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# Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala

KAREN MUSALO\* AND BLAINE BOOKEY\*\*

## Introduction

Guatemala has one of the highest rates of femicide, or gender-motivated killing of women, in the world.<sup>1</sup> It is estimated that more than 6,500 women have been the victims of violent killings since 2000, and thousands more raped and battered.<sup>2</sup> In 2011, more than 20,000 cases were filed with the courts under Guatemala's 2008 Ley contra el femicidio y otras formas de violencia contra la mujer [Law Against Femicide and Other Forms of Violence Against Women] [hereinafter 2008 Law],<sup>3</sup> including cases of femicide and other

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1. GENEVA DECLARATION ON ARMED VIOLENCE AND DEVELOPMENT, GLOBAL BURDEN OF ARMED VIOLENCE 2011: WHEN THE VICTIM IS A WOMAN 119-120 (2011), <http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence>.

2. We use the term "femicide" in this article to denote the gender-motivated killings of women, and the phrase "violent deaths of women" to denote the murder of a woman in violent circumstances (i.e., not an accidental death), for any motive. As such, all femicides would also be considered violent deaths of women, but all violent deaths of women would not necessarily be considered femicides absent evidence that gender was the motivating factor for the killing. For an in-depth discussion regarding the difference in the use of the term "femicide" rather than "feminicide," see Karen Musalo et al., *Crimes Without Punishment: Violence Against Women in Guatemala*, 21 HASTINGS WOMEN'S L.J. 161, 172-74 (2010).

3. Ley contra el femicidio y otras formas de violencia contra la mujer [Law Against

physical, sexual, economic, and emotional violence against women.<sup>4</sup> Less than three percent of the cases that reached the courts resulted in a judgment.<sup>5</sup> The Guatemala Office of the United Nations High Commissioner for Human Rights stated in its latest report that femicide and gender-based violence are “of utmost concern” and that “[t]he cruelty with which some of these crimes [have been] perpetrated [in Guatemala] shows how deeply rooted patterns of discrimination are in society, and also reveals the lack of institutional measures to tackle them.”<sup>6</sup> Similarly, in May 2012, the Inter-American Commission on Human Rights (IACHR) sent the first ever Guatemala femicide case to the Inter-American Court of Human Rights, admonishing the Guatemalan government for “creating an environment conducive to the chronic repetition of acts of violence against women.”<sup>7</sup> Indeed, much international attention has been drawn to the phenomenon of violence against women in Guatemala and the lack of an effective government response.<sup>8</sup>

The Center for Gender & Refugee Studies (CGRS or Center) has investigated and reported on the subject of impunity for gender-based violence in Guatemala over the last eight years.<sup>9</sup> The Center

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Femicide and Other Forms of Violence Against Women] [hereinafter 2008 Law], Decreto del Congreso [Congressional Decree], No. 22-2008 (2008) (Guat.).

4. CENTRO NACIONAL DE ANALISIS Y DOCUMENTACION JUDICIAL [NATIONAL JUDICIAL CENTER FOR ANALYSIS AND DOCUMENTATION] [CENADOJ], ESTADISTICAS POR DELITOS CONTEMPLADOS EN LA LEY CONTRA EL FEMICIDIO Y OTRAS FORMAS DE VIOLENCIA CONTRA LA MUJER [STATISTICS FOR CRIMES CONTEMPLATED IN THE LAW AGAINST FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN: YEARS 2010-2011] (2012) (Guat.) (on file with authors).

5. *Id.*

6. U.N. High Commission for H.R., Annual Report, 19th Sess., 10, U.N. Doc. A/HRC/19/21/Add.1 (Jan. 30, 2012).

7. Press Release, Inter-Am. C.H.R., IACHR Takes Case on Guatemala to the IA Court HR (June 7, 2012), available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/060.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/060.asp)

8. See generally HUMAN RIGHTS WATCH, WORLD REPORT 2012: GUATEMALA (2012); AMNESTY INTERNATIONAL, GUATEMALA: SUBMISSION TO THE U.N. HUMAN RIGHTS COMMITTEE: FOR THE 104TH SESSION OF THE HUMAN RIGHTS COMMITTEE (2012); UNHCHR, Annual Report, *supra* note 6; MADRE, REPORT ON VIOLATIONS OF WOMEN'S HUMAN RIGHTS IN GUATEMALA, UN HUMAN RIGHTS COMMITTEE, SUBMITTED TO U.N. HUMAN RIGHTS COMMITTEE (2012).

9. CGRS has also represented a number of Guatemalan women fleeing gender-based harm since its inception in 1999, including Rody Alvarado Peña. The case of Ms. Alvarado, a Guatemalan woman who suffered ten years of brutal violence at the hands

most recently published its findings in a 2010 report soon after the 2008 Law took effect.<sup>10</sup> In November 2011, in collaboration with the Refugee and Human Rights Clinic at the University of California, Hastings College of the Law, CGRS sent a delegation of attorneys and law students to research the degree of implementation of the 2008 Law and other laws relevant to addressing violence against women. Members of the 2011 delegation interviewed government officials, representatives of nongovernmental organizations (NGOs), and other experts concerned with issues of gender-based violence in Guatemala.<sup>11</sup> From July to September 2012, the Center conducted

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of her husband, was a landmark in the struggle for the right to asylum for women fleeing domestic violence in the United States. See Karen Musalo, *A Short History of Gender Asylum in the United States: Resistance and Ambivalence May Very Slowly Be Inching Towards Recognition of Women's Claims*, REFUGEE SURVEY QUARTERLY, Vol. 29, No. 2 (2010). In addition to direct representation, CGRS provides legal consultation, expert affidavits, and country conditions documentation to attorneys who request support through the organization's Technical Assistance. Since 1999, the Center has provided assistance in more than 600 cases involving applicants from Guatemala.

10. See Musalo, *Crimes Without Punishment*, *supra* note 2; see also Katherine Ruhl, *Guatemala's Femicides and the Ongoing Struggle for Women's Human Rights: Update to CGRS's 2005 Report Getting Away with Murder*, 18 HASTINGS WOMEN'S L.J. 199 (2007); Angélica Cházaro and Jennifer Casey, *Getting Away with Murder: Guatemala's Failure to Protect Women and Rodi Alvarado's Quest for Safety*, HASTINGS WOMEN'S L.J. 141 (2006).

11. In November 2011, researchers conducted interviews with representatives from the following governmental and non-governmental institutions:

- Defensoría de la Mujer Indígena [Center for the Defense of Indigenous Women] [DEMI] (Nov. 3, 2011);
- Oficina de Atención a la Víctima, Ministerio Público [Office for Attention to Victims, Public Prosecutor's Office] [MP] (Nov. 2, 2011);
- Instituto de la Defensa Pública Penal [Institute for Public Criminal Defense] [IDPP] (Nov. 3, 2011);
- Instituto Nacional de Estadística [National Institute of Statistics] [INE] (Nov. 2, 2011);
- Defensoría de la Mujer [Center for the Defense of Women] [DEFEM] at the Procuraduría de Derechos Humanos [Human Rights Ombudsman] [PDH] (Nov. 2, 2011);
- Juzgado de Delitos Contra la Mujer y Femicidio [Specialized Court for Crimes Against Women and Femicide] (Nov. 3, 2011);
- Centro de Investigación, Capacitación, y Apoyo a la Mujer [Center for Investigation, Training, and Support for Women] [CICAM] (Nov. 4, 2011);
- Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y contra las Mujeres [Coordinating Body to Prevent Domestic Violence and Violence Against Women] [CONAPREVI] (Nov. 1 and Nov. 3, 2011);
- Fundación Sobrevivientes (Nov. 3, 2011);
- Grupo Guatemalteco de Mujeres [Guatemalan Women's Group] [GGM] (Nov. 2,

additional follow-up interviews.<sup>12</sup> The analysis and conclusions contained in this article draw on these primary sources as well as on secondary sources, including studies and reports (both English and Spanish) published by government agencies, scholars, and human rights organizations.

