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## Criminalization is Not the Only Way: Guatemala's Law Against Femicide and Other Forms of Violence Against Women and the Rates of Femicide in Guatemala

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# **Criminalization is Not the Only Way: Guatemala's Law Against Femicide and Other Forms of Violence Against Women and the Rates of Femicide in Guatemala**

**Sydney Bay<sup>†</sup>**

*Abstract:* Femicide in Guatemala has not decreased over the past twelve years, despite government efforts to curb the practice. In 2008, Guatemala passed the Law Against Femicide and Other Forms of Violence Against Women, which defined and criminalized femicide. The Law also created regulatory agencies and courts focused on stopping femicide and other forms of violence against women in the country, including physical, sexual, emotional, and economic violence. But because the government lacks resources and it has received resistance from the agencies' local levels, femicide and the violence against women has not diminished. Additionally, recent Supreme Court cases have weakened aspects of the law. Despite that, for some families there has been justice in the specialized courts, allowing them to have peace after a senseless murder of their loved ones. However, overall, the number of femicides has continued to cause fear in Guatemala and has forced community members to start looking for other solutions outside of criminalizing femicide and other forms of violence against women. Over twelve years after the law was enacted, criminalization and reactive initiatives seem ineffective on their own. It will take advocacy and community members to create long term and effective solutions to curtail femicides in Guatemala.

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## INTRODUCTION

Femicide in Guatemala is prevalent. Yet criminalizing it has done little to stop the violent murders of women. In almost every country across the world, women are subjected to multiple forms of gender-based violence.<sup>1</sup> Femicide is the murder of a woman because of her gender.<sup>2</sup> It is one of the many manifestations of both gender inequality and gender-based discrimination.<sup>3</sup> While countries in the Northern Triangle<sup>4</sup> and

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<sup>†</sup> The author would like to thank all of the brave women who shared their survival stories with her, which was the catalyst for her research on this topic.

<sup>1</sup> Unless otherwise defined in an international law or a specific State's law, in this article the term women will be used to define women, those who identify as women, and those who may be perceived as women.

<sup>2</sup> U.N. Women, *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)*, at 3, U.N. Doc (2014) [hereinafter Model Protocol].

<sup>3</sup> *Id.*

<sup>4</sup> The Northern Triangle is the Latin American region consisting of Guatemala, El Salvador, and Honduras. Amelia Cheatham, *Central America's Turbulent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS (Oct. 1, 2019), <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>.

throughout Latin America have recognized femicide and other forms of violence against women (VAW) as grave issues, there has been little consensus on how to define femicide and how to implement programs and policies that eliminate it.<sup>5</sup>

The Northern Triangle has some of the highest femicide rates in Latin America and the world.<sup>6</sup> Currently, Guatemala has the third highest rate of femicide in the world.<sup>7</sup> Guatemala is a country with a population of over 16.6 million<sup>8</sup> people within 22 departments<sup>9</sup> that are divided into 340 municipalities.<sup>10</sup>

In an attempt to curtail the high rates of femicide, the Guatemalan government enacted the Law Against Femicide and Other Forms of Violence Against Women (“Decree”) in 2008.<sup>11</sup> The Decree recognized femicide as a widespread issue in Guatemala, criminalized femicide and other forms of VAW, and provided the government with a systematic framework to address crime reporting and working with victims.<sup>12</sup> It has been over twelve years since the Decree was enacted, and in that time the government and its agencies have put together specialized courts, provided resources for victims of violence and their families, and created an alert system for missing women.<sup>13</sup> Yet, based on Guatemala’s current rates of femicide, it seems like femicide’s criminalization and the partial implementation of the programs as addressed in the Decree has done little to curb femicide.

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<sup>5</sup> Model Protocol, *supra* note 2, at 3.

<sup>6</sup> Cheatham, *supra* note 4.

<sup>7</sup> Karen Musalo & Blaine Bookey, *Crimes without Punishment: An Update on Violence against Women and Impunity in Guatemala*, 40 HASTINGS RACE & POVERTY L.J. 265, 270 (2014).

<sup>8</sup> As of September 2018. See *Release Notes: September 2018*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/international-programs/data/tools/international-data-base/idb-release-notes/2018.html>.

