligations under the Belem Do Pará Convention (discussed in Section I, *infra*)—their operations have suffered dramatically, particularly because of severe budgetary cuts.<sup>44</sup> Behind the curtain of smoke left behind by the figurative bomb that was the Perez-Molina corruption scandal (which is discussed in more detail in Section V, *infra*), GGM was targeted by entities in power who accused them of corruption and embezzlement in order to justify withholding the budget for their CAIMUS operations.

Other nongovernmental organizations operate shelters which also offer integral assistance to victims in addition to protection by way of shelter. Survivors Foundation's (*Fundación Sobrevivientes* or FS) shelters were forced to close as of August 2015,<sup>45</sup> marking the close of one of the few shelters run by civil society agencies to close the gap between the existing and the necessary shelters.

#### IV. CHALLENGES IN ACCESS TO LEGAL RECOURSE FOR SURVIVORS OF VIOLENCE

##### A. PROTECTIVE MEASURES

A victim of gender-based violence may first seek protection, and then afterward continue to pursue her case against her abuser in the criminal court. A victim may request a protective order by visiting the nearest PNC, the Prosecutor for Women's Office (*Fiscalía de la Mujer*) at the MP, the National Procurator General (*Procurador General Nacional* or PGN), the Family Court (*Juzgado de Familia*), or a Peace Court (*Juzgado de Paz*).<sup>46</sup> These avenues are required by law to assist victims in theory. In practice, however, the execution of this lawfully mandated responsibility faces a myriad of obstacles. Economic and cultural challenges arise and often intersect, ultimately affecting both the PNC's and the Peace Courts' ability

42. GGM: Modelo Integral de GGM [GGM: Integral Model of GGM], <http://ggm.org.gt/caimus/informacion/modelo-integral/> (last visited Sept. 9, 2015).

43. GGM, Quien es CAIMUS [Who is CAIMUS], <http://ggm.org.gt/caimus/informacion/que-es-caimus/> (last visited Sept. 9, 2015).

44. Expert Declaration of Elisa Portillo Nájera, at 9 (Oct. 3, 2016) (on file with CGRS).

45. Interview with Norma Cruz of Fundación Sobrevivientes (FS) [Survivors Foundation], in Guat. City, Guat. (Oct. 14, 2015) (on file with author) [hereinafter FS Interview].

46. *Decreto No. 97-1996*, *supra* note 4, at Art. 4.

to issue and execute protective orders for women.

The PNC developed an Office of Attention to the Victim (*Oficina de Atención a la Víctima*, or OAV), whose aim is to provide specialized assistance to victims of gender-based violence through employing trained professionals to take declarations and also provide access to comprehensive care where necessary, such as mental health or social services, in addition to transporting a victim to the MP to file a criminal complaint against her aggressor.<sup>47</sup> The law requires that all PNC stations be equipped with OAV centers so that the police are able to respond to victims' needs adequately. Even though the OAV specialized assistance model exists, it is often impossible for a victim to even be reached by a police officer after she calls for help, because many police commissaries do not count on necessary resources, such as gas for their police cars. Therefore, assuming the police officers on duty even had the will—and were free of the bias against women that is widespread in Guatemalan culture and among those in power—to respond to a domestic violence situation, they are often prevented from doing so because there is no gas. Civil society agencies have often risen to the occasion by providing the police the necessary fuel to respond to situations of violence against women.<sup>48</sup> However, the necessary coordination is not always speedy, leading to a severe lag in a response from the authorities, if they even make it.<sup>49</sup> The police are responsible for transporting a victim of domestic violence to the court in order to request her protective order from a judge, and this responsibility alone can be troublesome. The culture of misogyny is pervasive in the police force, which further victimizes women and causes many of them to distrust the police and the justice system.

The effects of cultural biases against women and a lack of gender-based violence education in Guatemala reach deep into every level of the judicial system. According to law, all courts have the jurisdiction to issue protective orders, yet often the ordinary courts will not grant an order, dismissing the task as belonging to the specialized courts. Court officials often blame victims for the violence they experienced or intimidate them, effectively preventing them from obtaining protective orders. Many judges insist that the victim is able to reconcile with the abuser, and that she should do it so as not to inconvenience him and his rights, particularly if a child is part of the relationship and even if the child was a victim, too.<sup>50</sup> Although efforts in the

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47. Interview with José Najarro Betancourth of the National Civilian Police (PNC), Oficina de Atención a la Víctima (OAV) [Office of Attention to the Victim], in Guat. City, Guat. (Oct. 13, 2015) (on file with author).