This article provides an update on femicide and other violence against women and the impunity for such crimes in Guatemala. We begin in Part II with a brief overview of the prevalence and patterns of violence against women in Guatemala. Part III then sets forth the legal framework for addressing gender-based violence in that country, looks at some of the government's nascent efforts to implement relevant laws and policies, and examines statistics that show these efforts have not effectively reduced levels of violence or impunity. Part IV examines the principal barriers to effective implementation of the laws on gender violence, and Part V provides conclusions and recommendations. We recommend that—beyond the creation of additional specialized courts, continued trainings of justice system officials, and improved investigatory procedures—the Guatemalan government should institute a monitoring program to evaluate the performance of public officials in carrying out their obligations to apply the laws on gender violence. Additionally, a system to impose disciplinary actions is recommended, including ultimate dismissal of those who fail to apply the laws effectively and without gender bias.

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2011);

- Instituto de Estudios Comparados en Ciencias Penales de Guatemala [Guatemalan Institute for the Comparative Studies of Criminal Law] [ICCPG] (Nov. 4, 2011); and
- UN Women (Nov. 4, 2011).

All interview notes are on file with the authors.

12. Researchers interviewed representatives from the following governmental and non-governmental institutions in August and September 2012:

- Comisión Presidencial para el Abordaje del Femicidio en Guatemala [Presidential Commission on Femicide in Guatemala] [COPAF] (Sept. 14, 2012);
- Fundación Sobrevivientes (Sept. 25, 2012);
- GGM (Aug. 28, 2012);
- Red de la No Violencia contra la Mujer [Network for Non-Violence Against Women] [REDNOVI] (Sept. 14, 2012).

In addition, an interview was conducted with a former DEFEM employee who had left her position the week before the interview (Sept. 12, 2012).

## I. Violence Against Women Is Pervasive in Guatemala and Occurs in the Context of Deep-Rooted Gender Discrimination

The situation is grim in Guatemala. Women are subjected to many forms of grave gender-motivated harm from sexual violence, to trafficking, to femicide. The violence, documented by numerous studies, is particularly brutal and occurs at some of the highest rates in the world. Moreover, studies highlight the correlation between domestic violence and femicide in the country, demonstrating the dire consequences of the State's unsuccessful interventions.

### A. Guatemalan Women Suffer Many Forms of Violence at Shockingly High Levels

Violence against women pervades all sectors of Guatemalan society. The violence takes many brutal forms, including intra-familial (or domestic) violence, sexual violence, incest, human trafficking, and, at the extreme end of the spectrum, femicide.<sup>13</sup> The numbers are high and on the rise. In 2011, 20,398 complaints of violence against women under the 2008 Law were filed with the courts, up from 19,277 registered cases under the 2008 Law in 2010.<sup>14</sup> These complaints were for cases involving femicide and other physical, sexual, psychological, and economic violence. In comparison, Paraguay, which is similar to Guatemala in many respects and where violence against women is seen as an increasingly serious problem, recorded only 2,424 cases of violence against women in 2011.<sup>15</sup> Adjusting for differences in population size, this represents a rate of cases of violence against women about one-third that of Guatemala.

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13. See Elisa Portillo Nájera Declaration (Feb. 3, 2012) (on file with authors). A copy of Ms. Nájera's declaration is available upon request at <http://cgrs.uchastings.edu/assistance>.

14. CENADOJ STATISTICS YEARS 2010-2011, *supra* note 4.

15. Ministerio de la Mujer, República del Paraguay [Women's Ministry, Republic of Paraguay], *Estadísticas: Dirección de Prevención y Atención a víctimas de violencia*, [Statistics: Direction of Prevention and Services for Victims of Violence], Mujer.gov, <http://www.mujer.gov.py/estadisticas-i28> (last visited Dec. 18, 2012).

In examining the rise in complaints of violence against women and its significance, there are two additional factors to take into account. First, the number of cases filed with the courts may not provide an accurate picture of the levels of violence, because many complaints made by women to the Ministerio Público [Public Prosecutor's Office or MP] or other agencies are never filed with the courts and thus not reflected in these numbers. For example, while 20,398 cases of violence against women were filed with the courts in 2011, the MP received more than 38,000 complaints in the same year.<sup>16</sup> The MP, as discussed *infra*, has been criticized for its handling of cases of violence against women. Second, it is widely believed by many experts working in the public and private sectors in Guatemala that crimes of violence against women, as in many countries, are underreported.<sup>17</sup>

Guatemala has the third highest rate of femicide in the world, behind only El Salvador and Jamaica; all three countries report rates of ten or more femicides per 100,000 females in the population.<sup>18</sup> Ecuador, by comparison, which has roughly the same population as

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16. See SISTEMA INFORMATICO DE GESTION DE CASOS DEL MINISTERIO PUBLICO, DATOS DEL DELITO DE FEMICIDIO, REGISTRADOS DESDE LA VIGENCIA DE TIPO PENAL (15 DE MAYO 2008), HASTA EL MES DE ABRIL DE 2012 [INFORMATION CASE MANAGEMENT SYSTEM FOR THE PUBLIC PROSECUTOR, FEMICIDE CRIME DATA, REGISTERED SINCE ESTABLISHMENT OF THE OFFENSE (MAY 15, 2008) TO APRIL 2012] (2012) (on file with authors). A case might be registered with the MP, but never end up filed with the court if, for example, the MP decides that further investigation is not warranted. The MP's decision could result from the merits of the case, but it may also result from gender bias and failure of the prosecutor to take seriously cases of violence against women or inadequate investigations and other weaknesses on the part of the prosecutor. See GRUPO GUATEMALTECO DE MUJERES, MUERTES VIOLENTAS DE MUJERES Y FEMICIDIOS EN GUATEMALA 2011: UN CAMINO POR RECORRER PARA PROFUNDIZAR Y COMPRENDER LA PROBLEMÁTICA DE VIOLENCIA CONTRA LAS MUJERES [VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011: A LONG ROAD AHEAD TO FULLY UNDERSTANDING THE PROBLEM OF VIOLENCE AGAINST WOMEN] 35 (2012); Nájera Declaration, *supra* note 13, ¶¶ 30, 38.

17. Nájera Declaration, *supra* note 13, ¶¶ 23, 29; Interview with Representative from Fundación Sobrevivientes, in Guat. City, Guat. (Nov. 3, 2011); Interview with Representative from CICAM, in Guat. City, Guat. (Nov. 4, 2011); GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 7-8; COMISIÓN INTERAMERICANA DE MUJERES, ANALISIS SITUACIONAL: VIH Y VIOLENCIA CONTRA LAS MUJERES EN GUATEMALA [INTER-AM. COMMISSION ON WOMEN, SITUATIONAL ANALYSIS: HIV AND VIOLENCE AGAINST WOMEN IN GUATEMALA] 27 (2010) available at [http://www.oas.org/es/cim/docs/AnalisisGUT\[Final\].pdf](http://www.oas.org/es/cim/docs/AnalisisGUT[Final].pdf).

18. GENEVA DECLARATION, WHEN THE VICTIM IS A WOMAN, *supra* note 1, at 120.

Guatemala and where the femicide rate is considered to be high, reports a rate of only three femicides per 100,000 females.<sup>19</sup> Estimates suggest that anywhere from 631 to more than 700 women died in violent circumstances in Guatemala in 2011, bringing the number of women murdered in the country since 2000 to over 6,500, a conservative estimate.<sup>20</sup> Rates of reported femicide in Guatemala have in fact steadily risen over the last several years.<sup>21</sup> According to the Grupo Guatemalteco de Mujeres [Guatemalan Women's Group or GGM], rates of femicide may be even higher than reported.<sup>22</sup> Moreover, although there has been a decrease in the overall murder rate in Guatemala, the rate for the killings of men has decreased far more rapidly than the rate for women.<sup>23</sup>

Studies have documented that elevated femicide rates "are often accompanied by high levels of tolerance to violence against women among the wider population," and that "such behaviour is shaped by levels of gender inequality and norms that discriminate against the status of women."<sup>24</sup> Within that context, the persistently high level of femicides in Guatemala is understandable; it is beyond dispute that Guatemala has a long history of tolerating violence against women, with impunity for such crimes hovering between 97%–99% (see Part IV *infra*).<sup>25</sup>

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19. GENEVA DECLARATION, WHEN THE VICTIM IS A WOMAN, *supra* note 1, at 120.

20. GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 7.

21. PUBLIC PROSECUTOR, FEMICIDE CRIME DATA MAY 15, 2008 TO APRIL 2012, *supra* note 16 (showing the number of registered cases of femicide, including 118 cases (2008); 196 cases (2009), 236 cases (2010), and 263 cases (2011)); GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 31 (showing the number of femicides in 2011 to be 268, and suspected femicides to be 249).

22. GGM conducted a study into femicides in Guatemala and found that the statistics are likely obscured by two phenomena: (1) an increase in the number of femicides being disguised by perpetrators as suicides to avoid detection; and (2) an increase in the number of femicides carried out by hit men wherein the "material author" of the crime may be punished, but the "intellectual author" of the crime (and, as a result, the motive) remains undiscovered by the authorities. See Telephone Interview with GGM Representative, in S. F., Cal. (Sept. 25, 2012); GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 27–29.

23. The murder rate for men per 100,000 inhabitants decreased by fifteen points from 2010 to 2011, whereas it decreased by only one point for women. GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 5.

24. GENEVA DECLARATION, WHEN THE VICTIM IS A WOMAN, *supra* note 1, at 122.

25. In a recent analysis, the U.S. Special Rapporteur on Violence against Women, its

There is wide consensus that violence against women is a serious problem in Guatemala and that the government has yet to develop an effective response. This view is shared by international human rights bodies, foreign governments (the United States included), and NGOs that have investigated and considered the issue of violence against women in Guatemala. After a working visit to Guatemala in March 2012, the IACHR expressed “deep concern” regarding the high levels of violence against women.<sup>26</sup> In its most recent annual human rights report, the U.S. Department of State concluded that “[v]iolence against women, including domestic violence, remained a serious problem.”<sup>27</sup> Human Rights Watch and Amnesty International, among other NGOs, likewise report that violence against women is a “chronic problem in Guatemala” and that few perpetrators are brought to justice.<sup>28</sup> Some entities within the Guatemalan government itself echo these concerns. In a recent

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causes and consequences, Rashida Manjoo, put the present crisis in context:

The general instability of Guatemala’s legal sectors, along with a high level of impunity and lack of reforms following the conflict, has resulted in an atmosphere of crime and civilian insecurity. The Guatemalan government’s failure to effectively address the legacy of violence during Guatemala’s peace process is also thought to have contributed to the continuing levels of violence in the country. The acceptance of violence against women during the conflict strengthened societal acceptance of gender bias and “machista” attitudes in Guatemala. The current government’s lack of action in domestic violence and femicide cases have re-affirmed these attitudes, and thus play a major role in the continuing pervasiveness of violence against women in post-conflict Guatemala. Despite the peace process and transitional justice mechanisms, the violence experienced by women during the conflict has carried over into the post-conflict setting.

Rashida Manjoo, Calleigh McRaith, *Gender-Based Violence and Justice in Conflict and Post-Conflict Areas*, 44 CORNELL INT’L L.J. 11, 28–29 (2011).

26. Press Release, IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women (Mar. 27, 2012), [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/033.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/033.asp) [hereinafter Press Release, IACHR Expresses Concern About the Human Rights Situation of Women].

27. U.S. DEP’T OF STATE, 2011 HUMAN RIGHTS REPORT: GUATEMALA 16 (2012) available at <http://www.state.gov/documents/organization/186728.pdf>.

28. HRW, WORLD REPORT 2012, *supra* note 8, at 4; AI, GUATEMALA: SUBMISSION TO THE U.N. HUMAN RIGHTS COMMITTEE, *supra* note 8, at 7; MADRE, REPORT ON VIOLATIONS OF WOMEN’S HUMAN RIGHTS IN GUATEMALA, *supra* note 8, at 1, 9.

report analyzing the government's implementation of the 2008 Law, the Procuraduría de los Derechos Humanos [Human Rights Ombudsman or PDH] of Guatemala lamented that rates of femicide have continued to increase despite the passage of the law.<sup>29</sup>

## **B. Femicide and Domestic Violence Are Inextricably Linked in Guatemala**

Given the high level of impunity historically, there are theories, but not documented explanations, of the causes of femicides.<sup>30</sup> Regardless of the dearth of reliable data, including that the government does not keep records that would show the identity of the perpetrator or his relationship to the victim, knowledgeable Guatemalan sources are of the opinion that a significant number of the femicides are in fact the result of domestic violence.<sup>31</sup> Based on data provided by the Guatemalan Presidential Commission Against Femicide, the IACHR reported that in 2011 “of every 10 women who were killed, 3 had already reported being victims of acts of violence or had been granted restraining orders for their protection.”<sup>32</sup> The connection between femicide and domestic violence, although not present in all or even necessarily a majority of cases, is thus an important one to make in order for the government to implement more effective preventive strategies.

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29. PROCURADURÍA DE LOS DERECHOS HUMANOS, INFORME DE SEGUIMIENTO A RECOMENDACIONES: APLICACION DE LA LEY CONTRA EL FEMICIDIO [HUMAN RIGHTS OMBUDSMAN, REPORT ON COMPLIANCE WITH RECOMMENDATIONS: IMPLEMENTATION OF THE LAW AGAINST FEMICIDE] (2011) (on file with authors).

30. Musalo, *Crimes Without Punishment*, *supra* note 2, at 180.

31. GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 23; Nájera Declaration, *supra* note 13, ¶ 34; Telephone Interview with Representative from Fundación Sobrevivientes, in S.F., Cal. (Sept. 25, 2012); Interview with Representative from Fundación Sobrevivientes, *supra* note 17.

32. Press Release, IACHR Expresses Concern About the Human Rights Situation of Women, *supra* note 26 (“According to data provided by the Presidential Commission against Femicide, 705 women were killed and 28 were reported dismembered in 2011.”).

## II. Specialized Legislation Enacted to Address Gender Violence in Guatemala Has Been Ineffective at Reducing Levels of Violence and Impunity

Guatemala outlaws violence against women in many forms and provides for protective measures to prevent such violence before it occurs. Moreover, targeted laws in Guatemala mandate that the government take specific measures to address gender violence, with requirements ranging from the strengthening of existing institutions to the creation of new specialized bodies. The government should be lauded for the positive steps it has taken to comply with its obligations to prevent and punish gender violence. However, available statistics and other data demonstrate that the efforts have not effectively reduced rates of violence or impunity to date.

### A. Legal Framework to Address Gender-Based Violence in Guatemala

The primary law governing violence against women in Guatemala is the 2008 Law Against Femicide and Other Forms of Violence Against Women.<sup>33</sup> Prior to the 2008 Law, the 1996 Ley para prevenir, sancionar, y erradicar la violencia intrafamiliar [Law to Prevent, Punish, and Eradicate Family Violence] [hereinafter 1996 Law]<sup>34</sup> was the sole law addressing violence against women.<sup>35</sup> The

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33. On February 23, 2012, the Constitutional Court of Guatemala upheld the constitutionality of the 2008 Law, which had been challenged on grounds that it discriminated against men. The Constitutional Court's decision has reaffirmed increasing confidence in the justice system on the part of women. Although the Court's decision cannot be further appealed, advocates fear that defense attorneys will still attempt to bring "as applied" challenges to the 2008 Law in individual cases and they are not sure how the trial courts will respond. See GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 4; Telephone Interview with Representative from Fundación Sobrevivientes, *supra* note 31.

34. Ley para prevenir, sancionar, y erradicar la violencia intrafamiliar [Law to Prevent, Punish, and Eradicate Family Violence], Decreto del Congreso [Congressional Decree], No. 97-1996 (1996) (Guat.).

