


ORIGINAL ARTICLE

From Legislation to Everyday Practices in Guatemala's Violence against Women Courts

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Abstract

We explore how formal mandates associated with Guatemala's 2008 'Law against Femicide and Other Forms of Violence against Women' and with specialised violence against women (VAW) courts have encountered significant challenges due to state-imposed constraints. Drawing on courtroom observations, analyses of case files, and interviews, we find that while formal mandates incorporated feminist understandings of violence against women, which were often internalised among court officials, in daily practice specialised courts reproduced tendencies to depict violence as interpersonal, fragment people's experiences and enact narrow forms of justice that do not incorporate the full intent of the 2008 VAW Law and institutions intended to support it. This case study thus illuminates how and why legal solutions alone are not sufficient to reduce gender-based violence and femicide, particularly in the face of uneven and openly hostile challenges posed by governments.

Keywords: violence against women; Guatemala; gender; justice; gender-equality reform; ethnography

Introduction

Eighteen Latin American countries have passed laws criminalising femicide, classifying it either as a distinct crime, or as an aggravated form of homicide.¹ Many have also collected statistics and improved reporting on gender-based violence and funded women's shelters.² In 2008, the Guatemalan Congress passed the 'Law against Femicide and Other Forms of Violence against Women' (hereafter the 2008 VAW Law). This law criminalised various forms of violence against women (VAW), including physical, psychological, sexual and economic violence,

¹Economic Commission for Latin America and the Caribbean (ECLAC), 'ECLAC: At Least 2,795 Women Were Victims of Femicide in 23 Countries of Latin America and the Caribbean in 2017', Press Release, 15 Nov. 2018, available at www.cepal.org/en/pressreleases/eclac-least-2795-women-were-victims-femicide-23-countries-latin-america-and-caribbean, last access 22 June 2021.

²Sebastián Essayag, *From Commitment to Action: Policies to End Violence against Women in Latin America and the Caribbean* (Panama: UNDP, UN Women, 2017).

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and established femicide,³ or the killing of a woman rooted in misogyny, as a unique crime with a higher mandatory minimum sentence than that of homicide. It also mandated the creation of courts specialising exclusively in VAW, called ‘Femicide and Other Forms of Violence against Women Criminal Courts’. Soon thereafter, VAW crimes became the most common criminal complaint in the country, reflecting both women’s level of need and the hopeful expectations. Yet gender-based violence continues at an alarming rate, with 600 to 700 women being killed annually. Scholars such as Cecilia Menjivar and Shannon Drysdale Walsh⁴ provide compelling evidence about the obstacles women face reporting violence and navigating the institutions that are supposed to help them. At a larger level, scholars question the sincerity of government commitment to reforms adopted in the face of international and civil-society pressures.⁵ This leads us to ask, in a country where gender-based and racialised violence has deep roots, can specialised courts make a dent in gender-based violence?

Scholars of transitional justice in Guatemala document trials that prompt high-profile discussions of sexual and gender-based violence such as the 2016 Sepur Zarco trial in which two high-level military officials were found guilty of crimes against humanity ‘in the form of sexual violence, sexual and domestic servitude, and humiliating and degrading treatment; murder and enforced disappearance’.⁶ These trials represent unique advances in a context of stalled transitional justice and reveal the systematic way in which rape, sexual servitude and other forms of gender-based violence were used as a strategy of war during the armed conflict (1960–96). Most coverage, however, overlooked the six years of preparation, practice, legal and psychological support that non-governmental organisations (NGOs) offered the women who testified prior to that verdict, and the forging of collective identities that took place as a result.⁷ This extensive preparation, and focus on the collective, does not characterise most women’s experiences as they seek justice for gender-based violence in specialised VAW courts.

³The law uses ‘femicide’, but some use ‘feminicide’ to implicate the state in the gender-based murder of women. We use ‘femicide’ when referring to Guatemalan institutions reflecting the legal terminology, but ‘feminicide’ when discussing the broader phenomenon of the gender-based murder of women in the context of impunity.

⁴Cecilia Menjivar and Shannon Drysdale Walsh, ‘Subverting Justice: Socio-Legal Determinants of Impunity for Violence against Women in Guatemala’, *Laws*, 5: 31 (2016), pp. 8–28; “‘What Guarantees Do We Have?’ Legal Tolls and Persistent Impunity for Feminicide in Guatemala’, *Latin American Politics and Society*, 58: 4 (2016), pp. 31–55; ‘The Architecture of Feminicide: The State, Inequalities, and Everyday Gender Violence in Honduras’, *Latin American Research Review*, 52: 2 (2017), pp. 221–40.

⁵Paula Godoy-Paiz, ‘Not Just “Another Woman”: Femicide and Representation in Guatemala’, *Journal of Latin American and Caribbean Anthropology*, 17: 1 (2012), pp. 88–109; Cecilia Menjivar, *Enduring Violence: Ladina Women’s Lives in Guatemala* (Berkeley, CA: University of California Press, 2011); Shannon Drysdale Walsh, ‘Engendering Justice: Constructing Institutions to Address Violence against Women’, *Studies in Social Justice*, 2: 1 (2008), pp. 48–66.

⁶Jo-Marie Burt, ‘Gender Justice in Post-Conflict Guatemala: The Sepur Zarco Sexual Violence and Sexual Slavery Trial’, 2019, available at <http://dx.doi.org/10.2139/ssrn.3444514>, last access 22 June 2021.

⁷Burt, ‘Gender Justice’; Irma Velásquez Nimatuj, ‘The Case of Sepur Zarco and the Challenge to the Colonial State’, in Lynn Stephen and Shannon Speed (eds.), *Indigenous Women and Violence: Feminist Activist Research in Heightened States of Injustice* (Tucson, AZ: University of Arizona Press, 2021), pp. 100–24; Morna Macleod, ‘Ethical Tribunals and Gendered Violence in Guatemala’s Armed Conflict’, in *ibid.*, pp. 184–208.

Underfunding, understaffing and shortages of logistical support characterise the daily reality of those working in Guatemala's specialised VAW courts – evidence of the low priority assigned to gender-based violence by the central government. Nevertheless, examining the everyday practices, narratives and performances of those who work in and around the specialised VAW courts may reveal how 'the coherence and continuity of state institutions is constituted and sometimes destabilised'.⁸ This leads to our primary question: Can specialised institutions shift women's experiences of the state in ways that mitigate long-standing impunity and gender-based violence?

To answer this question, we draw on analyses of the 2008 VAW Law and related accords which mandated the creation of specialised courts; interviews with court officials and survivors; courtroom ethnographies; and analyses of case files. We find that while the 2008 VAW Law and related protocols combined feminist concepts and priorities, these elements of the legislation were difficult to achieve in the day-to-day workings of specialised courts, even though many specialised officials were sincerely dedicated to them.

We argue that the gap between the law's potential and the actual practices in trials had two sources. First, specialised institutions were undercut by a central government that provided minimal support for the 2008 VAW Law and related institutions. Second, specialised justice institutions were influenced by a legal culture focused on individual victims and individual restitution. This legal culture ignored the historical and current context in which gender-based violence was, and still is, embedded (characterised by kinship, community and patriarchal norms), and overlooked the intersections of class, race and ethnicity among individuals and communities. Faced with insufficient resources and a lack of political will, overworked officials in specialised courts often met the unrealistic expectations placed on them by falling back on the understandings and methodologies that prevailed in the criminal-justice system more broadly. As a result, while they made admirable advances in addressing impunity, specialised institutions often reproduced an incident-based, interpersonal view of violence; fragmented women's bodies and experiences; and provided a relatively narrow form of justice and reparations.

Below we discuss our theoretical framework and research methods. We then identify the overlapping structures of gendered violence, historically bolstered by the state itself, that have shaped Guatemalans' experiences and subjectivities. We then suggest how the 2008 VAW Law and related protocols included some feminist understandings of VAW and justice which were, in turn, internalised by many court officials. We show that these officials found themselves and their institutions negatively affected by the lack of broad support for the project by the central government. We then draw from our case-file analyses and courtroom observations to explore how VAW legislation and protocols were translated into everyday procedural practices in ways that fell short of their feminist goals and resulted in limitations and exclusions even for women who succeeded in making it into court. We conclude by reflecting that even when laws and on-the-ground state

⁸Aradhana Sharma and Akhil Gupta, 'Introduction: Rethinking Theories of the State in an Age of Globalization', in Aradhana Sharma and Akhil Gupta (eds.), *The Anthropology of the State: A Reader* (Malden, MA: Blackwell, 2008), p. 13.

actors are aligned with the goal of decreasing gender-based violence and increasing access to justice, the lack of will on the part of the central government places real limits on what even progressive laws and dedicated state actors can achieve. Yet we also acknowledge the very real contributions that the 2008 VAW Law and specialised institutions have made in challenging the normalisation of gender-based violence in Guatemala.