<sup>9</sup> This is equivalent to a state or a province within a country.

<sup>10</sup> *Guatemala*, PAN AMERICAN HEALTH ORG., <https://www.paho.org/salud-en-las-americanas-2017/?p=3338#:~:text=The%20Republic%20of%20Guatemala%20extends,22%20departments%20and%20340%20municipalities> (last visited Feb. 5, 2021).

<sup>11</sup> *Ley contra el Femicidio y otras Formas de Violencia contra la Mujer* [Law Against Femicide and Other Forms of Violence Against Women], Decreto del Congreso [Congressional Decree] No. 22-2008 (Guat.) [hereinafter Decree 22-2008].

<sup>12</sup> *Id.*

<sup>13</sup> See generally *Guatemala’s Femicide Law: Progress Against Impunity* (May 2009), GUATEMALA HUMAN RIGHTS COMM’N, [https://www.ghrc-usa.org/Publications/Femicide\\_Law\\_ProgressAgainstImpunity.pdf](https://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf); *Guatemala Sets Up Platform to Find Missing Women*, NEWSINAMERICA (Aug. 15, 2018), <http://newsinamerica.com/en/guatemala-sets-up-platform-to-find-missing-women/>; Louisa Reynolds, *Femicide Courts in Guatemala: A Ray of Hope*, EQUAL TIMES (May 12, 2014), <https://www.equaltimes.org/femicide-courts-in-guatemala-a-ray>.

This article first looks at the history of VAW in Guatemala and the root causes of increasing femicide. Next, it analyzes the Decree that criminalized femicide and provided a framework to address femicide and other forms of VAW. Finally, this article argues that the law has been ineffective in its objective to guarantee Guatemalan women freedom, integrity, dignity, protection, equality, and a life free of physical, psychological and sexual violence. Recognizing femicide, VAW and the societal inequalities that women face was a critical first step. Fully implementing courts and systems for victims of these crimes will be a second. However, in order to fully address femicide, the State will need an effective and sustainable response that involves preventative action and community support.<sup>14</sup>

### I. FEMICIDE: GLOBAL RECOGNITION OF ACTS OF VIOLENCE AGAINST WOMEN

Over the past twenty years, there have been increasing global efforts to crack down on femicide and other forms of VAW.<sup>15</sup> In response to the growing recognition of femicide in Latin America, the Regional Office for Central America and the Dominican Republic of the United Nations High Commissioner for Human Rights (OHCHR) created the Latin American Protocol for Investigation of Gender-Related Killings of Women (Femicide/Feminicide) in 2014.<sup>16</sup> The Model Protocol was created to provide Latin American and Caribbean countries with a guide on how to effectively investigate the violent deaths of women. Specifically, the Model Protocol sought to ensure the investigations took context into account to identify relationships with the perpetrator, and to conform the States to their international obligations.<sup>17</sup>

The Model Protocol defines “femicide” as the murder against women because of their gender.<sup>18</sup> The term femicide was coined by Diana Russell in the 1970s as an expression that combined the more neutral term homicide and the discrimination, oppression, inequality, and

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<sup>14</sup> See generally Musalo & Bookey, *supra* note 7; Press Release, Economic Commission for Latin America and the Caribbean (ECLAC), In 2018, At Least 3,529 Women Were Victims of Femicide in 25 Latin American and Caribbean Countries: ECLAC, U.N. Press Release (Nov. 25, 2019), <https://www.cepal.org/en/pressreleases/2018-least-3529-women-were-victims-femicide-25-latin-american-and-caribbean-countries>; *At Least 62 Women Killed Every Month in Guatemala: Report*, TELESUR (Nov. 3, 2017), <https://www.telesurenglish.net/news/At-Least-62-Women-Killed-Every-Month-in-Guatemala-Report-20171103-0028.html>.

<sup>15</sup> *Bolstering Efforts to End Impunity for Femicide and Gender-Motivated Killings*, UN WOMEN (Mar. 15, 2013), <https://www.unwomen.org/en/news/stories/2013/3/bolstering-efforts-to-end-impunity-for-femicide-and-gender-motivated-killings>.

