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Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

Guatemala: Domestic violence, including legislation, state protection, and services available to victims

1. Overview

According to Human Rights Watch, "[v]iolence against women is a chronic problem in Guatemala" (Jan. 2011). The Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) says that it is the "most reported crime, with more than 40,000 complaints lodged every year" (OAS 27 Mar. 2012). UNICEF reports that, on average, two women are killed each day (UN 28 Nov. 2011). According to the Inter Press Service (IPS), an international news agency (IPS n.d.), Guatemala has "one of the highest female murder rates in the world" (IPS 31 Jan. 2012). The IPS article further indicates that, according to police records, between 2000 and 2010, 5,200 women died in gender-related violence (ibid.).

The Director of the Center for Gender and Refugee Studies (CGRS) at the University of California's Hasting College of Law, who has conducted extensive research on gender-

based violence in Guatemala (CGRS 24 Apr. 2012, 2) states that statistics for "the number of prosecutions involving domestic violence specifically" are not available, but "the statistics for violence against women overall are revealing" (ibid., 9).

According to the InfoSurHoy.com, a news agency reporting on Latin America and the Caribbean (n.d.), there were 720 women killed in 2009 (14 Dec. 2011); IPS says there were 675 killed in 2010 (IPS 31 Jan. 2012). The IACHR says that, in 2011, "[a]ccording to data provided by the Presidential Commission against Femicide, 705 women were killed and 28 were reported dismembered" (OAS 27 Mar. 2012). InfoSurHoy.com, reporting on 14 December 2011, says similarly that there had been, as of that date, 651 femicides in the country. In 2011, out of every 10 women killed, 3 had previously either reported violence or had been granted restraining orders for their protection (OAS 27 Mar. 2012), and about 24 percent of women killed died as a result of domestic violence (InfoSurHoy.com 14 Dec. 2011). The highest rates of violence against women in 2011, according to police information, were in Alta Verapaz, Guatemala City, Huehuetenango, Quetzaltenango, Quiche, San Marcos, and Suchitepéquez (ibid.). The CGRS director notes that many women do not report domestic violence due to a lack of "confidence in the justice system to provide protection and a just result," as well as lack of economic opportunities and shelters (24 Apr. 2012, 7). According to the UNICEF, about 90 percent of domestic violence abuses are not reported (UN 28 Nov. 2011).

2. Legislation

A new law, the Law against Femicide and Other Forms of Violence against Women (*Ley contra el Femicidio y otras Formas de Violencia contra la Mujer*) was approved in April 2008 (Musalo et al. 19 Apr. 2010, 165; GHRC May 2009). Prior to this law, the 1996 Law to Prevent, Punish, and Eradicate Family Violence (*Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar*) addressed violence against women; however, "it only provided protective measures for women facing domestic violence and was not intended to punish aggressors" (CGRS 24 Apr. 2012, 4). The 2008 law recognizes femicide, violence against women, including psychological and economic violence as punishable crimes:

[translation]

Article 6. Femicide. The crime of femicide is committed by persons who, within the framework of unequal relations of power between men and women, kill a woman for being a woman, availing themselves of any of the following circumstances:

- a. Having tried unsuccessfully to establish or re-establish a couple's or intimate relationship with the victim.

- b. Maintaining family, marriage, cohabitation, intimate, courtship, friendship, companionship or employment relations with the victim during the time at which the act was perpetrated, or having maintained such relations with the victim
- c. As the result of a repeated expression of violence against the victim.
- d. As a result of group rituals whether or not using weapons of any kind.
- e. Disregarding the body of the victim to satisfy sexual instincts, or committing acts of genital mutilation or any other type of mutilation..
- f. Out of misogyny.
- g. When the act is committed in the presence of the victim's children.
- h. When any of the qualification circumstances set out in Article 132 of the Criminal Code is in effect.

Persons responsible for such crimes shall be punished by imprisonment from twenty-five to fifty years, and sentence reduction may not be granted for any reason. Persons charged with commission of this crime may not benefit from any alternative measure.