48. Interview with Mujeres Transformando el Mundo (MTM) [Women Transforming the World], in Guat. City, Guat. (Oct. 16, 2015) (on file with author) [hereinafter PNC-OAV Interview].

49. Article 10 of the 1996 Law to Prevent, Sanction and Eradicate Intrafamilial Violence obligates the police to respond, protect victims, take down reports, and detain the aggressor in cases of domestic violence. It cites a disciplinary sanction for failure to meet these obligations in Article 114 of the Penal Code. *Decreto No. 97-1996*, *supra* note 4, at Art. 10.

50. Nájera Interview, *supra* note 1, at 2.

courts to sensitize employees to victims of violence are afoot, improvements are slow, and many staff members lack the will to follow proper protocol due to sexist attitudes. As a result, a woman is unable to fully exercise her rights under the law. The attitudes of court staff are a particular challenge in rural and larger communities with a broader indigenous presence due to the more conservative and traditional attitudes toward women.<sup>51</sup> The biased attitudes that judges and other officials within the justice system hold can cause delays in processing a protective order for a victim of violence, which can sometimes mean the difference between life and death.

#### B. CHALLENGES IN THE PROGRESSION OF A CRIMINAL CASE

Overcoming the biases that a judge in the Family or Peace Courts holds is often the first of several obstacles in achieving safety via a protective order. If the order is issued, the challenge then lies in police enforcement of the order, and biased *machista* attitudes towards women influence whether a woman with a valid protective order will actually be protected in accordance with the terms of that order.<sup>52</sup> There have been instances in which victims of femicide have been found with a protective order in their pockets, moments after having been fatally victimized by the person listed in that protective order.<sup>53</sup> Police officers, when nearby during an incident of violence, are often seen unwilling to intervene in such situations, even though they are lawfully called to take action when a crime is committed in flagrancy, which is a crime committed while in the view of the authorities.<sup>54</sup>

##### 1. Filing a Complaint (“*denuncia*”)

Approximately 90% to 95% of all criminal cases in Guatemala do not result in a sentence,<sup>55</sup> and, as previously described, the rate of impunity is even higher for gender-based crimes. A case moves through the criminal process in about 1.5 years.<sup>56</sup> The pressure from the community, the family, or the very government officials processing criminal complaints often deter a woman from continuing the case for the entire lengthy process.<sup>57</sup>

Access to the locations where a victim can file a complaint is the initial hurdle towards filing a criminal complaint. Whether a victim lives in an urban area or in the interior of the country will make a drastic difference in the level of her access to the courts once a case has been filed, since the judiciary is centralized and a trip to urban areas is very often resource-

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51. Nájera Interview, *supra* note 1, at 2.

52. PDH Interview, *supra* note 39.

53. FS Interview, *supra* note 45.

54. Article 257 of the Guatemala Code of Criminal Procedure dictates apprehensions. The PNC may arrest an individual if caught in flagrancy, or if it receives an order from a judge. *See also, Decreto No. 97-1996, supra* note 4, at Art. 10.

55. ICCPG Interview, *supra* note 35, at 2.

56. *Id.*

57. *Id.* Ms. Leiva Mazariegos mentioned that many times, victims reconcile with their aggressors and abandon their case.

intensive for a victim.<sup>58</sup> Victims often must miss work, find childcare for their children, and pay for the trip to the courts. The victim faces stigmatization for being a ‘bad woman’ because she is filing a complaint, and this attitude towards her may follow her throughout her entire journey to the courts.

There is also an issue with linguistic access to justice in Guatemala. Guatemala’s majority population is indigenous, and speak a Mayan dialect, yet most of the institutions offer services predominantly in Spanish. Many do not count on the necessary interpretation to assist the victim. Guatemala is a linguistically diverse country due to the many indigenous populations that inhabit it. This linguistic barrier reinforces indigenous groups’ self-perceived sovereignty with regard to issues of gender-based violence, as many feel alienated from the legal framework imposed by the state and already have their own mechanisms within their own communities to handle these situations.<sup>59</sup> In early 2016, a constitutional reform resulted in greater power in indigenous communities to exercise their authority in criminal procedures in accordance to their own norms and customs so long as these norms and customs do not violate constitutional rights or internationally recognized human rights.<sup>60</sup> In March 2016, the Constitutional Court of Guatemala recognized the indigenous authorities’ capacity to resolve a case involving rape of a 10-year-old girl outside of the framework of the 2008 Law, thus frustrating the 2008 Law’s intention to protect *all* women in Guatemala in line with international human rights standards.<sup>61</sup>