<sup>16</sup> Model Protocol, *supra* note 2, at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 14.

systematic VAW that can culminate in death.<sup>19</sup> According to Russell, the term femicide should apply to all forms of killings that are motivated by the sense of superiority, entitlement, or assumption of ownership over women.<sup>20</sup> Femicide was another term birthed from femicide and was coined by Mexican researcher Marcela Lagarde.<sup>21</sup> The idea behind femicide, Lagarde argued, is that a woman is not only killed because she is a female, but because the State has failed to respond and comply with its international obligations to stop the violent acts.<sup>22</sup> Femicide is considered a state crime,<sup>23</sup> which speaks more to the fractured rule of law and to the government's silence amidst these mass murders.<sup>24</sup>

Latin American States are not in agreement about what terms should refer to violent murders against women, and the definition and scope of these terms differ from State to State.<sup>25</sup> Costa Rica, Chile, Guatemala, Nicaragua, Honduras, and Panama have adopted the technical term femicide.<sup>26</sup> Meanwhile, El Salvador, Mexico, Peru, and Bolivia codify the crime as femicide.<sup>27</sup> Other countries even designate it under aggravated homicide.<sup>28</sup> Even though there are conceptual differences between the two terms, they are often used interchangeably when referring to gender-related killings of women, and to distinguish them from homicide, a gender-neutral concept.<sup>29</sup>

Latin American States also differ on how to define femicide and how to implement programs and policies to eliminate it.<sup>30</sup> For example, countries incorporate different objective, descriptive, and normative

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<sup>19</sup> FEMICIDE: THE POLITICS OF WOMAN KILLING 13, 13-14 (Jill Radford & Diana E. H. Russell eds., 1st ed. 1992).

<sup>20</sup> Diana E. H. Russell, *Definición de femicidio y conceptos relacionados [Definition of femicide and related concepts]*, in FEMICIDIO: UNA PERSPECTIVA GLOBAL [FEMICIDE: A GLOBAL PERSPECTIVE] 77-78 (Diana E. H. Russell, & Roberta A. Harmes eds., 2006).

<sup>21</sup> Organization of American States Inter-American Commission of Women, Committee of Experts of the Follow-Up Mechanism to the Belem do Para Convention (MESECVI), *Declaration on Femicide*, at 3, MESECVI/CEVI/DEC. 1/08 (Aug. 15, 2008), <http://www.oas.org/en/mesecvi/docs/DeclaracionFemicidio-EN.pdf>.

<sup>22</sup> *Id.* at 3-4.

<sup>23</sup> State crimes include both crimes that are perpetrated by state agents and crimes in which the State is complicit and unwilling to act.

<sup>24</sup> *Declaration on Femicide*, *supra* note 21, at 3-4; see also Marcela Lagarde y De Los Rios, *Antropología, Feminismo y Política: Violencia Femicida y Derechos Humanos de las Mujeres [Anthropology, Feminism and Politics: Violence Femicide and Human Rights of Women]*, UNIV. AUTÓNOMA DE MÉXICO (UNAM), 209, 235 (2012), <http://www.oas.org/en/mesecvi/docs/DeclaracionFemicidio-EN.pdf>.

<sup>25</sup> Model Protocol, *supra* note 2, at 3.

<sup>26</sup> *Id.* at 141.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *Id.* at 14.

<sup>30</sup> *Id.* at 13.

elements into their definitions.<sup>31</sup> Guatemala situates the result of the killing in “the framework of unequal power relations between men and women.”<sup>32</sup> El Salvador and Honduras criminalize the killings when they involve “motives of hate or contempt for her condition as a woman.”<sup>33</sup> Argentina requires a motive of hate based on “gender or sexual orientation, gender identity, or its expression” as an aggravating sentencing factor to homicide.<sup>34</sup> These varying definitions and elements to the crime can make it difficult to compare rates of femicide and the success a State may have in curbing it.

The international community is taking two approaches to support Latin American States in their pursuit to curb femicide: (1) providing States with different resources like the Model Protocol that establish guidelines to address and eradicate femicide, and (2) penalizing countries who have created an environment conducive of the chronic repetition of acts VAW.<sup>35</sup> In doing so, the international community has put pressure on States, such as Guatemala, to address the senseless acts occurring within their borders.