Article 7. Violence against women. Violence against women is committed by persons who, in the public or private sphere, exercise physical, sexual or psychological violence, availing themselves of the following circumstances:

- a. Having tried unsuccessfully, repeatedly and continuously, to establish or re-establish a couple's or intimate relationship with the victim
- b. Maintaining family, marriage, cohabitation, intimate, courtship, friendship, companionship, employment, educational or religious relations with the victim during the time at which the act was perpetrated, or having maintained such relations with the victim.
- c. As a result of group rituals whether or not using weapons of any kind.
- d. Disregarding the body of the victim to satisfy sexual instincts, or committing acts of genital mutilation.
- e. Out of misogyny.

Persons responsible for the crime of physical or sexual violence against women shall be punished by imprisonment from five to twelve years, according to the seriousness of the crime, notwithstanding that such acts may constitute other crimes under ordinary law.

Persons responsible for the crime of psychological violence against women shall be punished with imprisonment from five to eight years, according to the seriousness of the crime, notwithstanding that such acts may constitute other crimes under ordinary law.

Article 8. Economic violence. Economic violence against women is committed by persons who, in the public or private sphere, engage in conduct that falls within the following circumstances:

- a. Adversely affect, limit, or restrict the free availability of women's assets or economic or labour rights.
- b. Force women to sign documents that affect, limit, restrict their assets or place them at risk; or that exempt [the perpetrator] from financial, criminal, civil or any other liability.
- c. Destroy or hide documents justifying ownership or personal identity documents, or property, personal effects, work tools that are essential for carrying out their usual activities.
- d. Wear down a woman's will through financial abuse by not covering her basic needs and those of her children.
- e. Exercise psychological, sexual or physical violence on women in order to control income or the flow of monetary resources entering the home.

Persons responsible for this crime shall be punished by imprisonment from five to eight years, notwithstanding that such acts may constitute other crimes under ordinary law. (Guatemala 2008)

The statute further indicates that

[translation]

[c]ultural or religious customs or traditions cannot be invoked in crimes against women as grounds for justification or exculpation in perpetrating, inflicting, consenting to, promoting, instigating or tolerating violence against women.

Upon simple reporting of a crime of violence in the private sphere, the jurisdictional body hearing the report must order the security measures referred to in Article 7 of the Law to Prevent, Punish and Eradicate Domestic Violence. Such measures may be applied to the victim of the crimes set out in this law even where the aggressor is not her relative. (ibid., Art. 9)

Observers say that the law is not effectively enforced (US 8 Apr. 2011, Sec. 6; CGRS 24 Apr. 2012, 13), an assessment corroborated by the Guatemalan ambassador to Canada who acknowledged that the law is not "as efficiently enforced as it is intended" (Guatemala 2 May. 2012).

3. State Protection

According to the 2008 law against femicide,

[i]t is the obligation of the State to guarantee the following rights for women who are victims of any form of violence:

- a. Access to information.
- b. Comprehensive assistance.

Civil servants who, without just cause, deny or delay the provision of information or comprehensive assistance to the detriment of the process or of the victim, shall be subject to labour and administrative measures and sanctions, without prejudice to civil or criminal liability if applicable. (Guatemala 2008, Art. 13)

Several training programs were created for key actors in the government to prevent and respond to violence against women (CGRS 24 Apr. 2012, 6). For instance, in 2011, "a series of trainings were conducted with prosecutors regarding crimes against women" (ibid.). However, this training focused on the special courts, rather than the ordinary courts, in which "judges routinely fail to correctly identify crimes under the 2008 Law" (ibid.).

The US Department of State's *Country Reports on Human Rights Practices for 2010* says that the Institute of Public Criminal Defense provides free medical, legal and psychological assistance to victims of domestic violence (US 8 Apr. 2011, Sec. 6). According to the report, by the end of 2010, "the project had attended to 12,641 cases of domestic violence" (ibid.).

The Office of the Ombudsman for Indigenous Women within COPREDEH [the President's Commission on Human Rights] provides legal assistance and mediation, as well as social services for indigenous women victims of domestic violence (ibid.). The office works with governmental and non-governmental institutions on prevention of violence and discrimination against indigenous women, but does not function on a national level due to a lack of "human resources and logistical capacity" (ibid.). The number of complaints this office receives is unknown (ibid.). According to the CGRS director, indigenous women "face double layers of discrimination in the justice system as a result of not only their gender, but also their ethnicity" (CGRS 24 Apr. 2012, 12). Government institutions are scarce in remote areas where indigenous women live and "even if a woman makes it to a government office, she is unlikely to be able to communicate as very few government officials speak indigenous languages" (ibid.). In 1999, the government created the Defence of Indigenous Women agency in order to protect and promote the rights of indigenous women (ibid.). However, according to the CGRS director, the

government does not provide the organization with adequate resources "to meet the great need" (ibid.).