Victims of domestic violence can file complaints against their abusers at a police station, go directly to the MP’s Office of the Prosecutor for Women, or at any of the courts—the Peace Courts or the specialized courts of First Instance.<sup>62</sup> Depending on where a victim lives (i.e., rural or urban area), she may or may not have access to the specialized court system. The majority of denunciations are brought to the police.<sup>63</sup> If the police are around during the commission of a violent crime against a woman, they are authorized by law to immediately arrest the abuser if the criminal act is carried out in front of the arresting authority.<sup>64</sup> However, if the crime occurs out of the police’s

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58. ICCPG Interview, *supra* note 35, at 2.

59. Nájera Interview, *supra* note 1. Elisa states this is known as the “ancestral authority.” Many indigenous women do not only feel unrepresented within the system and by government functionaries, but they are often also aggressively harassed and discriminated against. Indigenous victims opt to attend to their ancestral authority to avoid this threatening and unwelcoming environment.

60. ReformaJusticiaGT.org, Exposición de Motivos – Reforma Constitucional en Materia de Justicia [Exposition of Motives – Constitutional Reform in the Matter of Justice] (Oct. 5, 2016), at 15, [http://www.reformajusticiagt.org/wp-content/uploads/2016/10/Proy\\_Ref\\_Constitucional.pdf](http://www.reformajusticiagt.org/wp-content/uploads/2016/10/Proy_Ref_Constitucional.pdf).

61. Expert Declaration of Elisa Portillo Nájera, *supra* note 45, at 17–18.

62. ICCPG Interview, *supra* note 35, at 2.

63. Spiegel Interview, *supra* note 29, at 6.

64. *See*, Art. 257 of the Code of Criminal Procedure, *supra* note 54 (“Police officers, when nearby during an incident of violence . . . are lawfully called to take action in times of

view, a victim may still go to her nearest police station for assistance in filing a complaint. At the PNC, a victim is asked for a form of identification document.<sup>65</sup> It is unclear whether she will be asked for her own identification document and the identification document of her abuser, although either scenario can become a major obstacle in filing a criminal complaint. In the first case, a victim would have to establish her own identity in order to be helped, and if she cannot afford an identification document, she may be out of luck. In the latter, she may not have access to any identification for the abuser for a number of reasons, including that he may have control over all of his personal identification documents (and possibly hers as well). If a victim is in need of further services, the law<sup>66</sup> calls for a holistic approach to victim assistance on behalf of the State. At the PNC, this is done through the establishment of the Office of Attention to the Victim (discussed in Section IV, Part A, *infra*), whose purpose is to attend to the victim's needs from a gender-based lens.<sup>67</sup> Where there are OAVs available a victim is often treated with greater dignity, but out of the approximately 338 municipalities in Guatemala, only about 54 of them have OAV services available.<sup>68</sup> That means that the majority of police stations in Guatemala do not have specially trained personnel to handle cases of gender-based violence adequately and competently; the police often have neither will nor motivation to assist victims, largely due to the influence of societal biases against women.<sup>69</sup>

## 2. Investigation

The investigation into a criminal complaint against an abuser begins at the MP's Office of the Prosecutor for Women, and a victim can file a complaint to start an investigation herself without first going to the police, or with the assistance of police. The Office of the Prosecutor for Women faces challenges both in its internal operations as well as from exterior forces. The actors at each stage of the criminal process that a case follows continually filter out cases once they are brought to the prosecutor, where the facts of each case are analyzed to determine whether the act is chargeable as a crime of violence under the 2008 Law. Even if a victim is only seeking a protective order, the law requires the prosecutor to investigate the facts behind the order to determine whether an act of violence under the 2008 Law took place. This investigation is carried out by the Unit of Early Decision (*Unidad de Decisión Temprana* or UDT). If the UDT deems that there was probably a crime of violence against women under the 2008 Law, then the case continues to the Unit of the Directorate for Investigation (*Unidad de*

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flagrancy.”).

65. PNC – OAV Interview, *supra* note 48.

66. *Decreto 22-2008*, *supra* note 6, at Art. 13.