35. The 2008 and 1996 Laws are not the only laws, but they are the laws of principal relevance. Guatemala has developed other laws relevant to gender violence and women's rights including, for example, the Ley de Dignificación y Promoción Integral de

objective of the 1996 Law was to prevent intra-familial violence through protective measures, and was not intended to punish aggressors.<sup>36</sup> The 2008 Law addressed this gap by criminalizing a range of acts of violence against women in the public and private contexts,<sup>37</sup> including femicide,<sup>38</sup> and various forms of physical, sexual, psychological, and economic violence.<sup>39</sup> Although the 2008 Law criminalized some acts not previously recognized as crimes, it also included acts already criminalized in Guatemala's Criminal Code. For example, sexual violence is criminalized by both, and a defendant accused of rape could potentially be charged under both laws.<sup>40</sup> However, only those cases charged as crimes under the 2008

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la Mujer, [Law for the Dignity and Integral Promotion of Women], Decreto del Congreso [Congressional Decree] No. 7-1999 (Guat.) (1999); the Ley de Protección Integral de la Niñez y Adolescencia, [Law for the Integral Protection of Children and Adolescents] Decreto del Congreso [Congressional Decree] No. 27-2003 (Guat.) (2003); the Ley Contra la Violencia Sexual, Explotacion, y Trata de Personas, [Law Against Sexual Violence, Exploitation, and Human Trafficking], Decreto del Congreso [Congressional Decree] No. 9-2009 (Guat.) (2009); and the Ley de Competencia Penal en Procesos de Mayor Riesgo [Law for Criminal Jurisdiction in High Risk Cases] Decreto del Congreso [Congressional Decree] No. 21-2009 (Guat.) (2009). See also ORGANISMO JUDICIAL, JUZGADOS Y TRIBUNALES PENALES DE DELITOS DE FEMICIDIO Y OTRAS FORMAS DE VIOLENCIA CONTRA LA MUJER, [CRIMINAL COURTS FOR FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN], PRIMER INFORME [FIRST REPORT] 52 (2012) (discussing the legal framework for addressing gender-based violence in Guatemala).

36. See 1996 Law, *infra* note 42.

37. The Law does not criminalize “domestic violence” per se. It criminalizes a wide range of acts as crimes, from gender-motivated killings (i.e., femicide), to violence against women, to “economic violence,” whether committed by intimate partners or persons not in a relationship with the victim. 2008 Law, arts. 6–8.

38. Femicide is defined by the 2008 Law as the “violent murder of a woman, carried out in the context of unequal power relations between men and women, as an exercise of power over women” in certain circumstances, for example, for reasons of misogyny. See *id.*, arts. 3, 6.

39. The 2008 Law defines the crime of “violence against women” as any physical, sexual, or psychological violence in the public or private sphere exercised in certain circumstances, such as for reasons of misogyny. See 2008 Law, arts. 3(j), 7. Economic violence is defined by the 2008 Law as an action or inaction which impacts the use, enjoyment, availability, or accessibility of a woman to the material goods she has a right to by marital ties, common law marriage, her own ability, or inheritance, which causes her damage, harm, transformation, theft, destruction, detention, or loss of objects or material goods of her own or of the family group, as well as detention of work instruments, personal documents, and economic goods, values, rights, or resources and that occurs in certain circumstances. See *id.*, arts. 3(k), 8.

40. Criminal Code, art. 173 (criminalizing rape); 2008 Law, art. 7 (criminalizing sexual violence).

Law may be heard by the specialized courts created by the 2008 Law.<sup>41</sup>

Notably, the 2008 Law also incorporates the protective measures of the 1996 Law<sup>42</sup> and breaks new ground in providing the possibility of reparations to victims.<sup>43</sup> The reparations are to be proportionate to the harm caused to the victim and the perpetrator's level of culpability.<sup>44</sup> The drafters of the 2008 Law intended to increase access of women to the justice system. Towards that end, the law further provides that a number of government and non-governmental agencies may receive complaints, including the police, the MP, and law school clinics.<sup>45</sup>

### **B. Efforts by the Guatemalan Government to Implement Specialized Gender Violence Legislation**

The 2008 Law sets forth clear State obligations. It calls on the Guatemalan government to strengthen entities responsible for investigating and addressing violence against women, including the Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y contra las Mujeres [National Coordinating Body to Prevent Domestic Violence and Violence Against Women or CONAPREVI],<sup>46</sup> the Secretaría Presidencial de la Mujer [Presidential

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41. The Public Prosecutor can decide how to charge a case during the investigatory phase (e.g., whether to charge as homicide or femicide). However, even if a case is charged as homicide and filed initially with the ordinary courts, attorneys can (and have been able to) successfully request an ordinary court to transfer a case to a specialized court if there are indications of femicide. See Telephone Interview with Representative from Fundación Sobrevivientes, *supra* note 31.

42. The 1996 Law, incorporated by reference into the 2008 Law, provides that domestic violence victims can request restraining orders (including orders that remove the aggressor from the common residence and suspend an aggressor's custody of underage children), and requires that the police take certain actions in cases of family violence (including intervening in violent situations in the home). 1996 Law, arts. 7, 8, 10.

43. 2008 Law, arts. 11–12.

44. 2008 Law, arts. 14–20.

45. See GGM, MONITOREO: LEY CONTRA EL FEMICIDIO Y OTRAS FORMAS DE VIOLENCIA CONTRA LA MUJER [MONITORING: LAW AGAINST FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN] 59 (2010) [hereinafter GGM, MONITORING]; Nájera Declaration, *supra* note 13, ¶ 25.

46. CONAPREVI is a coalition of governmental and non-governmental organizations that coordinates public policies to reduce domestic violence and violence

Secretariat for Women or SEPREM], and the Defensoría de la Mujer Indígena [Center for the Defense of Indigenous Women or DEMI].<sup>47</sup> In addition, the 2008 Law requires that the State provide training to government officials, create specialized twenty-four-hour courts to handle cases arising under the Law, establish a national information system on violence against women, establish Centros de Apoyo Integral para Mujeres Sobrevivientes de Violencia [Comprehensive Support Centers for Survivors of Violence or CAIMUS], and provide legal assistance to victims.<sup>48</sup> In recognition that these efforts require additional resources, the 2008 Law requires that the Ministry of Finance “allocate resources . . . for compliance with the law.”<sup>49</sup>

Notwithstanding the 2008 Law’s clear framework for State action—in addition to a lack of resources to effectively implement the law—there are serious questions about the depth and consistency of the political will to ensure compliance. There is widespread hostility or resistance by justice system officials and members of Congress to the 2008 Law, even though some key actors in the Guatemalan government have demonstrated willingness and desire to implement the programs called for in the legislation.<sup>50</sup>

The government has initiated some new programs called for under the 2008 Law, including the establishment of specialized courts in three jurisdictions (Guatemala City,<sup>51</sup> Quetzaltenango, and Chiquimula);<sup>52</sup> the initiation of a mobile court program to increase access to justice currently operating in two areas (Guatemala City

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against women. 2008 Law, art. 17.

47. 2008 Law, arts. 14, 17.

48. 2008 Law, arts. 14–20.

49. 2008 Law, art. 21.

50. Notable appointments, hailed by advocates in the women’s movement, include Claudia Paz y Paz Bailey as the country’s first female Attorney General, and Hilda Morales Trujillo, appointed first as head of the Attention to Victims Unit of the MP and now as Deputy Ombudsman to the PDH.

51. It should be noted that the special court in Guatemala City covers only a portion of the capital, leaving certain areas to the jurisdiction of ordinary courts only. See Nájera Declaration, *supra* note 13.

52. The government recently authorized the creation of specialized courts in two additional jurisdictions (Huehuetenango and Alta Verapaz) and an appeals chamber for crimes under the 2008 Law, but at the time of this writing they were not yet operational. See CRIMINAL COURTS FOR FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN, FIRST REPORT, *supra* note 35, at 9, 47–48.

and Quetzaltenango);<sup>53</sup> the maintenance of support centers for women in the cities of five departments (Guatemala City, Quetzaltenango, Escuintla, Rabinal and Suchitepéquez); and the repeal of criminal law provisions that reflected sexist attitudes towards women and conflicted with the new laws.<sup>54</sup> Unfortunately, a variety of factors discussed below have impeded the effectiveness of these programs, such as, inter alia, a lack of resources and coordination between agencies, and persistent stereotyping and discriminatory attitudes on the part of some State actors.<sup>55</sup>

In addition, although the government has undertaken trainings aimed at building the capacity of State actors to prevent and respond to violence against women,<sup>56</sup> high turnover in agency personnel hinders their long-term effectiveness on the system as a whole (especially if funding is not allocated for ongoing trainings).<sup>57</sup> Moreover, the impact of the trainings is limited by their focus on actors at the few specialized courts rather than the ordinary courts where the majority of cases are heard (discussed *infra* Part III.C.).<sup>58</sup>

The government recently created two new bodies focused on the issue of femicides: the Comisión Presidencial para el Abordaje

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53. The initiation of the mobile court program has allowed some women to receive protective measures in a more timely and efficient manner. See Interview with Representative from the Public Prosecutor's Office, in Guat. City, Guat. (Nov. 2, 2011).