4. Police

InfoSurHoy.com, without being precise about when, notes that the National Civilian Police have implemented a new protocol, which allows them to enter a home without a warrant if, according to the police judgement, a woman is in danger (14 Dec. 2012).

However, sources indicate that domestic violence is regarded by the police as a "private matter" (Drysedale Walsh 2008, 54; GHRC May 2009, 6). Further, when contacted with complaints of domestic violence, police are "slow" to respond and sometimes they fail to appear at all (ibid.). Similarly, the CGRS director states that many police officers do not see violence against women as a serious crime (CGRS 24 Apr. 2012, 7). Moreover, authorities who receive domestic violence complaints often fail to refer them for investigations to the Public Prosecutor's Office (ibid.). Two sources indicate that the police force lacks training on how to deal with victims of domestic violence (US 8 Apr. 2011, Sec. 6; GHRC May 2009, 6). The Guatemala Human Rights Commission (GHRC) further indicates that the police force is understaffed and is "notoriously corrupt" (ibid.).

5. Judiciary

The Public Prosecutor's Office, which includes several entities such as the Women's Office, Office of Human Rights, and Crime Against Life and Personal Integrity Unit, is responsible for the investigation of femicide cases" (GHRC May 2009, 6). Agence France-Presse reports that "prosecutors receive more than 65,000 complaints of domestic violence a year" (19 Jan. 2012).

The creation of specialized courts, which focus on crimes against women (AI 2011; CGRS 24 Apr. 2012, 6), is regarded as an improvement (ibid., 5). They operate in Quetzaltenango, Chiquimula and Guatemala City (ibid.). A mobile court program was also created to allow judges to go to the remote areas (ibid.). However, these programs do not function "effectively" due to a lack of resources, coordination between the agencies, and "persistent stereotyping and discriminatory attitudes on the part of some State actors" (ibid.). In January 2012, a task force to combat femicide was created under the Ministry of Interior (ibid., 6).

Various reforms to the Criminal Procedure code have been implemented (ibid., 8). For instance, the new procedure allows for "sentences to be read orally, immediately following the hearing, which can eliminate the lag between the hearing and sentencing" (ibid.). However, the vast majority of the cases are heard in ordinary courts, "where

resolution is miniscule" (ibid., 9-10). According to the statistics, less than two percent of cases were resolved in ordinary courts in 2010 and 2011 (ibid., 11). In the special courts, 0.95 percent of cases were resolved in 2010, and 23.96 percent in 2011 (ibid.).

The Presidential Commission against Femicide was created in 2009 (InfoSurHoy.com 14 Dec. 2011). The Commission, which works with the Ministry of Interior on prevention of violence against women, receives about 600 reports of violence against women every month (ibid.).

However, sources indicate that the judicial system fails to provide adequate protection (GHRC May 2009, 7; CGRS 24 Apr. 2012, 7-8). Several sources state that, despite the 2008 law, there is a high rate of impunity for crimes against women (Human Rights Watch Jan. 2011; CGRS 24 Apr. 2012, 8-9; GHRC May 2009, 6). Sources indicate that the rate of impunity is in the vicinity of 98 percent (CGRS 24 Apr. 2012; GHRC May 2009; OAS 27 Mar. 2012). According to the GHRC, after the law was implemented in 2008, the number of women killed continued to grow (May 2009, 2). The report states that, according to the Human Rights Ombudsman, "crimes against women are not recognized, not investigated, and not brought to justice" (GHRC May 2009, 7). Similarly, the Director of CGRS notes that

[m]any prosecutors do not see violence against women as a serious problem that warrants attention. Some judges also exhibit bias toward women. ▫ There is also a pattern of prosecutors and judges urging conciliation of conflicts, rather than seeking to protect victims of domestic violence. ▫ Even in cases where the courts successfully prosecute and convict perpetrators of domestic violence, commutable sentences render protection illusory. (CGRS 24 Apr. 2012, 7-8)