From Institutional Design to Everyday Practices

We start from the premise that the state is not coherent, rational or uniformly patriarchal, but rather uneven, rife with inter/intra-institutional conflicts and influenced by diverse institutional gender regimes.⁹ This suggests that state institutions are likely to vary in the degree to which they uphold or challenge gender inequalities, providing both opportunities and challenges for addressing VAW through state-based reform. As will be demonstrated below, the Guatemalan state in certain moments has contained pockets of sincere anti-VAW commitment that existed alongside underfunded and under-committed institutions and actors, leading to uneven and often ineffective implementation of reforms.¹⁰

The existing literature points to sources of mismatches between formal mandates related to gender equity and the enactment of those mandates on the ground, including those associated with weak state capacity,¹¹ contradictory legal statutes,¹² backslides and backlashes following reform,¹³ or insufficiently trained officials.¹⁴ Some have also recognised that formal mandates are carried out by social actors influenced by their own world views and broader social and institutional contexts. These actors may develop institutional cultures and practices that shift the ways that institutions are gendered.¹⁵ For example, Rekha Mirchandani found that actors in Salt Lake City's domestic-violence courts challenged defendants' understanding of VAW as normal, rejected victim-blaming tendencies and cultivated a 'horizontal, consensus-building, and caring approach to justice'.¹⁶ Yet actors that carry out

⁹Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Durham, NC: Duke University Press, 2012); Lynne Haney, 'Feminist State Theory: Applications to Jurisprudence, Criminology, and the Welfare State', *Annual Review of Sociology*, 26 (Aug. 2000), pp. 641–66; Rekha Mirchandani, "'Hitting Is Not Manly": Domestic Violence Court and the Re-Imagination of the Patriarchal State', *Gender and Society*, 20: 6 (2006), pp. 781–804; Pamela Neumann, 'When Laws Are Not Enough: Violence against Women and Bureaucratic Practice in Nicaragua', *Social Forces*, 95: 3 (2017), pp. 1105–25.

¹⁰Erin Beck, 'The Uneven Impacts of Violence against Women Reform in Guatemala: Intersecting Inequalities and the Patchwork State', *Latin American Research Review*, 56: 1 (2021), pp. 20–35.

¹¹Celeste Montoya, 'International Initiative and Domestic Reforms: European Union Efforts to Combat Violence against Women', *Politics and Gender*, 5: 3 (2009), pp. 325–48.

¹²Menjívar and Walsh, 'Subverting Justice'.

¹³Cheryl O'Brien and Shannon Drysdale Walsh, 'Women's Rights and Opposition: Explaining the Stunted Rise and Sudden Reversals of Progressive Violence against Women Policies in Contentious Contexts', *Journal of Latin American Studies*, 52: 1 (2020), pp. 107–31.

¹⁴Patricia Martin, *Rape Work: Victims, Gender, and Emotions in Organization and Community Context* (New York: Routledge, 2005); Sara Nelson, 'Constructing and Negotiating Gender in Women's Police Stations in Brazil', *Latin American Perspectives*, 23: 1 (1996), pp. 131–48.

¹⁵Lisa Brush, *Gender and Governance* (Lanham, MD: AltaMira, 2003).

¹⁶Mirchandani, "'Hitting Is Not Manly"', p. 793.

formal mandates on the ground also have the potential to undercut gender-equity policies.¹⁷ For example, Pamela Neumann found that even specialised women's police and prosecutors in Nicaragua tended to dismiss women's experiences of violence as trivial and act in direct contradiction of the law.¹⁸ More broadly, scholars such as Paula Godoy-Paiz have highlighted how the 'strictly legal, formal rights-based framework' adopted by the Guatemalan state 'treats violence as an act involving *an* individual perpetrator and victim', which 'ignores the social conditions that give rise to and sustain relations of domination'.¹⁹

Given the ways formal mandates can be supported or undermined on the ground, when assessing criminal-justice reforms, one must move beyond the analysis of formal laws. We do so by exploring the emergent processes of translation in which conceptions of victimhood, violence and justice are negotiated by judges, lawyers, witnesses and others, and the larger political context within which they exist. Doing so shows that, despite the inclusion of feminist understandings in Guatemala's 2008 VAW Law and specialised court statutes and in the thinking of key court officials, court proceedings often reinforced tendencies to see violence as incident-based and interpersonal, fragment people's experiences and subjectivities, and narrow justice down to jail time and monetary compensation.²⁰ We demonstrate that this mismatch between the law's potential and its manifestation on the ground is caused by a political context of inconsistent state support and a broader legal culture that focuses on interpersonal, rather than structural, violence.

Research Methods

The analysis presented here draws on data collected as part of a larger collaborative project on access to justice for Guatemalan VAW survivors, ongoing since June 2016. In order to account for regional differences in Guatemala, we conducted our research in areas of the country that varied in levels of urbanness/rurality, poverty and ethnic composition. For the purposes of this article, we focus on our research in two areas: (i) Quetzaltenango, a mixed urban/rural department that is roughly half Ladino and half Indigenous, with medium levels of poverty, home to specialised courts since 2010; and (ii) Huehuetenango, a largely rural department with a mostly Indigenous population and high levels of poverty, home to specialised courts since 2012.

This article is based on four sources of data. First, we draw on interviews with 15 activists, five service providers, 12 judges, five prosecutors, five other government officials, five lawyers and two translators about the creation, implementation, functioning and impacts of the 2008 VAW Law and specialised courts. Second, we

¹⁷Menjívar and Walsh, 'Subverting Justice'; 'The Architecture of Femicide'; Nelson, 'Constructing and Negotiating Gender'.

¹⁸Neumann, 'When Laws Are Not Enough'; Cecilia Santos, *Women's Police Stations: Gender, Violence and Justice in São Paulo, Brazil* (New York: Palgrave Macmillan, 2005).

¹⁹Paula Godoy-Paiz, 'Violence in Guatemala's Metropolitan Area: Violence, Law, and Social Justice', *Studies in Social Justice*, 2: 1 (2008), p. 39. Emphasis in original.

²⁰Marion Fourcade, 'Cents and Sensibility: Economic Valuation and the Nature of "Nature"', *American Journal of Sociology*, 116: 6 (2011), pp. 1721–77; Sameena A. Mulla, 'In Mother's Lap: Forging Care and Kinship in Documentary Protocols of Sexual Assault Intervention', *Law, Culture and the Humanities*, 7: 3 (2010), pp. 413–33.

analyse three key documents: the 2008 VAW Law; Supreme Court Accord 30-2010 regulating specialised courts; and the 'Protocol for the Law against Femicide and Other Forms of Violence against Women', established for the interpretation and implementation of the 2008 VAW Law. Third, we analyse case files from VAW cases resolved in specialised courts, which include police and forensic reports, crime-scene photos, witness statements and judges' verdicts. Fourth, we draw on over 30 hours of observations of trials related to various forms of gender-based violence in specialised courts. In addition to these observations, we also conducted interviews with VAW survivors and their families (23 people in total).

Structures of VAW and State (In)action in Guatemala

VAW in Guatemala, as elsewhere, is structural in nature, rooted in legal and social norms, militarisation and patriarchal kinship systems.²¹ Historically, post-colonial justice systems promoted men's ownership over women's bodies 'in a system of "gendered terror"'.²² Courts excused abuse within romantic relationships and ignored sexual violence against poor or working-class and Indigenous women who were seen as lacking honour.²³ The state actively promoted VAW in the armed conflict between leftist guerrillas and authoritarian governments. In the late 1970s/early 1980s, state forces targeted Indigenous communities suspected of sympathising with guerrillas with genocidal and sexual violence, raping over 100,000 women and girls.²⁴ These crimes went largely unpunished in the post-conflict period. As discussed above, recent trials on sexual violence and sexual slavery have further called attention to this history.

The post-conflict period was also characterised by the entry of criminal groups and the formation of citizen-led security committees to address growing insecurity. Both were accused of using VAW as a weapon – using VAW against both women who criticised their activities and their male critics' female relatives/partners.²⁵ Yet, despite these dangers in the public sphere, home continued to be the most dangerous place for most women. Heteropatriarchal kinship and social structures promoted an ideal 'in which the father [was] both center and leader/boss' in the family, which then served 'as the model for the social arrangements of the state and its institutions'.²⁶

²¹Godoy-Paiz, 'Women in Guatemala's Metropolitan Area'; Menjívar, *Enduring Violence*.

²²David Carey Jr and M. Gabriela Torres, 'Precursors to Femicide: Guatemalan Women in a Vortex of Violence', *Latin American Research Review*, 45: 3 (2010), p. 145.

²³Sarah England, 'Protecting a Woman's Honor or Protecting Her Sexual Freedom?: Challenging the Guatemalan Patriarchal State through Reforms to Sexual Violence Legislation', *Latin American Perspectives*, 41: 1 (2014), pp. 124–42; Cindy Foster, 'Violent and Violated Women: Justice and Gender in Rural Guatemala, 1936–1956', *Journal of Women's History*, 11: 3 (1999), pp. 55–77.

²⁴Victoria Sanford, 'From Genocide to Femicide: Impunity and Human Rights in Twenty-First Century Guatemala', *Journal of Human Rights*, 7: 2 (2008), pp. 104–22; Victoria Sanford, Kathleen Dill and Sofia Duyos-Alvarez, 'Women as State Targets: Systematic Gender Violence during the Guatemalan Genocide', in Elissa Bemporad and Joyce Warren (eds.), *Women and Genocide* (Bloomington, IN: Indiana University Press, 2018), pp. 207–22.

²⁵Lynn Stephen, 'Fleeing Rural Violence: Mam Women Seeking Gendered Justice in Guatemala and the U.S.', *Journal of Peasant Studies*, 46: 2 (2019), pp. 229–57.