## II. FEMICIDE AND VIOLENCE AGAINST WOMEN IN GUATEMALA

Guatemala's history of VAW and sexism plays a role in how the State must address eradicating femicide and other forms of violence. The history preceding the Guatemalan Congress's passage of the Decree provides helpful context into what led Guatemala to finally pass it.

### A. *The Historical Roots of Femicide in Guatemala*

There are competing views about what sparked the surge of violent murders against women. Some argue the history of sexism and inequality in Guatemala is the cause for femicide there, while others believe the violence from Guatemala's civil war spurred femicide's increase.<sup>36</sup> Other scholars believe that a combination of these factors and the inaction of the government to protect women from gender-based

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<sup>31</sup> *Id.*

<sup>32</sup> Decree 22-2008, *supra* note 11, intro.

<sup>33</sup> Ley Integral Especial para una Vida Libre de Violencia para las Mujeres del El Salvador [Special Comprehensive Law for Life Free from Violence for the Women of El Salvador], Decree 520, art. 45 (Nov. 25, 2010) (El Sal.); Compendio de Reformas de Varias Leyes: Código de la niñez y de la Adolescencia, Código de Familia, Código Procesal Penal y Ley Contra La Violencia Domestica [Compendium of Reforms of Various Laws: Childhood and Adolescence Code, Family Code, Criminal Procedure Code and Law Against Domestic Violence], Decree 35-2013, art. 23 (Mar. 18, 2013) (Hond.).

<sup>34</sup> CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 80 (2012) (Arg.).

<sup>35</sup> Musalo & Bookey *supra* note 7, at 266.

<sup>36</sup> David Carey Jr. & M. Gabriela Torres, *Precursors to Femicide: Guatemalan Women in a Vortex of Violence*, 45 LAT. AM. RSCH. REV. 142, 144 (2010).

violence generally, all play a role in Guatemala's growing patterns of femicide.<sup>37</sup>

Some sociologists argue that the surge of femicides lies in Guatemala's social instability left over from La Violencia: Guatemala's 36-year civil war.<sup>38</sup> La Violencia ended in 1996, but the VAW continued.<sup>39</sup> During La Violencia, women were collateral damage between the divided sides—both the military groups and the insurgents reacted violently against women and children of their enemies as a retaliation tactic.<sup>40</sup> Both Guatemala's Civil Defense Patrols and the opposing militarized groups were trained to commit VAW (rape, mutilation, torture, and femicide).<sup>41</sup> Approximately 50,000 victims of La Violencia were women.<sup>42</sup> The abuse became generalized and systematic.<sup>43</sup> Once the men returned home from war, they received no help in confronting their wartime practices.<sup>44</sup> As a result, the violence was redirected towards their wives, girlfriends, and mothers with the expectation they would receive impunity as they had during the war.<sup>45</sup> Women continued to be objectified, sexualized, and treated however a man deemed fit; views that continue to perpetuate within Guatemala today.<sup>46</sup>

Yet, for David Carey Jr. and M. Gabriela Torres, La Violencia is not the sole or even primary catalyst for the increase in femicide.<sup>47</sup> Violent murders against women have been a feature of Guatemala's social fabric that pre-dates La Violencia and stems from the sexism, civic exclusion, public denigration, and physical abuse of women, all which have been both socially and legally excused.<sup>48</sup> Historically, domestic violence was seen as a private family matter.<sup>49</sup> When domestic violence was reported for example, alcohol instead of the individual actor was to

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* Candace Piette, *Where Women Are Killed by Their Own Families*, BBC NEWS (Dec. 5, 2015), <https://www.bbc.com/news/magazine-34978330>.

<sup>39</sup> *Timeline: Guatemala's Brutal Civil War*, PBS (Mar. 7, 2011, 12:00 AM EST), [https://www.pbs.org/newshour/health/latin\\_america-jan-june11-timeline\\_03-07](https://www.pbs.org/newshour/health/latin_america-jan-june11-timeline_03-07).

<sup>40</sup> Piette, *supra* note 38.