The Director further indicates that many aggressors are sentenced to five years of imprisonment and "the law allows convicted defendants to pay a fine for their crimes to avoid incarceration" (ibid., 8). The fine is between 5 and 100 quetzales [C\$0.63-13 (XE 26 Apr. 2012a, XE 26 Apr. 2012b)] per day (CGRS 24 Apr. 2012, 8). For instance, in 2009, 36 out of the 45 convictions resulted in commutable sentences (ibid.). According to the CGRS director, "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" (ibid.). Amnesty International (AI) provides an example from 2009 in which a woman was attacked and seriously injured by her husband, who was later arrested and sentenced, but not sent to jail (AI 7 Mar. 2011). In 2010, the woman left the shelter where she was living, in order to return to her community, but was killed a few months later (ibid.). According to the report, the authorities had not started an "effective investigation" into her death (ibid.).

Sources report that, very often, blame is assigned to the victims of crime (GHRC May 2009, 6; CGRS 24 Apr. 2012, 7). Women are regarded as "unfaithful and dishonest" (GHRC 2009, 6). Although it is not prescribed by law, prosecutors regularly require women to undergo lie-detector tests (CGRS 24 Apr. 2012, 7).

The US Department of State's *Country Reports 2010* notes that investigation and prosecution of domestic violence cases take about one year (US 8 Apr. 2011, Sec. 6). In 2010, there were "13 prosecutions for killings of women in Guatemala City □ but few prosecutions resulted in convictions" (ibid.). According to the CGRS director, many women abandon their cases due to a lack of protection, economic resources, legal assistance and the requirement of multiple visits to the prosecutor's office, which causes stress and hardship (CGRS 24 Apr. 2012, 7, 8). In 2010, 95 percent of women reportedly dropped their cases (ibid., 7).

6. Support Services

6.1 Telephone Hotlines

Country Reports 2010 indicates that there are three emergency hotlines established by the government's Program for Prevention and Eradication of Intrafamily Violence (US 8 Apr. 2011, Sec. 6). According to the report, hotlines receive about seven calls daily from battered women and children (ibid.). The Institute of Public Criminal Defence has a hotline to assist women who are victims of physical violence (ibid.). In 2010, it received 59,319 calls (ibid.)

6.2 Shelters

Sources state that there are not enough shelters for victims of domestic violence (US 8 Apr. 2011, Sec. 6; CGRS 24 Apr. 2012, 13) and they are of limited capacity (ibid., 12). According to *Country Reports 2010*, there are two women's shelters in Guatemala City, one with a capacity to house 40 persons and another with a capacity to house 20 victims and their families for 6 months at a time (US 8 Apr. 2011, Sec. 6). The report indicates that there is one shelter in Quetzaltenango, which has the capacity to house 40 women (ibid.). The government and foreign donors provide financial support for these three shelters (ibid.). According to the *Country Reports 2010*, the government operates eight shelters for victims of domestic violence, which provide temporary accommodation, as well as legal and psychological support (ibid.).

The CGRS director stated that comprehensive support centres for survivors of violence (CAIMU) were established by the government in five departments: Guatemala City, Quetzaltenango, Escuintla, Rabinal and Suchitepequez (CGRS 24 Apr. 2012, 5, 12). Two of these centres, which are located in Guatemala City and Quetzaltenango, have a

limited capacity, respectively about 25-30 women and about 35 women (ibid.). Further, women who have sons older than twelve years are excluded from seeking refuge in these centres (ibid.). The centre in Quetzaltenango, while part of the CAIMU network, receives most of its funding from non-governmental sources (ibid.).

There are few, if any, shelters available for women in rural areas (ibid., 13). The US *Country Reports 2010* states that there are some small private shelters operating in rural areas, but how many is unknown (8 Apr. 2011, Sec. 6).

7. Ability of Victims of Domestic Violence to Relocate Within Guatemala

Two sources indicate that it is "very difficult" for victims of domestic violence to escape a situation by relocating to other areas of Guatemala due to a lack of housing, insufficient income (Guatemala 2 May 2012; Mujeres en Acción 17 Apr. 2012), a lack of education and a dearth of employment opportunities (ibid.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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