²⁶Maile Arvin, Eve Tuck and Angie Morrill, 'Decolonizing Feminism: Challenging Connections between Settler Colonialism and Heteropatriarchy', *Feminist Formations*, 25: 1 (2013), p. 13.

Women often needed permission to leave the house, spend money or use contraception; men reported needing to show that they were in command of the household.²⁷ Guatemalan women were often prevented from engaging in work outside of the home and faced significant discrimination when they attempted to do so. In 2019, 29 per cent of women reported working or looking for work compared to 66 per cent of men.²⁸ Women were thus often dependent on their partners and kin, such that they may have had to choose between their safety and their livelihoods if they were experiencing abuse in the home. Conservative Catholic and evangelical moral teachings held that women should be chaste and obey their husbands, implying that men could control the women with whom they were in a sexual relationship.²⁹ Many internalised this view. Guatemalan men and women alike saw VAW as acceptable under certain circumstances at a rate higher than any other population in the region.³⁰ Headlines reporting women's murders often depicted them as 'crimes of passion', implicitly blaming women for their murders and excusing men who were 'blinded by jealousy'.³¹

State officials, influenced by prevailing social norms, perpetuated impunity for VAW. In the 1990s, Guatemala ratified relevant international conventions (notably the 'Inter-American Convention on the Prevention, Punishment and Eradication of VAW') and passed legislation offering limited protections to domestic-violence survivors (the 'Law to Prevent, Punish and Eradicate Intrafamilial Violence'). Yet, on the ground, police and judges ignored their mandates to provide and enforce restraining orders and interfere in ongoing abuse, seeing VAW as a private matter.³² Rates of women's homicides increased dramatically, but police and public prosecutors regularly failed to investigate or prosecute them, casting feminicides as 'crimes of passion' that did not warrant investigation and in which the victim was equally culpable. Over 600 women were murdered in 2006, giving Guatemala the third-highest femicide rate in the world. But 70 per cent of these murders were not investigated, and no arrests were made in 97 per cent of cases.³³ The gap between international treaties, domestic legislation and the quotidian practices of state officials demonstrated the ways that officials on the ground were able to undercut the impact of formal mandates.

²⁷UN Women, 'Guatemala', available at <http://lac.unwomen.org/en/donde-estamos/guatemala>, last access 23 June 2021.

²⁸Instituto Nacional de Estadísticas de Guatemala (INE), 'XII Censo Nacional de Población y VII de Vivienda', available at <http://redatam.censopoblacion.gt/bingtm/RpWebEngine.exe/Portal?BASE=CPVGT2018&lang=esp>, last access 23 June 2021. These figures are based on respondents' definition of work; as such they are likely to include work in formal and informal sectors.

²⁹Menjívar, *Enduring Violence*, pp. 214–22.

³⁰Dinorah Azpuru, 'Approval of Violence towards Women and Children in Guatemala', *AmericasBarometer Insights*, 2015, available at www.vanderbilt.edu/lapop/insights/IO923en.pdf, last access 23 June 2021.

³¹Sarah England, *Writing Terror on the Bodies of Women: Media Coverage of Violence against Women in Guatemala* (Lanham, MD: Lexington, 2019).

³²Hilda Morales Trujillo, 'Femicide and Sexual Violence in Guatemala', in Rosa-Linda Fregoso and Cynthia L. Bejarano (eds.), *Terrorizing Women: Femicide in the Américas* (Durham, NC: Duke University Press, 2010), pp. 127–37.

³³Amnesty International, cited in Marina Prieto-Carrón, Marilyn Thomson and Mandy Macdonald, 'No More Killings! Women Respond to Femicides in Central America', *Gender and Development*, 15: 1 (2007), p. 31.

The passage of the 2008 VAW Law and the creation of specialised courts (mandated by Article 15 of the 2008 VAW Law) represented potential breaks with the past. International pressure was stimulated and reinforced by an active domestic women's movement, which was simultaneously pressuring the government from below. Women's activism around femicide allowed for the cultivation of allies with government insiders at the time the 2008 VAW Law was passed.³⁴ Activists then worked together with government insiders in both institutional creation and implementation – crafting the 2008 VAW Law and generating protocols for the design and functioning of specialised courts and other institutions.³⁵

Insider allies represented rare and temporary pockets of anti-VAW commitment that were sincerely dedicated to the crafting and effective implementation of VAW reforms. At the time of the passage of the 2008 VAW Law, the creation of specialised courts and the early years of implementation, key figures across all three branches of government worked to prevent reforms from becoming dead letters. The VAW Law received significant support from institutions like the Judiciary, the Human-Rights Ombudsman and, in Congress, the Human-Rights and Women's congressional commissions. It was also backed by Sandra Torres, who at the time was the first lady and leader of the political party which held a plurality of congressional seats. Members of the Supreme Court, responsible for the administration of the Guatemalan judicial system, were committed to the effective design and implementation of specialised courts. Thelma Aldana (Supreme Court member 2009–14, Supreme Court president 2011–12) worked with members of the oversight commission for VAW policies – the *Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y Contra la Mujer* (National Coordinator for the Prevention of Intrafamilial Violence and VAW, CONAPREVI) – and members of the women's movement to develop protocols for specialised courts, which incorporated feminist understandings. Attorneys General Claudia Paz y Paz (2010–14) and Aldana (2014–18) were both committed to addressing VAW, establishing specialised public prosecutors and procedural reforms to facilitate the prosecution of sexual violence, as well as prioritising the prosecution of gender-based crimes committed both during the armed conflict and in the post-conflict era. This confluence of committed actors represented a temporary window of opportunity for gender-progressive reform that would later be challenged.

Domestic pressures from activists and insiders alike in 2008 suggested that Guatemala's reforms had the potential to be more comprehensive than those of many of its regional peers. Guatemala was one of the first countries in the region to typify femicide as a unique crime and to establish a national system of VAW criminal (rather than civil) courts. While international technical aid and donations supported these efforts, the bulk of initial funding for implementation came from the Guatemalan government on the insistence of domestic advocates. For example,

³⁴Government insiders pushing for VAW legislation included Congresswomen Nineth Montenegro, Delia Back, Zury Ríos, Myrna Ponce, then first lady Sandra Torres, and members of the oversight agency, the *Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y Contra la Mujer* (National Coordinator for the Prevention of Intrafamilial Violence and VAW, CONAPREVI).

³⁵Author interview with Nineth Montenegro, congresswoman, Guatemala City, 11 July 2017; author interview with Delia Back, congresswoman, Guatemala City, 23 May 2017.

the Guatemalan government spent US\$15 million creating specialised institutions in seven departments between 2010 and 2013. During that time, international donors provided just US\$2 million toward such efforts.³⁶ Still, insufficient commitment, government corruption and hijacking of funds impacted the specialised courts thereafter.

The 2008 VAW Law and Related Documents: Feminist and Legalistic Understandings

Following the passage of the 2008 VAW Law,³⁷ government agencies developed guidelines for implementing the new legislation. Alongside the 2008 VAW Law, we focus here on two documents that set such guidelines. The first, Supreme Court Accord 30-2010, titled 'Rules for Managing Specialised Courts with Jurisdiction over Femicide and VAW' (hereafter Accord 30-2010),³⁸ was established in 2010. The second, the 'Protocol for the Law against Femicide and Other Forms of Violence against Women',³⁹ included guidelines for court officials, public prosecutors and others for the application of the 2008 VAW Law. These guidelines were developed in large part by CONAPREVI, in consultation with the Supreme Court, judges at various levels, and other government agencies, so we refer to this document as the CONAPREVI Protocol. Of note is that CONAPREVI was a hybrid VAW oversight agency that incorporated both government representatives and anti-VAW activists, giving activists direct influence over the CONAPREVI Protocol (as was the case for other guidelines). We focus here on how these documents – the 2008 VAW Law, Accord 30-2010 and the CONAPREVI Protocol – depict VAW, victims and justice/reparations. We demonstrate that all three documents included both legalistic and feminist understandings of VAW.

The 2008 VAW Law, Accord 30-2010 and the CONAPREVI Protocol all include markers of legalistic understandings of violence and justice. Given that legalistic counting is 'hungry for categories',⁴⁰ laws tend to produce measurement systems that group crimes which are similar in some ways even though they are different in others.⁴¹ The 2008 VAW Law conformed to this tendency, categorising VAW according to the type of violence and allowing policy-makers to rank harm and quantify justice by assigning a distinct sentencing range to incidents belonging to

³⁶Comisión Internacional de Juristas (CIJ), *Buenas prácticas y resultados de la justicia especializada en femicidio y mayor riesgo* (Geneva: CIJ, 2016), p. 50.

³⁷Congress of the Republic of Guatemala, Law 22-2008, available at www.congreso.gob.gt/assets/uploads/info_legislativo/decretos/2008/22-2008.pdf, last access 23 June 2021.

³⁸Guatemalan Supreme Court of Justice, Accord 30-2010, available at http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDS%20compilaciones/Normativa%20Femicidio/3_acuerdos/3-04.html, last access 23 June 2021.

³⁹Guatemalan School of Judicial Studies, *Protocol for the Law against Femicide and Other Forms of Violence against Women* (Guatemala City: School of Judicial Studies, 2010), available at: www.oj.gob.gt/justiciadegenero/wp-content/uploads/2014/07/PROTOCOLO-de-la-Ley-contra-el-Femicidio-y-otras-formas-de-Vi.pdf, last access 23 June 2021.