<sup>41</sup> Rep. of the U.N. Human Rights Comm., Rep. on Violations of Women's Human Rights in Response to the Third Periodic Report of Guatemala, U.N. Doc. at 21 (Mar. 13–30, 2012).

<sup>42</sup> *Id.* See also Carey & Torres, *supra* note 36, at 157 (estimating over 90% of rape victims were Mayan women).

<sup>43</sup> Piette, *supra* note 38.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Carey & Torres, *supra* note 36, at 144.

<sup>48</sup> See generally *id.* at 145–51 (discussing the history of violent murders and gender practices that reinforce violence as a mechanism of social governance).

<sup>49</sup> *Id.* at 149.

blame.<sup>50</sup> If a woman braved the court room, justification for the violence included the woman failing in her house or motherly duties.<sup>51</sup>

After *La Violencia* ended, the number of reported domestic violence incidents increased.<sup>52</sup> In 2000, the Guatemalan Office for Defense of Woman received 4,908 allegations of domestic violence perpetrated against women, which was estimated to be only 5% of actual domestic violence incidences.<sup>53</sup> The historical constructions and recognition of *potestad marital*<sup>54</sup>, and a combination of customs, state laws, and judicial decisions that justified men's actions and left them without consequences, reinforced society's view that women are their husbands' property in Guatemalan society, and condoned gender-based violence.<sup>55</sup>

The culture of impunity also paved a way for femicide to go unpunished and uninvestigated.<sup>56</sup> The State's inability to take action was revealed when investigators were both unwilling and unable to protect women and conduct comprehensive investigations to find the criminal perpetrators.<sup>57</sup>

After years of senseless VAW with almost complete impunity, Congressional members responded to pressure from local activists and international organizations by finally joining the fight against femicide.<sup>58</sup> In 2008, Congress passed *el Ley contra el Femicidio y otras Formas de Violencia contra la Mujer* (the Law Against Femicide and Other Forms of Violence Against Women Decree).<sup>59</sup> Twenty Congresswomen from various political corners rallied and managed to get 112 out of 158 Congressional members to support it.<sup>60</sup> By passing the Decree, Guatemala recognized femicide and discrimination against women caused by the "power inequality between men and women in the social, economic, legal, political, cultural, and family spheres."<sup>61</sup> The Decree's objective is to eradicate femicide and other forms of VAW, and

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<sup>50</sup> *Id.* at 147.

<sup>51</sup> *Id.* at 149.

<sup>52</sup> *Id.* at 161.

<sup>53</sup> *Id.* at 144.

<sup>54</sup> A man's right over the person and property of his wife.

<sup>55</sup> See Carey & Torres, *supra* note 36, at 160.

<sup>56</sup> Daniella Hernández, *Femicide in the Americas*, 8 SAN JOSE ST. U.

SCHOLARWORKS 42, 43 (2018).

<sup>57</sup> *Id.* at 44 (citing Michelle Bellino, *Femicide and Silence in 'Postwar' Guatemala*, 7 WOMEN'S POL'Y J. OF HARV. 5, 6 (2010)).

<sup>58</sup> Karim Velasco, *To Fight Femicide in Guatemala, New Law, But Same Culture*, REWIRE NEWS GROUP (Aug. 27, 2008), <http://rewire.news/article/2008/08/27/to-fight-femicide-guatemala-new-law-but-same-culture/>.

<sup>59</sup> *Id.* (explaining that both the CEDAW Committee and European Parliament have urged Guatemala to take steps to effectively combat violence against women).

<sup>60</sup> *Id.*

<sup>61</sup> Decree 22-2008, *supra* note 11, intro.



guarantee Guatemalan women a life free of violence, as provided under the Guatemalan Constitution and international instruments on women's rights ratified by Guatemala.<sup>62</sup>