67. PNC – OAV Interview, *supra* note 48.

68. Spiegel Interview, *supra* note 29.

69. *Id.*

*Dirección de la Investigación* or UDI) to be investigated as such a crime.<sup>70</sup> What this creates in the UDT is the wide discretion to decide preliminarily whether what happened constitutes a crime under the 2008 Law such that it warrants an investigation under that law or other laws. Because these gender-based perspective efforts are nascent and individuals heading these government positions may possess very narrow, misinformed views of what constitutes a punishable crime of violence against women under the law, this authority filters out many cases that could have resulted in convictions had they been given an adequate and objective evaluation.<sup>71</sup> Some 50% of the complaints of violence against women pass the early decision phase and move on into investigation,<sup>72</sup> although the drop-off rate has been reported to be much higher in some cases.<sup>73</sup> More often than not, the only way a case will advance at all while it is at the prosecutor's office is if there is a joint complainant (*querellante adhesivo*)—commonly an advocate from a non-governmental organization—following up throughout the process. By contrast, the law obligates the MP to investigate cases of gender-based violence within three days of the complaint, as these are considered crimes of public impact.<sup>74</sup> But in reality, crimes of violence against women are not viewed as of significant concern to ensure that the necessary resources for investigations of all allegations of violence are allocated to the Office of the Prosecutor for Women. As a result, many claims of violence against women are dismissed, in direct contradiction with the law. In addition to the dismissals within the UDT, criminal cases not associated with gender-based violence are often given alternative measures to avoid having to go to court. One such measure is the use of the abbreviated procedure (*procedimiento abreviado*), in which a defendant admits he committed a crime and has the opportunity to bargain with the victim to drop the charges or to accept a lesser sentence if he is convicted.<sup>75</sup> Although this procedure has been heavily criticized by human rights bodies because of the unequal power relations between men and women, it is still widely used because of the resource and competency limitations of the prosecutors, for whom it is easier to quickly resolve a case than to add it to their docket.

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70. Interview with Lic. Gustavo Sandoval, Unidad de Dirección de la Investigación (UDI) and Licda [Prosecutor for the Unit of the Directorate for Investigation]. Susanna Rivera, former head of Unidad de Decisión Temprana (UDT) [Unit of Early Decision] (Oct. 14, 2015) in Guat. City, Guat. (on file with author) [hereinafter UDI and UDT Interview].

71. Nájera Interview, *supra* note 1 at 3.

72. UDI and UDT Interview, *supra* note 70.

73. Nájera Interview, *supra* note 1, at 3. In her role as an advocate, Elisa Portillo Nájera noted that of the cases she presents before the prosecutors, only about 10% move on to investigation.

74. UDI and UDT Interview, *supra* note 70. *See also*, Interview with Ana Grace Cabrera of UN Women, at 4, in Guat. City, Guat. (Oct. 15, 2015) (on file with author).

75. Interview with Ana María Mendez Dardón, Human Rights Lawyer, in S.F., Calif. (Oct. 9, 2015) (on file with author).

Because of the nascent nature of the implementation of the 2008 Law, many municipalities in Guatemala currently lack access to a prosecutor who is trained to apply a gender-based approach. The establishment of some of these legislatively mandated offices is met with resistance by the public, especially in rural communities where more traditional views towards woman and power dynamics between sexes are held.<sup>76</sup>

### 3. Charging and Prosecution

After the initial investigation by the prosecutor, the case must be presented to the courts to formally charge a perpetrator for the appropriate crime of gender-based violence as written in the law. Prosecutors may handle anywhere from 1,000 to 1,200 cases at a given time, which makes it impossible for each to receive the necessary attention.<sup>77</sup> The oversaturation inevitably creates long waitlists for cases to be prosecuted, during which time evidence in support of the case may be lost. In order to preserve a victim's testimony, the prosecutor may use a Gesell Chamber<sup>78</sup> to obtain the evidence at the moment when the victim has made a denunciation, in anticipation of litigation. However, it is impossible to have each person whose case could benefit from testifying in a Gesell Chamber actually use one, because the facilities are so few and the demand is so high, it is impossible to have each person whose case could benefit from testifying in a Gesell Chamber actually use one.<sup>79</sup> As a result, the prosecutors must use extreme discretion for its use, and will almost always give priority to children's sexual violence cases.<sup>80</sup>

As a matter of practice, prosecutors tend to place a heavy value and thus rely primarily upon scientific evidence and psychological evaluations to justify moving the case through the criminal process. Under the law, offices of the National Institute of Forensic Science should be available in each MP—where the Prosecutor for Women's Office is located—and even in 24-hour Shift Courts, for immediate response in preserving such evidence. The availability of these services in reality is determined by a victim's proximity to urban areas. In areas where they are available in the 24-hour Shift Courts, they have been found to be open for only part of the day despite the intended

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76. Nájera Interview, *supra*, note 1, at 1.