⁴⁰Diane M. Nelson, *Who Counts? The Mathematics of Death and Life after Genocide* (Durham, NC: Duke University Press, 2015), p. 42.

⁴¹Sally Engle Merry and Summer Wood, 'Quantification and the Paradox of Measurement: Translating Children's Rights in Tanzania', *Current Anthropology*, 56: 2 (2015), pp. 205–29.

each category of violence. The law established three categories of crimes: femicide, economic violence and VAW. The latter, VAW, included psychological/emotional, physical and sexual violence. Chapter 2 of the 2008 VAW Law included definitions of terms used throughout the law. In this chapter, these crimes were as follows:

- (1) Femicide: someone who, in the context of unequal power relations between men and women, kills a woman because she is a woman.
- (2) Economic violence: actions or omissions that prevent a woman's use, enjoyment, availability or accessibility to material goods that rightfully belong to her.
- (3) Psychological/emotional violence: actions that can produce psychological or emotional damage or suffering to a woman or her children, including actions, threats, or violence against her children or other relatives [...] with the goal of intimidating her, diminishing her self-esteem or controlling her.
- (4) Physical violence: acts of aggression in which bodily force is used directly or through an object, weapon or substance to cause damage, physical suffering, injuries or sickness to a woman.
- (5) Sexual violence: acts of physical or psychological violence whose effect is to violate a woman's sexual freedom and integrity, including sexual humiliation, forced prostitution and the denial of the right to use family-planning methods [...] or protection against sexually transmitted diseases.⁴²

The law established sentencing ranges for each crime: 25–50 years for femicide; 5–8 years for economic or psychological violence; 5–12 years for physical or sexual violence.

Alongside legalistic categorising and counting, however, the 2008 VAW Law, Accord 30-2010 and the CONAPREVI Protocol also incorporated feminist understandings. These documents, in various places, pointed to VAW as rooted in overlapping structures of inequality. For example, the CONAPREVI Protocol explained that murdering a woman after unsuccessfully attempting to establish romantic relations with her was gendered because '[t]he man's violent attitude in the face of a woman's rejection [...] results from the patriarchal culture that prevails in the country [...] Men use violence as a form of oppression and domination toward women, attempting to treat women as their property.'⁴³ The CONAPREVI Protocol established the justification for and principles of the 2008 VAW Law by drawing on the methodology established by feminist jurist Alda Facio for a gender-based analysis of legal phenomena. The protocol established the steps through which state officials could recognise gender bias in their personal lives, in the law and in society, with the goal of 'democratising the law', which had historically been androcentric.⁴⁴ It established the necessity of a VAW-specific law given the structural roots of VAW, highlighting that 'in a patriarchal culture, crimes have

⁴²Congress of the Republic of Guatemala, Law 22-2008, Chapter 2.

⁴³Guatemalan School of Judicial Studies, *Protocol for the Law against Femicide*, p. 16.

⁴⁴*Ibid.*, pp. 6–10.

been construed as natural, everyday practices and socially accepted when they are directed at women'.⁴⁵

The 2008 VAW Law (Chapter 4, Article 5), Supreme Court Accord 30-2010 and the CONAPREVI Protocol all legally established VAW as a public-order crime against individuals *and* society, moving beyond a depiction of VAW as a solely interpersonal act with individual effects. Doing so eliminated the possibility of alternative resolutions in cases of VAW, a significant change given that previously officials had often encouraged women to reconcile with abusive partners.⁴⁶ This view of VAW as rooted in structural inequality and having society-wide effects could also be seen in the 2008 VAW Law's definition of central concepts. Many interview respondents from the Judiciary highlighted that it is not typical for laws to include a section that defines central terms. They noted that the 2008 VAW Law's Chapter 2, which did just that, was therefore more reflective of feminist than criminological understandings of VAW, given the fact that it included definitions of terms such as public and private realms, misogyny and patriarchy. For example, this chapter defined power relations as 'manifestations of control or domination that lead to a woman's submission and discrimination against her'.⁴⁷ The CONAPREVI Protocol similarly included feminist conceptions of VAW. It highlighted that women were more vulnerable to violence because of economic and other forms of inequality and that VAW 'perpetuates the subordination of women and the unequal distribution of power between women and men, damaging [...] women's holistic health and wellbeing'.⁴⁸

Significantly, the CONAPREVI Protocol acknowledged that different forms of violence overlapped and highlighted that even violence that did not produce visible injuries could be prosecuted and punished. For example, the protocol stated that 'physical violence is not separate from psychological violence', but rather that the two 'are intimately related'. It noted that to fit the crime of physical violence, all that was required was that 'the damage could cause the victim physical suffering', even if it did not produce 'visible injuries'.⁴⁹

In places, all three documents reflected a recognition that women required multifaceted assistance and justice. For example, Accord 30-2010 stated that specialised courts should have a system for holistic assistance that consisted of specialists in psychology, social work and medicine who provided personalised assistance to victims based on their particular circumstances, including 'age, sex, gender, culture, ethnicity, origin, economic condition and any other' identity.⁵⁰ The CONAPREVI Protocol similarly listed victims' rights to quality and effective services without delays, access to interpreters, information about their rights, and to be treated with respect and confidentiality.⁵¹ This view of a victim-centred justice was also reflected in discussions of reparations. The 2008 VAW Law (Chapter 5) and the CONAPREVI Protocol both established that reparations should be multifaceted in order to

⁴⁵*Ibid.*, pp. 11–12.

⁴⁶*Ibid.*, p. 27; Guatemalan Supreme Court of Justice, Accord 30-2010, Article 5.

⁴⁷Congress of the Republic of Guatemala, Law 22-2008, Article 3, paragraph G.

⁴⁸Guatemalan School of Judicial Studies, *Protocol for the Law against Femicide*, p. 15.

⁴⁹*Ibid.*, p. 21.

⁵⁰Guatemalan Supreme Court of Justice, Accord 30-2010, Articles 16 and 17.

⁵¹Guatemalan School of Judicial Studies, *Protocol for the Law against Femicide*, pp. 29–30.

successfully return victims to their state prior to the criminal acts. They established that reparations should go beyond economic compensations to include medical, psychological and social reparations, as well as those related to pain and suffering.

In sum, in their depiction of VAW, justice and reparations, the 2008 VAW Law, Accord 30-2010 and the CONAPREVI Protocol all incorporated both legalistic and feminist understandings. They included legalistic categorisation and counting and focused on individual attention and reparations rather than collective ones. However, because of the important influence of anti-violence activists and their insider allies, they also incorporated feminist understandings that opened up the possibility of a more capacious understanding of violence and justice. Most importantly, they acknowledged the structural sources of VAW, depicted VAW as perpetuating male privilege and recognised women as in need of multifaceted justice and holistic reparations.

Specialised Officials Internalise Feminist Understandings

In 2010 the first three specialised courts were created, with ten subsequently added. The design and practices of these courts contrasted with the ways that state institutions in Guatemala had traditionally been gendered. More than half of the judges appointed to specialised courts were women.⁵² Many of the judges we interviewed had a pre-existing interest in women's rights or had developed an interest through their mandatory training at the Escuela de Estudios Judiciales (School of Judicial Studies), which drew on the work of feminists like Facio.⁵³ In an attempt to meet the mandated guidelines for holistic assistance, specialised courts provided women with free psychological support and childcare during trials and utilised strategies to reduce re-victimisation, including screening off defendants while victims were in the courtroom, and public prosecutors who specialised in VAW litigated cases.

Judges and other specialised officials (whom we have given pseudonyms) by and large internalised the feminist understandings of VAW and justice that were embedded in the 2008 VAW Law, Accord 30-2010 and the CONAPREVI Protocol. In interviews, they spoke about misogyny, patriarchy and cycles of violence and readily identified structural inequalities that made narrow criminal-justice approaches to VAW insufficient. Judge Sergio argued, for example, that challenging the association of women with the private sphere was necessary to address VAW:

When you are educated in the area of women's human rights and in gender issues, you understand that a wife is a person, she is not an object for beatings ... she is not just a mother whose purpose is to have children or to prepare

⁵²Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer del Organismo Judicial (UJEFEM), *Tercer informe de los órganos jurisdiccionales penales en delitos de femicidio y otras formas de violencia contra la mujer, violencia sexual, explotación y trato de personas* (Guatemala City: UJEFEM, 2014), p. 86, available at <http://ww2.oj.gob.gt/justiciadegenero/wp-content/uploads/2014/12/Tercer-Informe.compressed.pdf>, last access 23 June 2021.

⁵³Author interviews with Sandy (17 July 2017), Isabel (1 July 2016), Ariel (23 July 2017) and Sergio (5 July 2016), judges in specialised courts; and Monica (1 Aug. 2017), member of oversight agency for specialised judicial institutions.

food, nourish, dress and raise children. No, instead she is a person who has rights and who should be respected.⁵⁴

A specialised public prosecutor, Luisa, echoed these sentiments, arguing that VAW was a cultural issue rooted in 'machista' ideals that were absorbed early on, which depicted women as symbols of 'the household', 'domestic work' and 'motherhood'.⁵⁵ Lucero, a long-time judge, argued that VAW affected all women, regardless of socio-economic class, and that the violence litigated in her courtroom represented just the tip of broader experiences of violence: 'Usually when they arrive at the justice system it is because they have already passed through ... a cycle of violence.'⁵⁶ Such understandings echoed those found in the 2008 VAW Law and related documents which established VAW as connected to broader patriarchal structures and women as whole beings with rights and a range of roles.