*B. Enough is Enough: From International Organizations to Local Pleas*

Local activists and international pressure pushed Guatemala to take steps towards curbing femicide when it passed the Decree.<sup>63</sup> For many, it is the State's duty to step in and address the VAW.<sup>64</sup> The Guatemalan Constitution contains specific articles that discuss the State's duties and protections guaranteed to all individuals in Guatemala.<sup>65</sup> According to the Constitution, the State has the duty to protect the person and the family, and guarantees to [all Guatemalans] a life, freedom, justice, security, peace, and integral development of the person.<sup>66</sup> It guarantees the protection of human life and integrity and security of the person,<sup>67</sup> and that all human beings in Guatemala are free and equal in dignity and rights.<sup>68</sup> In conjunction, these Constitutional protections mean women in Guatemala should be able to live free from harm and that the government owes women a duty of protection in their persons and that they be treated free and equally in both their dignity and rights. By failing to address femicide, the Guatemalan government was not only disregarding its constitutional duties, but it was also not complying with its international treaties.<sup>69</sup> In 1981, Guatemala ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)<sup>70</sup> and in 1995, the Convention of Belem do Para,<sup>71</sup>

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<sup>62</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA [POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA] Nov. 17, 1993, arts. 3, 4; Decree 22-2008, *supra* note 11, art. 1.

<sup>63</sup> GUATEMALA HUMAN RIGHTS COMM'N, GUATEMALA'S FEMICIDE LAW: PROGRESS AGAINST IMPUNITY, *supra* note 13, at 1.

<sup>64</sup> *Id.*; see also Organization of American States, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), June 24, 1994, 33 I.L.M. 1534 (explaining it is the States' duty to protect women from violence, signed by Guatemala in 1995).

<sup>65</sup> POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA, *supra* note 62, arts. 2-4.

<sup>66</sup> *Id.* arts. 1, 2.

<sup>67</sup> *Id.* arts. 3, 4.

<sup>68</sup> *Id.* art. 4.

<sup>69</sup> See generally *Femicide/Feminicide*, MUJER,

<http://mujerguatemala.org/?portfolio=femicide-feminicide> (last visited Feb. 7, 2021).

<sup>70</sup> Convention on the Elimination of All Forms of Discrimination against Women, June 8, 1981, 1249 U.N.T.S. 13.

<sup>71</sup> Organization of American States, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), June 24, 1994, 33 I.L.M. 1534.

both of which establish a woman's right to be free from violence and address the eradication of all forms of VAW. Guatemala also ratified the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights.<sup>72</sup> Guatemala is also a State party to the International Convention of Economic, Social, and Cultural Rights (ICESCR).<sup>73</sup> Under Article 46 of Guatemala's Constitution, its acceptance and ratification international treaties and conventions have preeminence over domestic law.<sup>74</sup> These international laws are domestic laws and can be used to enforce individual rights.<sup>75</sup> Despite these explicit rights, Guatemalan women continue to suffer and pay the price for the government's inaction towards violence against women.<sup>76</sup>

The statistics of violent murders of women prior to 2008 were staggering. Between 2000 and 2008, Guatemala registered over 4,000 violent murders of women.<sup>77</sup> 98% resulted in impunity.<sup>78</sup> Specifically, in 2005, there were up to 665 women and girls killed, with only 2 reported murder convictions.<sup>79</sup> Between 2002 and 2005, the murders of women rose 63%.<sup>80</sup>

On April 9, 2008, Guatemala's Congress passed Decree 22-2008, the Law Against Femicide and Other Forms of Violence Against Women (the Decree).<sup>81</sup> The Decree came into effect on May 15, 2008.<sup>82</sup> When Guatemala passed the law against femicide, it not only allowed Guatemala to come into compliance with international conventions, but it was Guatemala's first attempt to address femicide on a national level.<sup>83</sup>

The Decree's advocates felt that by criminalizing femicide and providing support for victims and families, they could begin a larger conversation about Guatemala's cultural view and treatment of women.<sup>84</sup> It could also address the large number of perpetrators who many felt were

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<sup>72</sup> Rep. of the U.N. Human Rights Comm., *supra* note 41, at 1.

<sup>73</sup> *Id.*

<sup>74</sup> POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA, *supra* note 62, art. 46.

<sup>75</sup> *See id.* *See also* Rep. of the U.N. Human Rights Comm., *supra* note 41, at 1.

<sup>76</sup> *Femicide / Femicide*, MUJER, *supra* note 69 (ranking Guatemala as having the third highest rate of VAW in Latin America and the Caribbean, outranked by El Salvador and Jamaica).