54. For example, no longer valid is Article 106 of the Criminal Code that provided that "the forgiveness of the victim will remove the criminal responsibility of the guilty party." See Telephone Interview with Representative from Fundación Sobrevivientes, *supra* note 31.

55. PDH, REPORT ON COMPLIANCE WITH RECOMMENDATIONS, *supra* note 29, at 43-45; Nájera Declaration, *supra* note 13.

56. In 2011, for example, the Victim's Assistance Unit of the Public Prosecutor's Office—led at the time by the well-known lawyer and women's rights advocate, Hilda Morales Trujillo, who is now the Deputy Human Rights Ombudsman at PDH—conducted a series of trainings with prosecutors regarding crimes against women. More than seventy prosecutors from the East and Northeast of the country attended the training in Guatemala City. The training was held in the capital because it was too dangerous for the prosecutors to gather at one place in their respective localities, which highlights the immense pressure and intimidation the prosecutors themselves face. The MP is seeking funding to repeat and expand these trainings in the future to reach more prosecutors. See Interview with Representative from the Public Prosecutor's Office, *supra* note 53; see also Interview with Representative from ICCPG, Guat. City, Guat. (Nov. 4, 2011).

57. Interview with Representative from the Public Prosecutor's Office, *supra* note 53.

58. *Id.*

del Femicidio en Guatemala [Presidential Commission to Address Femicide in Guatemala or COPAF]<sup>59</sup> and a Fuerza de Tarea Contra el Femicidio [Task Force to Combat Femicide].<sup>60</sup> The effectiveness of these newer initiatives remains to be seen. But, if past is prologue, the expectation is minimal impact. The government, before, has created special initiatives to investigate femicides that contributed little due to lack of adequate resources or will to carry out the initiative's mandate.<sup>61</sup>

### **C. Statistics, Unreliable as They Are, Indicate That Efforts to Implement Gender Violence Legislation Have Not Reduced Levels of Violence Against Women or Impunity for Such Crimes in Guatemala**

Statistics are necessary for understanding the scope of the problem of violence against women in Guatemala as well as for evaluating the effectiveness of government responses. The 2008 Law recognizes the importance of statistics and calls for uniform collection of statistics by government agencies, but such a uniform system has yet to be developed. At this point, the available statistics are primarily from the courts. Taking into account their limitations, the statistics still clearly demonstrate that the government's efforts to enforce the 2008 Law have had minimal impact on the heightened levels of violence and rates of impunity for such crimes.

### **D. The Government Has Failed to Collect Reliable Statistics**

The 2008 Law mandates the creation of a nationwide, standardized system for collecting data on violence against

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59. *Ministerio de Gobernación [Ministry of the Interior], Acuerdo Gubernativo [Government Agreement] No. 46-2012 (2012) (Guat.)*.

60. *See Nombran dos Nuevas Fuerzas de Tarea Contra Femicidio y Secuestro [Two New Task Forces Against Femicide and Kidnapping are Appointed]*, PRENSA LIBRE, Jan. 24, 2012.

61. *See* Interview with Representative from COPAF, in Guat. City, Guat. (Sept. 14, 2012) (lamenting a lack of resources); *see also* Interview with Representative from REDNOVI, in Guat. City, Guat. (Sept. 14, 2012); GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 35–36; PDH, REPORT ON COMPLIANCE WITH RECOMMENDATIONS, *supra* note 29, 44–45 (describing lack of funding and personnel to carry out objectives of 2008 Law); Musalo, *Crimes Without Punishment*, *supra* note 2, at 203–06.

women.<sup>62</sup> Under the Law, the Instituto Nacional de Estadística [National Institute of Statistics or INE] is obligated to collect data from multiple government institutions—including, among others, the MP, PDH, the Centro Nacional de Análisis y Documentación Judicial [National Center for Judicial Analysis and Documentation of the Judicial Organ or CENADOJ], and the Policía Nacional Civil [National Civil Police or PNC]—and publish official results.<sup>63</sup> The INE has undertaken efforts to comply with its obligations, but the INE and other institutions tasked with collecting data have not been allocated adequate resources to carry out their duties in this regard.<sup>64</sup> Even where agencies do collect data, it is difficult to analyze because the 2008 Law does not call for a uniform complaint intake mechanism across institutions. As a result, the institutions often report contradictory numbers regarding the investigation and processing of complaints of violence against women.<sup>65</sup>

Moreover, the failure of agencies to disaggregate data by key indicators diminishes the utility of the existing statistics for developing effective law enforcement and other preventative responses. For example, the 2008 Law applies when a woman's right to a life free of violence is violated in the public as well as in the private sphere, and would include acts of violence committed by a stranger, as well as partner violence. However, when cases are registered with the courts, there is no separate identifier to indicate in which context the violence occurred.<sup>66</sup> Therefore, on the basis of these statistics, it is not possible to determine with any accuracy the percentage of cases prosecuted under the 2008 Law that involve domestic violence and/or whether those cases are treated any

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62. 2008 Law, art. 20.

63. *Id.*

64. The INE's budget was cut by 25% in 2010, and there were only two staff members in charge of analyzing intra-familial violence statistics as of November 2011. See Interview with Representative from INE, Guat. City, Guat. (Nov. 2, 2011).

65. For example, CENADOJ collects information for INE about cases that have been ingresados [filed with the court] and reached a sentence, whereas the prosecutor sends INE information about denuncias [formal complaints]. Moreover, while CENADOJ tracks data in relation to the category of crimes defined by the 2008 Law, the PNC does not divide acts by type of crime; it has attributed its failure to do so to a lack of resources. See Interview with Representative from INE, *supra* note 64; Interview with Representative from PDH, Guat. City, Guat. (Nov. 2, 2011).

66. 2008 Law, arts. 2, 6–8.

differently in the courts. Likewise, agencies do not disaggregate by ethnicity, which is problematic for addressing issues unique to indigenous Mayan communities.

#### **A. Available Statistics Demonstrate Near Virtual Impunity for Perpetrators of Gender-Based Violence**

In light of the failure to collect reliable statistics in Guatemala, it is difficult to gain an accurate understanding of levels of violence against women and the success of government programs to prevent and punish such violence, but all indications point to unremitting impunity. Two notable observations can be made upon examination of the CENADOJ statistics from 2010 and 2011. First, the vast majority of cases of violence against women prosecuted under the 2008 Law are heard by ordinary courts, as opposed to specialized courts. This is significant because resolution of cases in the ordinary courts is extremely low (less than 2% resulted in a judgment in 2011; see Table 1 below). Second, while it is encouraging that cases heard by specialized courts have a better chance of resulting in a judgment (around 24% resulted in a judgment in 2011; see Table 2 below), the special courts hear fewer cases relative to the ordinary courts (935 compared to 19,463 last year) such that, on the whole, impunity for acts outlawed by the 2008 Law is still near complete. Of the total cases registered under the 2008 Law in ordinary and special courts combined, less than 3% received judgment in 2011.<sup>67</sup> The statistics available to date for 2012, which cover the period through April 2012, do not show much improvement. Over 1,000 cases were filed with the ordinary courts between January and March of 2012, but

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67. The CENADOJ statistics refer only to reported cases that were processed under the 2008 Law. If all incidents of violence against women were included, even those that were not reported or those that were reported but were not classified as crimes under the 2008 Law, but rather, for example, the Criminal Code, the rates of impunity might be even higher. GGM reports that at least 268, if not 517, of the 600+ violent deaths of women in 2011 should have been charged and investigated as femicide based on information regarding the underlying circumstances of the deaths that GGM obtained from police narratives, morgue reports, and news coverage. GGM, *VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011*, *supra* note 16, at 31, 34. However, this is clearly not the case, as CENADOJ reports that there were only 153 cases of femicide registered with the courts that year. The outcome for the other 400+ violent deaths of women is not included in available statistics.

only forty-eight cases, or 4.4%, were resolved during that period (see Table 3 below).