While many noted that VAW affects women of different classes, all of the judges we interviewed (12 in total: five in Huehuetenango, five in Quetzaltenango and two in Guatemala City) paid particular attention to the challenges faced by poorer women. They highlighted that poverty and economic dependency prevented women from leaving abusive relationships and accessing justice, drawing connections with broader power structures. This reflected the majority of cases that came into their courtrooms, with middle-class and wealthy women being the exception. This led many of them to suggest that prison sentences were not enough to support victims of VAW. Judge Ariel reflected this sentiment:

One of the biggest challenges, I think, is not only to impose punishments on aggressors but instead to be able to give support to the victim. This need includes therapeutic support, medical or social support, including education. Because in many cases it is also because of the very economic situation, because of her dependency, both emotional and economic, that she is experiencing violence.⁵⁷

He therefore echoed the need expressed in the 2008 VAW Law and related documents for holistic support and reparations to prevent and address VAW. Another judge argued that changing the broader culture around gender in Guatemala was necessary to address VAW, but that the criminal-justice system was not well suited to do so. He explained that 'ideally, people who [were] found guilty and put in prison would have a chance to change their ideas' but he noted that rehabilitative services in Guatemala's prisons were practically non-existent.⁵⁸

The Socio-Political and Institutional Context: Undercutting Feminist Goals

Following the mandates established in the 2008 VAW Law and related documents, Guatemala's specialised VAW judicial systems concentrated judges, prosecutors and

⁵⁴ Author interview with Sergio, judge, 19 June 2016.

⁵⁵ Author interview with Luisa, specialised public prosecutor, 26 July 2017.

⁵⁶ Author interview with Lucero, judge, 2 July 2018.

⁵⁷ Author interview with Ariel, judge, 23 July 2017.

⁵⁸ Author interview with Sergio, judge, 16 July 2017.

domestic-violence resources into a central system to better attend to VAW survivors by facilitating access to social workers, psychologists, day-care centres and doctors, among other resources. Yet these measures to combat VAW and increase access to justice were embedded in a broader context that undermined specialised institutions' ability to transform justice to women's benefit. The number of judges, prosecutors and investigators was limited. The government never invested in social services to support the most vulnerable, and thus failed to address the conditions that rendered some more vulnerable to violence and less able to access state institutions in the first place. Even while it pursued criminal-justice reform related to VAW, the central government failed to adequately reform non-specialised government institutions and thus did not sufficiently address the widespread discrimination common in state institutions. Thus women on the ground experienced a 'patchwork state' in which institutions and officials that had internalised VAW reforms existed alongside institutions that had not.⁵⁹ The net effect was that, in practice, narrow, legalistic understandings of VAW were prioritised over those that connected VAW to overlapping social, political, economic and historical inequalities.⁶⁰ And at a larger level, the specialised courts and support structures were not equipped at all to deal with the overwhelming number of VAW complaints filed – in 2018 alone there were almost 49,000 VAW reports filed.⁶¹

Specialised institutions received insufficient and uneven support. The Otto Pérez Molina presidency (2012–15) represented a particular crisis point. His administration was openly hostile to women's governmental agencies and NGOs; failed to deliver all of the assigned budget to the judicial system; and siphoned millions of dollars in public funds in a vast corruption ring. According to interview respondents, a number of public prosecutors, public defenders and forensic experts who worked on VAW cases quit during this time because their pay was regularly delayed, impeding the hiring and retention of qualified personnel and weakening the quality of investigations. The executive branch's lacklustre commitment to supporting specialised and related institutions affected officials' day-to-day experiences, characterised by insufficient personnel and equipment, which communicated to them the de-prioritisation of their work.

Following the passage of the 2008 VAW Law and the creation of specialised courts, VAW became the most common criminal complaint in the country, producing a heavy workload for specialised courts, prosecutors and holistic support services. The formal ban on alternative settlements and the requirement that crimes be investigated, even if victims recanted, represented feminist victories in terms of persuading authorities to take VAW seriously. Yet the ban on alternative settlements also eliminated options for reducing prosecutors' and courts' caseloads and backlogs. Specialised officials' workloads further increased when cases of sexual violence against minors came under specialised courts' jurisdiction (in 2016). All of these realities combined to overwhelm specialised courts and prosecutors, as well as the psychologists, social workers and other support staff assigned to them. For

⁵⁹Beck, 'The Uneven Impacts of Violence against Women Reform in Guatemala'.

⁶⁰Godoy-Paiz, 'Women in Guatemala's Metropolitan Area'.

⁶¹United Nations Development Council (UNDP), *Violencia en contra de las mujeres a lo largo del ciclo de vida: Análisis sobre Guatemala, año 2018* (Guatemala City: UNDP, 2019).

example, in 2018, there were 34,422 reports of VAW in the 13 departments with specialised courts.⁶² That same year just 9,851 cases entered pre-trial hearings and just 3,045 advanced to trial⁶³ in specialised courts.⁶⁴ Courts and prosecutors did not have enough interpreters to meet the needs of Indigenous women; psychologists and social workers could not provide adequate attention to all survivors. Outside of the context of specialised institutions, holistic assistance was inaccessible for most survivors. For example, the few domestic-abuse shelters that existed in the country received such limited and inconsistent funding that they fell behind on their rent when the government failed to distribute allocated funds.

The Guatemalan government did advance in the collection of VAW-related statistics and measures of state responses, as mandated by the 2008 VAW Law and Accord 30-2010, by collecting data from public prosecutors, national forensic experts, police and courts, among others, allowing the state to provide evidence of action. The statistics were used by activists, international observers and government officials for a variety of purposes, but in the short term did not do much to help women whose cases were investigated and prosecuted slowly, if at all. The culture of numerical reporting affected officials' behaviour. Judges in specialised institutions reported pressure to produce as many verdicts as possible, as quickly as possible. Overworked and undertrained public prosecutors, fixated on securing as many guilty verdicts as possible, often failed to collect evidence on damages in their investigations or to make specific petitions for reparations when prosecuting cases, despite the CONAPREVI Protocol's mandates to do so.⁶⁵

Judges that we interviewed were rendering 50 to 60 verdicts a year, taking work home with them regularly and experiencing burnout and secondary trauma. They reported receiving pressure from higher-ups to increase their verdict counts, presumably to produce positive statistics for annual reports. One judge complained that higher-ups saw them as 'verdict-rendering machines'.⁶⁶ Despite their structural understanding of VAW and commitment to a more expansive form of justice, this context left officials little room to live up to the spirit of the feminist-inspired elements of the law and related protocols. Instead, the elements that were most easily embraced in courtrooms were those that fitted prevailing juridical and bureaucratic models based on relatively narrow views of violence, women and justice, as demonstrated below.

Everyday Practices in Guatemala's Specialised Courts

Courtroom observations permitted us to move beyond formal mandates and officials' perspectives to their enactment and operationalisation. We focus on our observations in Quetzaltenango and Huehuetenango. Quetzaltenango is a department in the western highlands, populated by 800,000 residents, roughly half of

⁶²INE, *Estadísticas de violencia en contra de la mujer, 2018* (Guatemala City: INE, 2018), p. 131.

⁶³UJEFEM, *Ocho años de la justicia especializada en delitos de femicidio y otras formas de violencia contra la mujer y violencia sexual, 2010–2018* (Guatemala City: UJEFEM, 2019), p. 88.

⁶⁴Guatemala lacks case-tracked data. Thus, the annual numbers for VAW reports, pre-trial hearings, and trials do not necessarily represent the same cases.

⁶⁵UJEFEM, *Ocho años de la justicia especializada*.

⁶⁶Author interview with Anita, judge, 21 July 2017.

whom are Mayan (K'iche' and Mam) and half Ladino (non-Indigenous);⁶⁷ 44 per cent live in poverty. Rates of reported VAW and sexual violence vary across municipalities within this department, ranging from 133 to 994 criminal complaints per 100,000 inhabitants in 2019.⁶⁸ The specialised criminal court in Quetzaltenango is in the departmental capital in a large judicial complex and consists of an administrative office, offices for three judges (one man and two women at the time of our 2019 research), and three small courtrooms.

Huehuetenango is a department located in western Guatemala populated by 1.7 million Guatemalans, 65 per cent of whom are Indigenous, belonging to one of nine distinct ethnolinguistic groups.⁶⁹ Huehuetenango is geographically dispersed, largely rural, and the vast majority of residents (78 per cent) live in poverty. Rates of reported VAW and sexual violence range among municipalities in Huehuetenango from 72 to 1,214 complaints per 100,000 inhabitants in 2019.⁷⁰ The specialised criminal court is located in the centre of the departmental capital, up to eight hours by car or bus from the most distant municipalities. It is in a humble building only identified with a small, spray-painted label on the outer wall. It consists of judges' offices, an administrative office and three courtrooms (one so tiny there is no room for observers). At the time of our research, it employed one female and two male judges.