77. UDI and UDT Interview, *supra* note 70.

78. The Gesell Chamber is a space comprised of two rooms divided by a special glass window through which a team of investigators in one room can observe without being seen from the other room. It is used to obtain and preserve testimony prior to trial by obtaining it before much more time passes and the risk of the victim recanting or forgetting key information increases. The use of the Gesell Chamber allows the victim to give testimony in an environment where she feels safe, since she does not have to physically confront the perpetrator or his counsel as she would have to do in the courtroom later on at trial. See Nájera Interview, *supra* note 2, at 9. See also, UDI and UDT Interview, *supra* note 70, at 5–6.

79. UDI and UDT Interview, *supra* note 70, at 5–6.

80. *Id.*

round-the-clock nature of the court.<sup>81</sup>

Once there is enough evidence to sustain that there may have been a crime of gender-based violence, the case is brought before a judge at the specialized courts, if one is available, and the offender is indicted for charges under the 2008 Law.<sup>82</sup> Not all crimes under the 2008 Law are heard in the specialized courts, however, because, as discussed above (Section III, Part A, *infra*), there are only about eleven departments in Guatemala out of twenty-two with specialized courts.<sup>83</sup> Therefore, many cases of violence against women are still handled by ordinary courts today, especially in rural regions.<sup>84</sup> However, there is a discrepancy in the way the law is applied in the ordinary courts and the specialized courts.<sup>85</sup> The ordinary courts have been found to apply measures to avoid penal action against a perpetrator, categorize certain crimes differently in comparison to the specialized courts, and apply different methods to determine whether a crime was motivated by gender, thereby producing inconsistent conclusions for cases with similar facts.<sup>86</sup> Advocates have found that a generalized lack of will to typify a crime as one of violence against women under the 2008 Law, and a tendency of many judges to insist on only categorizing acts under the 1996 Law, allows the offender to walk away unpunished.<sup>87</sup> Part of the lack of will in the judiciary to qualify certain crimes as falling under the jurisdiction of the 2008 Law is not always that judges do not receive adequate training, because there has been investment in training.<sup>88</sup> Rather, the problem lies in keeping both the system and the judges accountable. Challenging a judge's decision regarding a criminal case is a major task, as the culture to do so simply does not exist given the general mistrust of the system and lack of empowerment by the people to do so.<sup>89</sup> This creates entitlement and foments the opportunity for corruption or carelessness in the courts because judges are not concerned with accountability, and their judicial decisions are not monitored consistently.<sup>90</sup>

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81. Jorge Eduardo De León Duque, Informe del Procurador de Derechos Humanos de Guatemala para el 20 aniversario de la Cuarta Conferencia Mundial sobre la Mujer – Beijing 1995 [Report from the Procurator for Human Rights of Guatemala for the 20th Anniversary of the Fourth World Conference on Women – Beijing 1995] (2014), PROCURADOR DE LOS DERECHOS HUMANOS, [http://www.pdh.org.gt/archivos/descargas/Biblioteca/Informes%20Especiales/inf\\_beijing.pdf](http://www.pdh.org.gt/archivos/descargas/Biblioteca/Informes%20Especiales/inf_beijing.pdf). file:///Users/stephaniestupakis/Downloads/inf\_beijing.pdf

82. Spiegel Interview, *supra* note 29, at 3.

83. *Id.*

84. *Id.*

85. U.N. High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala* [Informe del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de su Oficina en Guatemala 2014] (2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/101/61/PDF/G1410161.pdf?OpenElement> (English, Spanish not available).

86. *Id.*

87. PDH Interview, *supra* note 39, at 4.

88. Spiegel Interview, *supra* note 29, at 3.

89. Spiegel Interview, *supra* note 29, at 4.

90. *Id.* at 4-5.