Statistics from the MP's office also demonstrate the relatively small number of complaints on which the prosecutor's office had taken action. From January to April of 2012, the MP received 14,149 complaints of violence against women; its statistics for this time period show that only 144 suspected aggressors had been placed in preventive detention, only 247 suspects had been charged, and only one case had resulted in a final judgment.<sup>68</sup>

**Table 1. Cases Registered (Filed) and Judgments Issued in Ordinary Courts for Crimes Under the 2008 Law Against Femicide and Other Forms of Violence Against Women for the Years 2010 and 2011<sup>69</sup>**

ORDINARY COURTS						
	Year 2010			Year 2011		
	Total Registered Cases	Total Judgments Issued	Percentage of Cases Resolved	Total Registered Cases	Total Judgments Issued	Percentage of Cases Resolved
	19,172	310	1.62%	19,463	366	1.88%

68. These numbers include only acts of physical violence. The MP received 244 complaints of economic violence during the same period, but only two suspects had been placed in preventive detention, and only two suspects had been charged, while zero cases reached resolution. PUBLIC PROSECUTOR, FEMICIDE CRIME DATA MAY 15, 2008 TO APRIL 2012, *supra* note 16.

69. CENADOJ STATISTICS YEARS 2010–2011, *supra* note 4. According to CENADOJ, the total judgments captured in the statistics for any given year do not necessarily correspond to the specific cases filed during the year. This could be the result of various factors; for example, the judgment might be issued in a case that was filed the previous year, in 2010, but was not resolved until 2011.

**Table 2. Cases Registered (Filed) and Judgments Issued in Special Courts for Crimes Under the 2008 Law Against Femicide and Other Forms of Violence Against Women for the Years 2010 and 2011<sup>70</sup>**

SPECIAL COURTS					
Year 2010			Year 2011		
Total Registered Cases	Total Judgments Issued	Percentage of Cases Resolved	Total Registered Cases	Total Judgments Issued	Percentage of Cases Resolved
105	1	0.95%	935	224	23.96%

**Table 3. Cases Registered (Filed) and Judgments Issued in Ordinary Courts for Crimes Under the 2008 Law Against Femicide and Other Forms of Violence Against Women for the Year 2012 (January–March)<sup>71</sup>**

ORDINARY COURTS		
Year 2012 (January–March)		
Total Registered Cases	Total Judgments Issued	Percentage of Cases Resolved
1,081	48	4.4%

70. CENADOJ STATISTICS YEARS 2010–2011, *supra* note 4.

71. CENADOJ, *Sentencias Dictadas por Condenados y Absueltos y Delitos Contenidos en la Ley Contra el Femicidio y Otras Formas de Violencia Contra la Mujer en los Órganos Jurisdiccionales del Ramo Penal de la República de Guatemala, Años 2010 al 2012* [Judgments Issued Under the 2008 Law Against Femicide and Other Forms of Violence Against Women by the Criminal Branch of the Judiciary of the Republic of Guatemala, 2010 to 2012] (2012) (on file with authors). CENADOJ has released statistics from the specialized courts for 2012, but only with respect to sentences issued from January to April of 2012. Statistics are not available regarding the number of cases registered with the specialized courts during the same period, so a comparison between the number of cases registered and the number of cases resolved is not possible.

### III. The Guatemalan Government Faces Many Barriers to Implementation of Laws on Gender-Based Violence

Notwithstanding the passage of targeted legislation aimed at eradicating violence against women in Guatemala—which has increased awareness about violence against women in Guatemala and affirmed the State’s obligations to address it—alarming levels of violence and impunity for such violence persist. Experts attribute this to a failure to effectively implement the laws, which results from a lack of political will on the part of some actors in the government, and a paucity of resources.<sup>72</sup> Government representatives and advocates working with women have identified the principal obstacles to the prevention, prosecution, and punishment of these crimes of violence. They include inefficacy and bias in the justice system, confusion by judicial actors over the applicable laws, and lack of access to counsel, shelters, and other support.<sup>73</sup>

#### A. The Justice System is Plagued by Widespread Inefficacy and Bias

The weaknesses of State institutions responsible for providing justice and security in Guatemala have allowed for impunity for all crimes to remain high in the country.<sup>74</sup> The debilitated condition of

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72. Some of our sources have commented that the lack of resources also reflects the lack of political will and that if the will were there, the government would take care to allocate adequate funding in the nation’s budget.

73. The Inter-American Commission on Human Rights has issued two comprehensive reports on violence against women in the Americas, including in Guatemala, identifying these and other barriers to addressing violence against women in the region. See INTER-AM. C.H.R., ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE IN MESOAMERICA, OEA/Ser.L/V/II. Doc. 63 (2011); INTER-AM. C.H.R., ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE IN THE AMERICAS, OEA/Ser.L/V/II. Doc. 68 (2007); see also GGM, MONITORING, *supra* note 45; PDH, REPORT ON COMPLIANCE WITH RECOMMENDATIONS, *supra* note 29; Nájera Declaration, *supra* note 13.

74. The government prosecutes some but not all cases that enter the justice system, a failure that results in impunity. Impunity is also compounded by the reluctance of women to report crimes of violence, which results from a lack of confidence in the justice system, poor treatment by government officials who may be biased and make

State institutions is the legacy of decades of armed conflict, combined with corruption. Although impunity exists for crimes of violence against both women and men, deep-rooted gender biases and stereotypes uniquely prejudice the proper investigation and prosecution of cases involving female victims.<sup>75</sup>

Through every step of the legal process, deficiencies and biases exist in Guatemalan institutions charged with the prevention, investigation, prosecution, and punishment of crimes against women.<sup>76</sup> To begin, effective implementation of the protective measures provided for under the 2008 Law (discussed *supra* Part III), to prevent crimes from occurring in the first place, has been lacking.<sup>77</sup> Judges often refuse to issue protective orders, or grant them in a manner that does not provide adequate protection. Judges may refuse to order perpetrators to leave the home, or to pay financial support to the victim, favoring the aggressor's property interests over the woman's safety.<sup>78</sup> Economic dependence of a woman on her abuser is a significant factor in ensuring her continued vulnerability. There is also a pattern of police, judges, and prosecutors urging conciliation of conflicts, rather than seeking to protect victims of domestic violence.<sup>79</sup> Even where adequate protective measures are put in place, police enforcement is limited by lack of political will and resources.<sup>80</sup> The problems that plague the issuance and enforcement of protective orders also adversely impact prosecutions for violent acts; when women do not feel safe or have economic independence, they are not willing to pursue their cases. One study from 2010 showed that women abandoned their cases in a striking 95% of cases that entered the justice system for investigation.<sup>81</sup>

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disparaging remarks to the victims, and other social and economic factors that discourage reporting of abuse. *See* sources cited *supra* note 73.

75. Nájera Declaration, *supra* note 13, ¶ 21-23; Interview with Representative from CICAM, *supra* note 17; GGM, MONITORING, *supra* note 45, at 55-56; IACHR, ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE, *supra* note 73, ¶ 180-191.

76. *See* sources cited *supra* note 75.

77. U.S. DEP'T OF STATE, 2011 HUMAN RIGHTS REPORT, *supra* note 27, at 16-17.

78. Nájera Declaration, *supra* note 13, ¶ 32.

79. GGM, MONITORING, *supra* note 45, at 57-58; Nájera Declaration, *supra* note 13, ¶ 28; Interview with Representative from CICAM, *supra* note 17.

80. *See* Nájera Declaration, *supra* note 13.