We draw on excerpts of our observations from these two specialised courts to describe quotidian practices and interactions in courtrooms, focusing in particular on how actors in specialised courts conceive of and measure VAW, victims and justice. We find that, in contrast to the feminist understanding imbued in official mandates and internalised by many officials, on-the-ground practices in courts largely embedded VAW in a framework of incident-based, interpersonal conflict by erasing structural sources and ongoing processes of violence, kinship dynamics and elements of women's narratives that overflowed legalistic valuation of testimony and expertise. In metonymic transformations in which women and their experiences were rendered bureaucratically and legalistically legible, injured body parts stood in for whole persons; incidents of violence stood in for ongoing processes and structures of victimisation; and kin, communities and households were uprooted from their socio-economic and political contexts to be cast as witnesses and crime scenes. In these contexts, the ideal of holistic justice and reparations was narrowed down to the establishment of quantified jail sentences and monetary (largely unenforced) compensations.

Fragmenting Women and VAW

Women, especially poor, Indigenous or otherwise marginalised women, must overcome geographical, linguistic, cultural and social obstacles to bring their cases to specialised courts.⁷¹ For most women the closest institutions with whom they

⁶⁷INE, 'XII Censo Nacional de Población y VII de Vivienda'.

⁶⁸Observatorio de las Mujeres del Ministerio Público, 'Estadísticas del Portal', available at <http://observatorio.mp.gob.gt/wordpress/index.php/estadisticasportal/>, last access 23 June 2021.

⁶⁹INE, 'XII Censo Nacional de Población y VII de Vivienda'.

⁷⁰Observatorio de las Mujeres del Ministerio Público, 'Estadísticas del Portal'.

⁷¹Stephen, 'Fleeing Rural Violence'; Beck, 'The Uneven Impacts of Violence against Women Reform in Guatemala'.

can file complaints are the police or the local justices of the peace, which rarely have representatives that speak Indigenous languages and have a history of dismissing women's complaints. Once a report is completed, women must go through a forensic medical examination, which focuses on collecting evidence. The forensic examiner takes photographs of different parts of the woman's body, measures bruises and injuries, and takes notes. This fragmentation of the woman's body to produce visual and quantitative proof is in practice very important for a finding of physical and sexual violence,⁷² despite the fact the CONAPREVI Protocol stated that visible injuries were not necessary for establishing physical violence. While these forensic procedures are not specific to Guatemala, they do expose women to retraumatization. Unlike the Sepur Zarco case, where women's testimonies were validated as a central part of the evidence, these procedures focus on measuring visible bodily harm. Indeed, we heard stories of women being turned away when attempting to report abuse to public prosecutors if they did not have visible bruises or injuries. Reporting women also undergo forensic psychological examinations, meet with public prosecutors and may be asked to facilitate evidence collection, given public prosecutors' lack of staff. Throughout, women interact with offices that have insufficient translators for Indigenous languages, which leads to delays and mistranslations of their experiences. They must undertake multiple trips to offices in departmental centres, often with children in tow and accompanied by family or friends to offer interpretation, childcare or emotional support, thus demonstrating the collective nature of the experience of violence and the pursuit of justice.

If women overcome these hurdles, their cases may enter specialised courts, often after significant delays given courts' backlogs. In these courtrooms, the judge who rules on cases sits in front facing the public (there are no juries). On his/her right sits the victim, the public prosecutor and any other lawyers supporting the victim's or joint plaintiff's case. To the judge's left sit the accused, the public defender or the private attorney involved in the case. Translators for Indigenous languages sit next to the person who needs translation.

Trials begin with swearing in the accused and calling the first witnesses, who are often forensic experts. These experts first establish their expertise by fielding questions about their education and job experience and then narrate their findings, often in relationship to pictures and measurements of crime scenes and victims' bodies. They, along with police, are among the most important witnesses for securing a conviction given their perceived expertise and the importance placed on corroboration between testimonies and physical evidence. Victim testimony is an important additional element that can certify the 'truth of experience' though. Similar to Alessandra Gribaldo's findings related to Italian sexual violence courts, these testimonies require women and witnesses to 'report their experiences in the right way (i.e. through a suitable narrative) and to demonstrate that [victims] have experienced the violence as such'.⁷³ Ultimately, the public prosecutor's ability to successfully fragment and measure women's experiences and bodies and

⁷²Deborah White and Janice Du Mont, 'Visualizing Sexual Assault: An Exploration of the Use of Optical Technologies in the Medico-Legal Context', *Social Science and Medicine*, 68: 1 (2009), pp. 1–8.

⁷³Alessandra Gribaldo, *Unexpected Subjects: Intimate Partner Violence, Testimony, and the Law* (Chicago, IL: University of Chicago Press, 2019), p. 285.

re-aggregate them into evidence of physical and psychological damage is key to securing a guilty verdict. Prosecutors' questions thus focus on specific dates, times, event sequences and harm to specific body parts that they can corroborate with other testimonies and physical evidence.

The introduction of evidence is intimately linked to expert testimony and often involves the fragmentation of women's bodies and experiences in ways that may not even be recognisable to victims. For example, in an attempted-femicide trial we observed in Huehuetenango's specialised court in 2017, testimony from a technical investigator from the public prosecutor's office focused on the physical evidence of the attempted femicide. After being sworn in, the investigator, Maria, began by describing 25 different photographs that documented the physical damage done to the victim, a young Mam woman named Juana from a rural municipality. Juana alleged in her declaration that her husband asked her to bring him a drink and when she did not do it right away, he got angry, called her names and beat her severely with a piece of wood and an iron bar. She was pregnant at the time. Maria presented photographs of different body parts with physical damage on them that was visualised, quantified and filtered through Maria's narration and expertise, reflecting a fragmented view of women and an incident-based account of cycles of violence. Maria read each caption without further comment:

- (1) The face of the victim; (2) lesions on her left side; (3) lesions and bruises on her face; (4) the front of her face; (5) lesions on the right side of her face; (6) lesions on the top of her head; (7) close-up of lesions on the top of her head; (8) lesions on the back right side of her head; (9) lesions on the lower part of the back of her head; (10) her arms; (11) bruises on the right forearm; (12) bruises on the left forearm; (13) lesions on the entire left arm; (14) close-up of lesions on left arm; (15) lesions on the right arm; (16) close-up of lesions on right arm; (17) close-up of lesions on arms; (18) lesions on her back; (19) detail of lesions on her back; (20 and 21) details of lesions on other back area; (22) lesions on the upper part of the right breast; (23) lesions on the left breast; (24) lesions on the neck.⁷⁴

After reading the captions for each of these photographs, Maria testified that, 'with an interpreter the victim stated that the accused, Aldo Santiago, "hit me in the face, head, back, arms and chest".⁷⁵ Maria then described her second technical report, which included a series of photographs of the crime scene and of one of the weapons. She narrated in rapid succession:

- (1) The place where she was attacked; (2) close-up of place where she was attacked; (3) the house (exterior) where she was attacked inside; (4) close-up of house; (5) close-up of where she was attacked inside of house; (6) second close-up of place; (7) metal rod that the accused used to beat the victim; (8)

⁷⁴Maria, technical investigator from the public prosecutor's office, speaking at an attempted-femicide trial at the specialised VAW court in Huehuetenango, 2017.

⁷⁵*Ibid.*

metal rod; (9–11) metal rod; (12) bloodstain from the victim on the metal rod; (13) diagram of chain of custody of metal rod.⁷⁶

The above sequence demonstrates the literal fragmentation of Juana's body and the damage it suffered, as well as the breaking apart of the context of the event, and the weapons used to inflict harm. The act of a severe beating, which took place in the context of ongoing processes and broader structures of violence, was broken into individual body parts that in turn were further fragmented into individual wounds and bruises. The length, width, colour and texture of each wound and bruise was narrated and enumerated. For Juana, the experience is still an embodied memory of a severe beating all over her body when she did not bring her husband a beer.

This is representative of other trials we observed. Photographs are passed around the courtroom or projected while they are narrated, in the presence of the victim if she is present (she is not required to be), family members observing the hearing, and the accused, who is often shielded from the victim's view with a portable screen. These processes render visible the material results of the violence and are critical to corroborating the victims' testimony and establishing harm. In Juana's case, such fragmentations and mediations, through expert photographs and narrations, were leveraged to corroborate her account of the attack and to establish her as a trustworthy and credible victim. But they also fragmented her and her experiences and served to reinforce a view of VAW as an isolated incident of interpersonal violence.

In cases of rape, specialised courts emphasise findings of serious physical (especially genital) injury as the standard for non-consensual sex,⁷⁷ as can be seen in the below description of a case of sexual violence in Huehuetenango. A Mam adolescent named Virginia accused a neighbour of raping her. Her parents, especially her father, supported her in the many steps that followed the police report, including undergoing a forensic medical examination to collect physical evidence. We got to know Virginia and her family well in the course of our research and spoke with her and her family on multiple occasions following her interactions with the specialised courts in Huehuetenango, sharing meals and conversations with them and maintaining contact through WhatsApp.

Four days after the attack, Virginia's physical and gynaecological examination was performed by a Spanish-speaking forensic doctor, even though Virginia speaks Mam. In the forensic medical report included in Virginia's casefile, her body was broken into 'extra-genital, para-genital, genital' regions and the forensic specialist documented the genital and extra-genital wounds, noting their length in centimetres, colour and texture. The report also stated that Virginia's examination showed a recent '*desfloración*' ['deflowering'], and that she was not pregnant and had no venereal diseases, and referred to the collection of a vaginal-fluid sample. Given the delay between the attack and the examination, no evidence of semen was found. While the report was critical to establishing her as the victim of a violent act, and rendered the violence she experienced visible in court, it also described

⁷⁶*Ibid.*

⁷⁷White and Du Mont, 'Visualizing Sexual Assault'.