Given that the institutions responsible for implementing the specialized system for violence against women are limited in availability and under-resourced, a long wait is to be expected at the various stages of the criminal process. Even if a case has reached the courts, it is still not immune to the dynamics that affect situations of domestic violence and power imbalances between men and women. During the lengthy delays in processing, a woman may become convinced either through external pressure or on her own accord that the process is taking too long and she cannot afford to continue making extra trips to the courts or to the MP to participate in her case or to conduct the very necessary follow-up to ensure her case is moving along. Without her consistent involvement in her case, and without the help of a *querellante adhesivo*, which many victims unfortunately do not have, a case may become dismissed before it ever reaches a conviction.<sup>91</sup>

In fact, very few cases actually reach a conviction.<sup>92</sup> Cases in which a sentence is handed down to the aggressor are usually those in which there is substantial scientific evidence to prove the case, and in which a *querellante adhesivo* was involved.<sup>93</sup> A conviction does not always result in imprisonment in accordance with the minimum five-year sentence prescribed under the 2008 Law.<sup>94</sup> Rather, many aggressors under this law often receive commutable sentences<sup>95</sup> because jails are often filled with other types of criminals, including drug traffickers, murderers, and gang members.<sup>96</sup> Although there are efforts from grassroots organizations and government institutions to reduce the number of commutable sentences issued, there has not been much change in commutable sentencing.<sup>97</sup>

#### V. SOCIOPOLITICAL CRISIS AND MACHISTA ATTITUDES ARE AMONG THE TOP REASONS IMPLEMENTATION OF THE 2008 LAW HAS BEEN STALLED.

Thousands of Guatemalans took to the streets demanding the resignation of the then-President Otto Perez-Molina amidst allegations that he was a principal actor in the illegal customs bribery ring known as “La Línea,”

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91. Interview with Irma E. Salazar Cruz of the Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer [Caribbean Comm. for the Defense of the Rights of Women] in Guat. City, Guat. (Oct. 16, 2015) (on file with author) [hereinafter Cruz Interview]

92. *Id.* at 2.

93. *Id.*

94. *See Decreto 22-2008, supra* note 6, at 4-5.

95. *See* Guatemala Penal Code Art. 50 (Guat.), <http://leydeguatemala.com/codigo-penal/comutacion-de-las-penas-privativas-de-libertad/2926/> (last visited Feb. 5, 2017) (in Guatemala's criminal justice system, if a sentence is five years or fewer, it must be commutable—that is, a convicted individual can avoid going to jail by paying from 5 to 100 daily Quetzales).

96. Cruz Interview, *supra* note 91, at 3.

97. *Id.* (referring to interinstitutional efforts by the Red Institucional Contra la Violencia Sexual, Explotación, y Trata [Institutional Network Against Sexual Violence, Exploitation, and Human Trafficking]).

which defrauded the people of Guatemala of desperately needed resources.<sup>98</sup> As the spotlight shifted toward the scandal, which also implicated former vice president, Roxana Baldetti, and other members of his administrative cabinet, budgets for victims' services were dramatically cut and key roles were shifted through unilateral decisions where they were assigned democratically before.<sup>99</sup> There was a veil of smoke from the proverbial bomb that was the discovery of corruption at the highest government office, and it clouded the fight against violence against women to invisibility.<sup>100</sup> Opponents of the women's rights movement have begun to retaliate through anti-feminist efforts.

One such effort involves the National Coordinator for the Prevention of Intrafamiliar Violence and Violence Against Women (*Coordinadora Nacional Para la Prevención de la Violencia Intrafamiliar y en Contra de la Mujer* Mujer) ("CONAPREVI"), which Article 16 of the 2008 Law establishes as the principal driver of the creation and implementation of public policy related to providing integral services to female survivors of violence.<sup>101</sup> CONAPREVI was a decentralized agency, comprised of several leaders of both the public (government) and private (civil) spheres of women's rights work, in charge of creating its own budget for its functions and for the implementation of its policies<sup>102</sup> until the abrupt transfer of its authority to the purview of the Third Viceministry of the Ministry of the

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98. "La Línea," or "The Line," was a corruption scandal discovered by the Comisión Internacional Contra la Impunidad en Guatemala or CICIG [International Commission Against Impunity in Guatemala]. It mainly consisted of high-level public officials (including the now former president and vice-president) taking bribes from businessmen in exchange for avoiding tariffs. See also "La Línea": *el qué, el cómo y el por qué del escándalo de corrupción que tumbó al presidente de Guatemala* [The Line: the what, how, and why of the corruption scandal that overthrew the president of Guatemala], BBC: MUNDO (Sept. 3, 2015), [http://www.bbc.com/mundo/noticias/2015/05/150507\\_guatemala\\_corrupcion\\_escandalo\\_vicpresidenta\\_baldetti\\_jp](http://www.bbc.com/mundo/noticias/2015/05/150507_guatemala_corrupcion_escandalo_vicpresidenta_baldetti_jp).