81. GGM, MONITORING, *supra* note 45, at 68. The government has the obligation to

Investigations are often inadequate due to the lack of interest officials have in solving crimes of violence against women, as well as the failure to collect and preserve evidence, coordinate efforts among law enforcement personnel and prosecutors, and contact potential witnesses. Law enforcement personnel frequently blame the victims of the crimes and fail to respond in a timely manner.<sup>82</sup> Agencies that receive complaints involving a possible crime do not forward them to the MP (the agency responsible for starting a criminal investigation) as required under the 2008 Law. Many prosecutors who receive complaints often fail to diligently undertake the necessary investigation because either they do not see violence against women as a serious problem that warrants their attention,<sup>83</sup> or they express disbelief of women's stories and subject them to "veracity tests," despite their impermissibility.<sup>84</sup>

Even when complaints are properly filed, biased attitudes on the part of prosecutors may result in delays, as well as the necessity for women to make multiple appearances. The stress and hardship resulting from this often causes women to abandon their cases.<sup>85</sup> And, even where a case makes it to trial, gender bias may affect the outcome. Some judges are predisposed to disbelieve a woman's

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pursue prosecution whether or not a victim participates, but many prosecutors drop cases under these circumstances. Guatemala has a procedure known as "prueba anticipada," whereby a woman's statement may be taken early in the case, so it is on record and can be utilized in the proceedings if she later decides not to cooperate (for example, if she fears retaliation). However, this procedure is rarely used. See Interview with Representative from Fundación Sobrevivientes, *supra* note 17; Interview with Representative from the Specialized Court for Crimes Against Women and Femicide, Guat. City, Guat. (Nov. 3, 2011).

82. Nájera Declaration, *supra* note 13, ¶ 30.

83. Interview with Representative from the Specialized Court, *supra* note 81; Interview with Representative from UN Women, Guat. City, Guat. (Nov. 4, 2011); Nájera Declaration, *supra* note 13, ¶¶ 27, 30, 38.

84. Although it is not required by law, and although psychologists readily admit that there is no reliable test to evaluate whether someone is lying, prosecutors routinely require women to undergo such tests, administered by the Instituto Nacional de Ciencias Forenses [National Institute of Forensic Science or INACIF]. Such tests are not requested of victims in any other type of criminal case in Guatemala. See Interview with Representative from the Public Prosecutor's Office, *supra* note 53; Nájera Declaration, *supra* note 13, ¶ 38.

85. Women often lack resources, and the requirement of multiple visits to the prosecutor's office can be so costly as to be prohibitive. See GGM, MONITORING, *supra* note 45, at 73.

testimony and refuse to convict if she has no evidence other than her word for the violence she suffered.<sup>86</sup>

Finally, even in cases where the courts successfully prosecute and convict perpetrators of domestic violence, commutable sentences render the protection afforded by the law illusory.<sup>87</sup> If an aggressor is sentenced to the minimum sentence of five years, as many are, the law allows convicted defendants to pay a fine for their crimes to avoid incarceration.<sup>88</sup> The fine is a relatively small amount ranging from 5–100 Quetzales per day (or approximately USD\$0.60–\$13 per day).<sup>89</sup> In 2009, thirty-six of the forty-five convictions for the 13,650 registered cases of violence against women resulted in commutable sentences.<sup>90</sup> Many sources in Guatemala believe that judges purposely sentence male aggressors to the five-year minimum so they will not have to serve any time in jail.<sup>91</sup>

## B. Confusion Over the Laws Persists

Despite trainings and other efforts to educate key actors on the 2008 Law, progress has been slow. There are various aspects of the Law that make it particularly difficult to enforce. First, the 2008 Law is a “special law” (i.e., enacted as a stand-alone decree) and is not part of either the Civil or the Criminal Codes. This has led to confusion as to which courts have jurisdiction to apply its provisions.<sup>92</sup> Second, there have been persistent questions regarding interpretation of key terms in the law—most notably, those which define certain acts as crimes.<sup>93</sup> Although the judges in the special

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86. Some prosecutors and judges and others in the political system have made negative comments about the 2008 Law and its constitutional validity and have refused to enforce it. Nájera Declaration, *supra* note 13, ¶¶ 21–22; Interview with Representative from the Specialized Court, *supra* note 81.

87. Nájera Declaration, *supra* note 13, ¶ 42; Interview with Representative from Fundación Sobrevivientes, *supra* note 17; Interview with Representative from the Specialized Court, *supra* note 81.

88. GGM, MONITORING, *supra* note 45, at 78.

89. *See id.*

90. *Id.*

91. *See* Nájera Declaration, *supra* note 13, ¶ 42; Interview with Representative from the Specialized Court, *supra* note 81.

92. PDH, REPORT ON COMPLIANCE WITH RECOMMENDATIONS, *supra* note 29, at 43; Musalo, *Crimes Without Punishment*, *supra* note 2, at 199.

93. Some individuals report that vague definitions in the 2008 Law and the lack of

tribunals have demonstrated a greater capacity to properly interpret the law, ordinary court judges routinely fail to correctly identify acts of violence against women as crimes under the 2008 Law.<sup>94</sup> This failure has great significance because, unless an act is classified as a crime under the 2008 Law, it cannot be transferred to the special courts, which (as demonstrated by the statistics above) are better equipped to handle them.<sup>95</sup>

### C. Victims Lack Access to Free Legal Services and Shelters

The 2008 Law obligates the State to provide free legal assistance to guarantee the effective exercise of the rights of victims.<sup>96</sup> Attorneys are needed to represent women who are seeking protective orders and who can also serve in criminal prosecutions in the role as a querellante adhesivo [complementary prosecutor].<sup>97</sup> Counsel for the complainant can help pressure the prosecutor and others in the justice system to move the case forward and protect the victim from revictimization.<sup>98</sup> While attorneys with the Instituto de

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direction in how to prove elements of the enumerated crimes (e.g., “misogyny” as an element to be proven in femicide cases), make it difficult to interpret and implement the Law. See Interview with Representative from the Specialized Court, *supra* note 81; CRIMINAL COURTS FOR FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN, FIRST REPORT, *supra* note 35, at 17, 52-54.

94. Because the special courts are better equipped to interpret and apply the 2008 Law, the failure to create all of the specialized bodies called for in the Law has significantly hampered its effectiveness. Two new courts have been authorized, as discussed elsewhere, but it could take months for them to become operational. See Telephone Interview with Representative from GGM, in S.F., Cal. (Aug. 28, 2012); CRIMINAL COURTS FOR FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN, FIRST REPORT, *supra* note 35.

95. Even in jurisdictions where special courts exist, ordinary courts preside over the first in a series of three hearings. The first hearing is where the MP presents its theory of the case, identifying the perpetrators, and judges also consider whether to issue protective orders. At the second hearing the MP must present sufficient evidence to move the case forward to the third, which is the actual trial. See Nájera Declaration, *supra* note 13, ¶ 26.

96. 2008 Law, art. 19.

97. See Nájera Declaration, *supra* note 13, ¶ 37; Interview with Representative from IDPP, in Guat. City, Guat. (Nov. 3, 2011); *Código Procesal Penal* [Criminal Procedure Code], *Decreto del Congreso* [Congressional Decree] No. 51-92, art. 116 (1992) (Guat.); GGM, MONITORING, *supra* note 45, at 68-69.

98. Fundación Sobrevivientes, a Guatemalan NGO that provides legal services for women, sees a notable improvement in the response of the justice system when its

Defensa Pública Penal [Institute for Public Criminal Defense or IDPP] and the government support centers do provide some free legal services for victims, there are not enough attorneys to represent all women or provide adequate representation even when available. Without counsel, the system is difficult for women to navigate.

Under the 2008 Law, the State also guarantees the resources necessary, financial or otherwise, for the operation of the CAIMUS support centers for women victims of violence.<sup>99</sup> However, budgeting for these and other programs under the Law has been inadequate.<sup>100</sup> Currently, support centers operate in just five departments, and only two of those centers have shelters (Guatemala City and Quetzaltenango).<sup>101</sup> While certainly welcomed, the two shelters together are reported to have a combined sixty-person capacity.<sup>102</sup> Compounding the situation is the prohibition the CAIMUS have on housing male children over twelve years of age; women with teenage sons must be turned away. In addition to the state centers, it is reported that there are at least two NGOs that run shelters in Guatemala City, including Fundación Sobrevivientes and El Refugio.<sup>103</sup> These shelters similarly have limited capacity and provide only temporary reprieve.