Virginia in dehumanising ways by breaking her down into bodily regions and reducing her subjectivity and experience to her 'deflowered' status. The term 'deflowered' continues to be used in Guatemalan forensic examinations to refer to a girl or woman without an intact hymen, discursively reinforcing the social and legal fixation on women and girls' sexual purity. This socio-legal focus can be seen in the fact that up until 2009, rape was defined as a crime against a woman's honour.⁷⁸ Virginia spoke with us of how she dreaded being in the court because of how it made her feel.

Another standard part of trials is a psychological report, usually submitted and narrated by a forensic psychologist associated with the public prosecutor's office, but sometimes by a private psychologist. Through reports and testimonies, psychologists describe the harm done as a result of physical and sexual violence (such as 'anxiety', 'stress' and 'depression') and in so doing contribute to an image of a worthy victim who deserves justice. For example, the forensic psychologist who interviewed Virginia, described above, reported Virginia's version of the attack and her symptoms, including intense fear and depression, a 'loss of interest in daily activities, loss of appetite, and insomnia'. The psychologist's written report also reflected her valuation of Virginia as deserving justice. Relying on racialised and classed language, she depicted Virginia in a way that would elicit sympathy in the courtroom. She wrote that 'the patient has a humble appearance', presented with 'adequate' clothing and personal hygiene, and that the family had 'limited economic resources [as] the father works in agriculture and the mother does housework'. Referencing Virginia's Indigenous identity, the examiner additionally noted that Virginia was suffering from 'cultural patterns of shame for having lost her virginity in a way that is seen as dishonourable and shocking' and that affected 'her future marital happiness'.

In our multiple interviews with Virginia and her family, no one ever expressed shame about the attack or mentioned concern with regard to Virginia's virginity or possible marital happiness (indeed Virginia later partnered without issues). This demonstrates how officials, themselves affected by stereotypes, mediate and, in so doing, transform victims' experiences for consumption in courts in order to squeeze people's complex subjectivities into the narrow category of 'victim'. These translations of women's experiences simplify women's complex experiences but are also critical to efficiently establishing their credibility and worthiness. These are important especially in the face of defence strategies that seek to undermine victims, either by questioning the reliability of their testimonies or their character. For example, we witnessed a defence attorney highlighting drinking and the social habits of one victim to cast her as unworthy and unreliable, despite directives in Accord 30-2010 and the CONAPREVI Protocol to avoid using such stigmatising value judgements.

In attempts to render as many verdicts as quickly as possible, judges often focused on physical evidence which was much easier to evaluate than other forms of evidence such as testimony, but also much harder to come by given the weaknesses in the public prosecutor's investigatory capacities. In a trial related to physical violence we observed in Quetzaltenango, the judge spoke at length in his verdict about the importance of the physical evidence and its correspondence

⁷⁸Godoy-Paiz, 'Violence in Guatemala's Metropolitan Area'.

with the victim's testimony. The victim, Belinda, accused her child's father of beating her in the head with a stone. She went to the hospital, where photographs of her head wound were taken. The forensic doctor described in detail the wound produced, which was about 3.15 centimetres by 0.61 centimetres, and deep. During her testimony in a Quetzaltenango court, the doctor showed photographs of the blood, the stitches and the wound from different angles. She stated that the wound was 'created by a heavy object with an uneven edge'. Belinda provided solid testimony and stated that during the assault, the accused said, 'I am going to kill you'. Evidentiary photographs also showed threats and vulgarities the accused had published on Facebook. In his verdict the judge stated:

She said that 'he beat me with a stone, and he was going to kill me'. The expert forensic doctor evaluated her just 23 hours after this happened. The doctor's report is detailed. She received medical attention for eight days. There is a correlation between the wounds and what she said happened ... I saw the photograph of the wound, the photograph of the dried blood, and the stitches associated with this wound ... Even though two years and 11 months have passed since this happened, the testimony that the victim provided was consistent and useful. The presumption of innocence on the part of the accused is destroyed ... I find the accusation credible.

In Virginia's case, the sexual assault described previously, the judge weighed the evidence of physical assault differently from the rape evidence, which he found deficient. Because there were inconsistencies in witnesses' testimonies and the analysis of vaginal fluids did not produce physical evidence of rape, the judge did not find the accused guilty of sexual violence. Yet, even though the prosecutor failed to prosecute the accused for it, the judge found the defendant guilty of physical violence because there was documented evidence of bruises on Virginia's face and body, thus demonstrating the power of bodily evidence and the benefit of judges sensitive to overlapping forms of VAW. In an interview three years after the trial, the judge reflected on the importance of physical evidence in his verdict.

It is possible that there was a rape. The problem is that there were not elements of proof to establish that there was a rape because they did not carry out the proper expert examinations to be able to establish that she had indeed been raped. However, through some tests presented ... because the adolescent presented blows to some parts of the body ... This evidence suggested to me the fact that he assaulted her and pushed her to the ground. So, he was sanctioned for violence against the woman in its physical manifestation.⁷⁹

Although the 2008 VAW Law, related documents and specialised officials recognised VAW as rooted in ongoing processes, kinship, social norms and poverty, these understandings did not fit well into overburdened and under-resourced courts that were pressured to get through as many cases as quickly as possible. The failure to attend to such realities impeded some women's effective access to specialised courts

⁷⁹Author interview with Francisco, judge, Huehuetenango.

and shaped the experiences of those who were able to bring their cases to court. While space limitations prevent us from going into great detail about the ways in which women's kinship, contexts and daily lives were erased in practice, one example can illustrate.

In a case of physical violence that we observed in Huehuetenango, a Mam man named José was accused of physically beating his sister Josefina. The defence's first witness was the victim's daughter-in-law, a woman named Rosa who lived with Josefina. Rosa admitted that she recognised the accused as her husband's uncle but was reluctant to say more. She had been forced to come to court and clearly did not want to testify, saying '[a]s I said before, I do not want to get involved in problems. I do not know why they are fighting.' In response to the defence lawyer's further questions, she repeated, 'I don't want to get involved in problems.' The judge then instructed her that she had to answer the questions. The defence lawyer asked her to name the people she lived with. She replied, 'the family'. 'What are their names?' asked the defence lawyer. Instead of answering, Rosa broke down in tears. The judge instructed her again to answer. When the defence asked her, 'Did you see José hit Josefina?', Rosa responded again, 'I don't want to get involved.' 'Did someone threaten you?' asked the defence lawyer. 'No, no one. I don't want to get involved', Rosa answered again. The judge then interrupted and said, 'You are obligated to testify. I am going to ask that it be certified that you refused.'

Rosa left the courtroom. In the waiting room we overheard Rosa talking with her husband's family, explaining that she was worried about what would happen to her and her children if the problem escalated. She was reliant on her mother-in-law for housing and seemed to recognise that upsetting her husband's uncle could produce negative repercussions for her and her children. Given that she was living outside her home community, Rosa was dependent on her husband and his extended family. In this particular case the gender, generational and marriage and in-law relationships seeped into the court through Rosa's refusal to testify. In the context of extreme poverty, reliance on power-infused kin relations and patriarchal family structures which were woven into her daily life as a mother, wife and daughter-in-law, among other relational identities, shaped Rosa's motives in ways that were not captured in a court that viewed her narrowly as a witness to an incident of interpersonal violence.

Sincerely dedicated specialised officials were not ignorant of such forces and relations that affected victims and witnesses outside the courtroom, as can be seen in the above sections. Yet, despite their centrality to the experience of violence and the pursuit of justice, these factors were in practice erased as judges, prosecutors and forensic experts fragmented women's subjectivities and experiences of violence into body parts and incidents, reflective of a traditional criminal-justice approach to VAW. This approach was rooted in a narrower understanding of VAW than that embodied in parts of the 2008 VAW Law and related protocols – one that reduced women's complex identities to that of victim, their embodied experiences to injured body parts, and structural violence to incidents of interpersonal conflict. This approach was connected to a valuation of physical evidence of harm and expert testimony as the most important forms of proof and an overlooking of those aspects of women's and witnesses' testimonies and experiences that did not neatly fit into legal categories.

Calculating Justice and Reparations

Inside the courtroom, women's ongoing experiences of overlapping violences were translated into a 'single, documented, provable, and unquestionable event'⁸⁰ that carried a quantifiable carceral and monetary value. Despite the 2008 VAW Law and other documents' valuation of holistic reparations for victims, echoed by specialised officials in interviews, in practice justice consisted of jail time, unenforced monetary compensation and little else. As established by Guatemala's criminal code, criminal sentences of five years or less (for any crime) were commutable at a cost set by the judge. Because this provision applied to VAW crimes as well, this served to further quantify and monetise justice in specialised courts. Commutation fees were paid to the government, not the victim, and were therefore a particularly empty form of justice for survivors. For example, in Belinda's case described above, the judge found the accused guilty and sentenced him to five years of prison, commutable at the cost of US\$1.30 per day for a total of US\$2,370. This quantity was far out of reach for many Guatemalans, 60 per cent of whom live below the national poverty line and 25 per cent of whom live on under US\$3.20/day.⁸¹ The possibility of commutation for some sentences meant that, just as with victims, poor defendants had very different experiences of specialised justice compared to their better-off counterparts.