99. As discussed in more detail below, the Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y en Contra de la Mujer or CONAPREVI [National Coordinator for the Prevention of Intrafamiliar Violence and Violence Against Women] (Guatemala's highest entity with the purpose to eradicate violence against women was unilaterally overtaken by the government instead of members of civil society as prescribed by Government Agreement Number 463-2013, which states three representatives from organizations which specialize in violence against women must lead this agency).

100. FS Interview, *supra* note 45, at 1.

101. See *Decreto 22-2008*, *supra* note 6, at 6. See also Congressional Decree 97-96 (originating the idea of a National Coordinator in Article 13, in which it delineates all of its intended responsibilities).

102. See Articles 10-11 of Governmental Agreement 831-2000 of the Republic of Guatemala. CONAPREVI was to be headed by: the Presidential Secretariat for Women (*Secretaría Presidencia de la Mujer* or SEPREM), Attorney General of the Republic; President of the Judicial Organ, President of the Executive Board of the National Institute of Statistics (*Instituto Nacional de Estadística* or INE), a representative from the Program for Prevention and Eradication of Intrafamiliar Violence (*Programa de Prevención y Erradicación de la Violencia Intrafamiliar* or PROPEVI), and three representatives from the national Network of No Intrafamiliar Violence (*Red de la No Violencia Intrafamiliar* or PROPEVI).

Interior (*Ministerio de Gobernación*),<sup>103</sup> which is in charge of the general prevention of violence and crime.<sup>104</sup> These changes have been significantly debilitating, as no agency is currently adequately monitoring the situation of violence against women or the government's response.<sup>105</sup> Currently, CONAPREVI does not exist beyond a façade, as the Presidential Secretariat for Women (*Secretaría Presidencial de la Mujer*) or (SEPREM), headed by an appointee of the Perez-Molina administration, has taken over its general responsibilities to a much less effective degree and at variance with the 2008 Law.<sup>106</sup> Currently, leaders of nongovernmental organizations continue to advocate to restore CONAPREVI to its original state, after the progress they achieved towards this goal was wiped out following the political upheaval caused by the Perez-Molina corruption controversy.<sup>107</sup>

Biases against women exist in all sectors of society, and many government employees hold these harmful attitudes while exercising their government mandates. Organizations fighting on the frontlines against powerful perpetrators, such as Survivors Foundation, recognize that the patriarchal biases against women's rights also exist within government agencies and among government officials with the decision-making authority over criminal cases against perpetrators of abuses under the 2008 Law. Because of their fearless opposition to perpetrators of gender-based violence with power and influence in Guatemala, they have been particularly targeted by antifeminist campaigns and by people with the power to seriously weaken their functions. Efforts to curtail any detectable progress in prosecuting more crimes of violence against women continue even from prison cells holding some of the powerful perpetrators that have been brought to justice, from which these individuals have issued threats and even hired paid assassins.<sup>108</sup> The corruption discovery at such high levels of the government has inspired a spirit of distrust between agencies and sectors of society, causing services provided by both governmental and nongovernmental agencies to continue to suffer and impunity to remain prevalent. Opposing forces of the women's rights movement and of the crucial role some advocates have undertaken are so committed to their position that they have issued serious threats to the lives of those advocates who have begun to take on powerful perpetrators of violence against women to the extent that some now carry a constant fear for their lives.<sup>109</sup> From the viewpoint of those at the forefront of the fight against gender violence and

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103. Guatemala Government Agreement 463-2013 (Nov. 21, 2013), available at [https://www.infile.com/leyes/visualizador\\_demo/index.php?id=68930](https://www.infile.com/leyes/visualizador_demo/index.php?id=68930).

104. *Procurador*, *supra* note 18, at 40–41.

105. Expert declaration of Elisa Portillo Nájera, *supra* note 45, at 8.

106. *Id.*; see also Nájera Interview, *supra* note 1, at 7.

107. See Interview with representatives of Grupo Guatemalteco de Mujeres (GGM) [Guatemalan Group of Women], in Guat. City, Guat. (Oct. 12, 2015) (on file with authors).