In short, there are not enough shelters in Guatemala to meet the demand.<sup>104</sup> Few options, if any, exist for women living in rural

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lawyers are involved and therefore advocates that providing competent counsel should be a government priority. Notably, the MP has on occasion requested support from the Foundation, in the form of asking for the participation of its attorneys. See Interview with Representative from Fundación Sobrevivientes, *supra* note 17.

99. 2008 Law, art. 16.

100. See GGM, MONITORING, *supra* note 45, at 95; Interview with Representative from IDPP, *supra* note 97; Interview with Representative from DEMI, in Guat. City, Guat. (Nov. 3, 2011).

101. GGM, MONITORING, *supra* note 45, at 94. Although part of CAIMUS, the shelter in Quetzaltenango is reportedly run by the NGO Nuevos Horizontes, with most of the funding for the shelter coming from non-governmental sources. *Id.*

102. Email from Representative from the Women's Justice Initiative (Apr. 23, 2012, 08:55 PST) (on file with authors) (reporting that CAIMUS only has capacity for about 25-30 women in Guatemala City and about 35 women in Quetzaltenango).

103. Email from Representative from the Women's Justice Initiative (Apr. 19, 2012, 09:27 PST) (on file with authors). Asociación Generando is planning to build a shelter in Chimaltenango, but it is not yet in operation. *Id.*

104. U.S. DEP'T OF STATE, 2011 HUMAN RIGHTS REPORT, *supra* note 27, at 17; IACHR, ACCESS TO JUSTICE FOR WOMEN VICTIMS OF SEXUAL VIOLENCE, *supra* note 73, at 64; Nájera Declaration, *supra* note 13, ¶ 50.

areas. The inadequacy of shelters coupled with a dearth of economic opportunities for women discourages women from reporting abuse—they have no choice but to stay with their abusers to provide for and protect themselves and their children.<sup>105</sup>

#### D. Indigenous Women Face Additional Hurdles

Access to justice is even more limited for indigenous (Mayan) women, who often do not speak Spanish and live in remote areas of the country. Government institutions, such as police stations, prosecutor's offices, or courts, are scarce in rural areas.<sup>106</sup> Even if a woman is able to travel to a government office, she may be unable to communicate if she does not speak Spanish and the government officials do not speak her indigenous language.<sup>107</sup> Under these circumstances, the women confront discrimination in the justice system as a result not only of their gender, but also of their ethnicity.<sup>108</sup> Although social norms throughout the country discourage women from standing up to their abusers, the pressure is even greater in indigenous communities, where there is strong community pressure not to denounce violence and to stay with their abusers.<sup>109</sup> The Defensoría de la Mujer Indígena [Center for Defense of Indigenous Women or DEMI], created in 1999, is the government agency tasked with working to promote the defense of indigenous women and the full exercise of their rights. The 2008 Law provides that the government shall work to strengthen DEMI;<sup>110</sup> however, the government has not given DEMI adequate resources to meet the great need.<sup>111</sup>

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105. Nájera Declaration, *supra* note 13, ¶ 53; UNHCHR, Annual Report, *supra* note 6, ¶ 49. Gender discrimination in Guatemalan society results in extremely limited economic opportunities for women and deep economic dependency on men. *Id.*

106. See Interview with Representative from DEMI, *supra* note 100; Interview with Representative from the Public Prosecutor's Office, *supra* note 53; Interview with Representative from CICAM, *supra* note 17; Interview with Representative from CONAPREVI, Antigua, Guat. (Nov. 3, 2011).

107. See MINORITY RIGHTS GROUP INTERNATIONAL, STATE OF THE WORLD'S MINORITIES AND INDIGENOUS PEOPLES 2009 - GUATEMALA 114 (2009) (reporting there are twenty-three different officially recognized indigenous languages in Guatemala).

108. Nájera Declaration, *supra* note 13, ¶¶ 52-53; Interview with Representative from DEMI, *supra* note 100.

109. See sources cited *supra* note 108.

110. 2008 Law, art. 17.

111. See Telephone Interview with Representative from GGM, *supra* note 94;

## IV. Recommendations and Conclusion

The enactment of legislation to address violence against women in Guatemala was a necessary step, which has undoubtedly increased awareness about violence against women in the country and affirmed the State's obligations to prevent and punish it. But the law is not sufficient. While some sectors of the government have taken seriously their obligations to ensure that women live free of violence, others have yet to shed harmful stereotypes and discriminatory attitudes towards women. The government, as a whole, has not responded effectively, and the rates of violence against women have continued to increase. The consequences of failed intervention and impunity are severe for women, often resulting in death.

In our 2010 report on violence against women in Guatemala, we joined international bodies and NGOs in offering a series of recommendations to the government, including reliable statistical gathering, improvement of crime scene investigation,<sup>112</sup> and development of forensic evidence capabilities.<sup>113</sup> In addition to these recommendations, which we continue to endorse, we join key

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Interview with Representative from REDNOVI, *supra* note 61. In addition to the barriers discussed, some experts have expressed concern that progress made since enactment of the 2008 Law is in danger of being reversed by a deteriorating human rights situation in the country under the administration of Guatemala's new President, Otto Pérez Molina, who took office on January 14, 2012. *Id.* See also Randal C. Archibold, *Guatemala Shooting Raises Concerns About Military's Expanded Role*, N.Y. TIMES, Oct. 20, 2012; Danilo Valladares, *Guatemala under Pressure to Investigate Shooting of Native Protesters*, INTER PRESS SERV. NEWS AGENCY, Oct. 9, 2012; Jonathan Hafetz, *Guatemala's Creep Toward Military Rule and Repression*, AL JAZEERA, Oct. 26, 2012. We hope that these concerns are stemmed and that President Molina reaffirms the country's commitment to human rights and progress in addressing gender violence.

112. *E.g.*, PDH has advocated for creating a protocol to differentiate between femicide and homicide at the beginning of a criminal investigation to ensure key evidence is not lost. PDH, REPORT ON COMPLIANCE WITH RECOMMENDATIONS, *supra* note 29, at 35. There is precedent for such a protocol; El Salvador has recently developed a protocol for investigating suspected femicide that establishes that all violent deaths of women should begin as femicide investigations. See Fiscalía General de la República de El Salvador [Attorney General of the Republic of El Salvador] & UNHCHR, *Protocolo de actuación para la investigación del femicidio* [Protocol for the Investigation of Femicide] (2012).

113. Musalo, *Crimes Without Punishment*, *supra* note 2, at 219-220.

stakeholders in urging the government, consistent with its obligations under the 2008 Law, to authorize the creation of specialized courts in all jurisdictions in the country given their relative success to date.<sup>114</sup> Further, we recommend that the government institute a monitoring program to evaluate the performance of public officials in carrying out their obligation to apply the laws on gender violence, and a system to impose disciplinary actions, including ultimate dismissal, of those who fail to apply the laws effectively and without gender bias.<sup>115</sup> Ultimately, without a way to evaluate and impose serious sanctions upon public officials tasked with applying the law, there will never be meaningful change.<sup>116</sup> We also urge governments and bodies involved in international cooperation, and in providing funding for strengthening the justice system, to demand accountability and to find better ways to use their influence to pressure the Guatemalan government to effectively implement the laws it has enacted.

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114. See CRIMINAL COURTS FOR FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN, FIRST REPORT, *supra* note 35; GGM, VIOLENT DEATHS OF WOMEN AND FEMICIDES IN GUATEMALA 2011, *supra* note 16, at 4.

115. See Musalo, *Crimes Without Punishment*, *supra* note 2, at 220.

116. In May 2012, the IACHR referred the first ever Guatemala femicide case to the Inter-American Court on Human Rights, *María Isabel Véliz Franco v. Guatemala*. See Press Release, Inter-Am. C.H.R., IACHR Takes Case on Guatemala, *supra* note 7. The case before the Court presents not only an opportunity to achieve justice for the individual femicide victim on whose behalf the suit was brought, but also an opportunity for the government to take advantage of the expert body to establish a framework of priorities (particularly important given Guatemala's limited resources) to move towards more effective implementation of the laws. We urge the government to take seriously the proceedings and heed any judgment reached by the Court.