In addition to prison sentences, judges and prosecutors could pursue justice through the assignment of reparations, which, according to the 2008 VAW Law and related documents, were meant to be holistic. Yet, as noted above, public prosecutors who were focused on producing as many guilty verdicts as possible often failed to collect evidence of damages in their investigations and sometimes failed to include petitions for reparations alongside their requests for jail time. Pressured to move cases through quickly to produce verdict counts and cognisant of their limited ability to affect broader change, many judges fell back on monetary forms of reparations. Money, after all, is attractive in its apparent ability to commensurate, to render otherwise hard-to-value phenomena like physical harm or emotional distress comparable,⁸² even in contexts like specialised courts which are supposed to operate according to more expansive views. Judges often sentenced perpetrators to pay monetary compensation to cover women's legal costs and recognise their pain and suffering. Yet judges acknowledged that these reparations were 'largely symbolic', as one judge explained, because of perpetrators' limited ability to pay and the low likelihood of enforcement. In their rulings some judges also included statements saying that the victim should have access to free psychological counselling. In practice, because of the dearth of resources at public and non-governmental support centres, long wait time and the fact that most psychological services were offered in departmental capitals, victims – especially those from remote areas – did not have effective access to these services. Judges sometimes also prescribed rehabilitative therapy for men who were sent to prison but knew full well that such services were in practice

⁸⁰Maria Martinez and David Casado-Neira, 'Fragmented Victims: Women Victims of Gender-Based Violence in the Face of Expert Discourses and Practices in Spain', *Women's Studies International Forum*, 59 (Nov. 2016), p. 44.

⁸¹World Bank, 'Guatemala', available at <https://data.worldbank.org/country/GT>, last access 23 June 2021.

⁸²Fourcade, 'Cents and Sensibility', p. 1734.

unavailable in the dysfunctional prisons. Such measures thus fell far short of the ideal of holistic reparations established in the law and related documents.

The relatively narrow assignment of punishments and reparations reinforced a view of VAW as an isolated, interpersonal matter. For example, in the case discussed above in which Virginia was sexually assaulted by her neighbour, the resulting harm was much broader than that represented by Virginia's physical injuries and extended to her family.⁸³ In our interviews with them, Virginia and her family complained that the perpetrator's family continued to harass them long after the assault. As a result, Virginia stopped leaving the house and dropped out of school – a decision that would have long-term ramifications for Virginia and her family, given the tendency to pool economic resources in poor areas. What is more, Virginia's family, especially her father, incurred significant expenses in terms of travel costs and missed work accompanying Virginia in the five-year period between her attack and the guilty verdict. This demonstrates the group-based and relational effects of VAW and the importance of kin relationships in accessing justice. Yet, in practice, the court continued to rely on an interpersonal view of VAW and a narrow interpretation of reparations that ignored these complexities. The judge awarded Virginia US\$1,350 in compensation for legal costs and pain and suffering, and sentenced her perpetrator to six years in prison (he served less than half). Reparations did not address the long-term effects of years of harassment from her perpetrator's kin, isolation and Virginia's resulting lack of education. Notably, the judge denied the requested compensation for Virginia's father's costs and lost income.

Conclusions

Guatemala's 2008 VAW Law and legal statutes related to specialised courts incorporated feminist understandings of VAW and justice. They mandated the creation of specialised courts that provided hope for victims of violence to access a form of justice that dignified them as rights-bearing subjects affected by broader structures of inequality and violence. Courts were staffed by specially trained and often highly motivated judges, and other court personnel who dedicated their careers to making a difference in women's lives. Yet the pressures placed on officials in the context of structural inequality, a patchwork state, weak political will and insufficient resourcing limited their abilities to enact the most radical elements of their mandates. In practice, officials enacted the 2008 VAW Law in ways that challenged impunity for VAW but that also reproduced an incident-based, interpersonal view of violence; failed to fully recognise women as whole subjects; and encouraged narrow forms of justice and reparations, even though officials themselves recognised the limits of doing so. And at a larger level, the reality that specialised courts continue to be under-resourced, understaffed and often inaccessible to many women suggests the negligence of the Guatemalan state in relation to VAW.

In our interviews with those labouring in and around specialised courts, officials expressed their beliefs that specialised courts and related institutions could do much more. Judges, for example, recognised poverty and dependency on kin and patriarchal family structures as a barrier to accessing justice and dreamed of government funds

⁸³Beck, 'The Uneven Impacts of Violence against Women Reform in Guatemala'.

and programmes to overcome these barriers through services such as job training, schooling or other forms of support that would contribute to truly holistic reparations. The gaps that they identified between formal mandates, their personal motivations and the on-the-ground practices thus highlight the outstanding debt that the Guatemalan government owes to women, and society more generally. More broadly, the weaknesses they confront reflect the limitations of creating specialised institutions to address VAW without sincere efforts to promote larger social change – as has been the case in other Latin American countries such as Brazil and El Salvador.

An additional set of factors that limit the present-day impact of specialised institutions is the reality that in recent years there has been a backlash against the advances made in addressing gender-based violence, gender inequality and impunity in Guatemala. Challenges to the 2008 VAW Law included a constitutional challenge to the entire law, a proposal to amend the law to include punishments for women who lodged false accusations, and a constitutional challenge to the provision that barred those convicted of femicide from getting time off for good behaviour. Only the last challenge was successful. Attorneys General Paz y Paz and Aldana, who were committed to combatting VAW and impunity, have not been succeeded by a like-minded counterpart. Law-makers have proposed legislation that challenges the rights of women and LGBTQ people, such as the proposed 'Life and Family Protection' bill which would have expanded the criminalisation of abortion and defined the family so as to discriminate against LGBTQ people (the bill stalled in Congress). Right-wing administrations have attacked the institutions most effective at combatting impunity, including the Comisión Internacional contra la Impunidad en Guatemala (International Commission against Impunity in Guatemala, CICIG), whose mandate was terminated in 2019.

Still, these realities and our findings should not be seen as evidence of the worthlessness of the 2008 VAW Law and specialised courts. The very presence of conservative backlash demonstrates the destabilising potential of these new institutions and the ideals that they intend to uphold, even if they do not always fully succeed. Guatemalan media outlets now reference VAW not only when reporting on particular incidents of violence, but also when reporting on the proceedings of trials in specialised courts, the opening of new specialised institutions and the release of government statistics and reports related to VAW (as mandated in the 2008 VAW Law). Journalists often use the language codified in law, including 'femicide', 'misogynistic violence' and 'gender-based violence', rather than the previously popular, de-gendered term 'intrafamilial violence'. As a result, the 2008 VAW Law and specialised institutions directly and indirectly challenge the view of VAW as private, inevitable or normal, and break with the government institutions' historical tendency to normalise gendered violence. Perhaps most importantly, VAW laws and specialised courts such as those in Guatemala and elsewhere provide activists and survivors with important social and political capital in their ongoing and critical fight to decrease gender-based violence and resocialise new generations, even in the face of reluctance and backlash on the part of political leaders.

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Spanish abstract

Este artículo explora cómo en Guatemala mandatos formales asociados con la Ley en contra del Femicidio y Otras Formas de Violencia contra la Mujer, de 2008, y con cortes especializadas en violencia contra la mujer han encontrado desafíos significativos dadas las limitaciones estatales impuestas. A partir de observaciones en las mismas cortes, análisis de documentación de casos, y entrevistas, encontramos que mientras los mandatos formales incorporaron entendimientos feministas de la violencia en contra de las mujeres, mismos que con frecuencia fueron internalizados por funcionarios en las cortes, en la práctica cotidiana las cortes especializadas reproducían la tendencia de mostrar dicha violencia como algo interpersonal, fragmentar las experiencias de la gente y aplicar formas estrechas de justicia sin incorporar las intenciones plenas de la ley de 2008 y de las instituciones de apoyo. Este estudio de caso, entonces, ilumina cómo y por qué las soluciones legales por sí mismas no son suficientes para reducir la violencia basada en género y el feminicidio, particularmente frente a los desafíos dispares y abiertamente hostiles mostrados por los gobiernos.

Spanish keywords: violencia contra las mujeres; Guatemala; género; justicia; reforma para la equidad de género; etnografía

Portuguese abstract

Este artigo investiga como na Guatemala mandatos formais associados à Lei contra o Femicídio e Outras Formas de Violência contra a Mulher, de 2008, e aos tribunais especializados de violência contra a mulher têm encontrado desafios significativos devido a restrições impostas pelo Estado. Com base em observações feitas em tribunais, análises de arquivos de casos, e entrevistas, descobrimos que, embora os mandatos formais incorporassem entendimentos feministas a respeito da violência contra as mulheres, algo muitas vezes internalizado entre os funcionários dos tribunais, na prática diária os tribunais especializados reproduziam a tendência de descrever a violência como interpessoal, fragmentar as experiências das pessoas e promulgar formas restritas de justiça que não incorporam a intenção plena da lei de 2008 e das instituições destinadas a apoiá-la. Este estudo de caso, portanto, ilumina como e por que as soluções jurídicas por si só não são suficientes para reduzir a violência de gênero e o feminicídio, particularmente em face dos desafios desiguais e abertamente hostis apresentados pelos governos.

Portuguese keywords: violência contra a mulher; Guatemala; gênero; justiça; reforma da igualdade de gênero; etnografia

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