108. FS Interview, *supra* note 45, at 5. See also Nájera Interview, *supra* note 1, at 12.

109. FS Interview, *supra* note 45 (in our meeting with Norma Cruz of FS, Ms. Cruz revealed that she was travelling accompanied by a team of bodyguards).

impunity, there is widespread fear that the limited achievements reached in the struggle for women's rights may be reversed.

## VI. ADDITIONAL OBSERVATIONS AND RECOMMENDATIONS

The entire judicial process very often involves some level of revictimization because of lack of sensitivity in the legal system as well as in society at large, but this could be mitigated if government officials administering the law applied a gender-based perspective to an already emotionally and mentally taxing process. Revictimization does not only occur in the process, but it often starts at home, where the victim's community will often side with an aggressor because he is a male, and a traditional woman, in their view, should submit to him. This deeply engrained patriarchal culture exacerbates the lack of will to implement the law and make available the necessary resources for victims, and it is especially perpetuated in rural areas. Additionally, members of the LGBT community are kept at the margins of the conversation of violence against women; transgender women cannot bring forth a claim of violence against women because they are not considered biological women under the law.<sup>110</sup> Moreover, officials will often blame the transgender victim for the violence she endured because of her gender identity.<sup>111</sup>

In light of all the information gathered, and the input of representatives of civil society, United Nations bodies, and the government, we have suggestions for improvement. We call on the Guatemalan government to enact policies in support of the continued and steady development of the specialized infrastructure and implementation of public services to address gender-based violence in accordance with its international obligations. Specifically, we call on Guatemala to ensure the adequate funding for integral services, collection of reliable data, emergency response, investigations, and shelters. We encourage the Guatemalan government to collaborate with civil society agencies both in creating and implementing the policies that will most benefit victims of gender-based violence, with attention to inclusion of the LGBT community. We also join the Office of the High Commissioner for Human Rights in its recommendation that Guatemala adopt policies to assure specialized trainings for judges from ordinary tribunals while it continues to expand coverage of specialized organs.<sup>112</sup> Moreover, we recommend that regular and permanent education and training, as well as monitoring and discipline for public officials be

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110. ICCPG Interview, *supra* note 35, at 5.

111. *Id.*

112. *Putting women's rights at the forefront of judicial decisions*, U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Aug. 3, 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/JudicialDecisions.aspx>.

established.<sup>113</sup>

As a major funder of various development projects in the region,<sup>114</sup> the United States should take a more active role in ensuring accountability for the funds to guarantee their most effective use. This is particularly relevant in light of the recent high-profile corruption scandal. We also reiterate the need for governments involved in international cooperation to use their influence to pressure the Guatemalan government to implement the laws and comply with its international obligations.<sup>115</sup> Finally, in light of the current shortcomings in Guatemala, we call on the United States to ensure continued humanitarian protection to Guatemalans fleeing gender-based violence as well as take special measures to process women and LGBT asylum-seekers.

## VII. CONCLUSION

The current Attorney General of Guatemala, Thelma Aldaña, has discussed the creation of a new prosecutor's office specializing in prosecutions of femicide, due to the exorbitant rate of deaths of women and girls in recent history.<sup>116</sup> While such a move is certainly one that warrants commendation, it is also important to maintain momentum surrounding the establishment of the entire specialized scheme contemplated under the 2008 Law so that this type of crime is not only penalized, but also prevented before it reaches that fatal stage. Much work remains to be done to get public officials up to speed with training and competence to handle cases of violence against women with the appropriate approach. Although it will likely continue to be a difficult transition in cultural perspective towards women, with its framework and nascent institutional establishment, Guatemala is poised to be a pioneering leader in the fight against the rampant levels of violence against women in the Northern Triangle region.

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113. Expert Declaration of Karen Musalo, Prof, Center for Gender & Refugee Studies, on Velásquez Paiz et al. v. Guatemala, Case No. 12.777, Inter-American Court of Human Rights (Apr. 13, 2015) (on file with CGRS).

114. See *Guatemala: Overview*, USAID: FROM THE AMERICAN PEOPLE (Aug. 16, 2016), <https://www.usaid.gov/guatemala/overview>.

115. Musalo, *supra* note 9, at 266–67.

116. See *After 5,000 Femicides, Guatemala Creates Body to Tackle Crisis*, TELESURTV.NET (Jan. 21, 2016), <http://www.telesurtv.net/english/news/After-5000-Femicides-Guatemala-Creates-Body-to-Tackle-Crisis-20160121-0041.html> (“Guatemala saw over 5,000 women and girls killed in seven years with high impunity rates.”).