<sup>77</sup> GUATEMALA HUMAN RIGHTS COMM'N, GUATEMALA'S FEMICIDE LAW: PROGRESS AGAINST IMPUNITY, *supra* note 13, at 1.

<sup>78</sup> *Id.*

<sup>79</sup> *Guatemala: No Protection, No Justice: Killings of Women (An Update)*, AMNESTY INT'L (Mar. 26, 2011), <https://www.amnestyusa.org/reports/guatemala-no-protection-no-justice-killings-of-women-an-update/>.

<sup>80</sup> *Id.*

<sup>81</sup> Decree 22-2008, *supra* note 11.

<sup>82</sup> Velasco, *supra* note 58.

<sup>83</sup> *Id.*

<sup>84</sup> *Guatemala's Femicide Law: Progress Against Impunity*, *supra* note 13, at 2.

never brought to justice.<sup>85</sup> Guatemala's Attorney General, Thelma Aldana, says the Congress was trying to change the public attitude towards victims, especially the view of law enforcement.<sup>86</sup> Prior to the Decree, there were reports of law enforcement agents and forensic investigators who would arrive on the scene of a female homicide and comment on the victims dress or actions as the justification for her violent murder.<sup>87</sup> Some officials would use the infamous phrase, "she was asking for it" or a similar line of comments.<sup>88</sup> Passing the Decree was a statement to Guatemalans that the government will not tolerate this kind of treatment towards women, along with creating a framework to systematically address femicide.

## II. GUATEMALA'S LAW AGAINST FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN: CONGRESSIONAL DECREE NO. 22-2008

The Decree defines and criminalizes femicide and other forms of VAW. It details what various state agencies and actors must do to prevent and punish these acts, while also clarifying Guatemalan women's rights.

### A. *The Decree Defines and Criminalizes Femicide*

The Decree defines femicide<sup>89</sup> as "the violent death of a woman, occasionally in the context of unequal power relations between men and women, in the exercise of gender power against women."<sup>90</sup> The law is applied when a person violates a woman's ability to live free from violence, in both the private and public sphere.<sup>91</sup> Specifically, Article 6 articulates femicide's elements.<sup>92</sup>

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<sup>85</sup> *Id.* at 1.

<sup>86</sup> Piette, *supra* note 38.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> In Spanish, the term for femicide is *femicidio*.

<sup>90</sup> Decree 22-2008, *supra* note 11, art. 3(e).

<sup>91</sup> *Id.* art. 2.

<sup>92</sup> *Id.* art. 6.

Elements of Femicide:<sup>93</sup>

A person commits femicide:

- a) If one murders a woman, because of her status as a woman,
- b) Within the framework of the unequal balance of power between men and women;
- c) Under the following circumstances:
  1. From unsuccessful attempts to form a relationship (partner or intimacy with the victim).
  2. There was an existing or previously existing relationship with the victim such as: familiar, conjugal, intimate, courtship, friendship, companionship, or an employment relationship.
  3. As a result of repeated violence against the victim.
  4. As a result of group rituals of any kind with or without a weapon.
  5. In contempt of the victim's body to satisfy the perpetrator's sexual instincts or to commit acts of mutilation against.
  6. By misogyny.
  7. In the presence of the victim's children.
  8. Concurrently with any of the qualifying circumstances under Article 132 of the Guatemala Criminal Code.<sup>94</sup>

The Decree's plain text implies that for murder to be considered femicide, the act must be committed against a woman.<sup>95</sup> The Decree does not define woman, nor does it address gender violence more broadly, so merely looking at the Decree does not tell us whether the term *mujer*,<sup>96</sup> includes individuals who identify as women, transgender women, or individuals who are perceived as women. Even though the text does not specifically define *mujer*, Guatemala does not recognize the LGBT

<sup>93</sup> *Id.*

<sup>94</sup> Código Penal de Guatemala [Guatemalan Penal Code], Decreto del Congreso [Congressional Decree] No. 17-73, Decreto del Congreso [Congressional Decree (Guat.), art. 132, [hereinafter Código Penal] (defining and criminalizing the act of committing murder by treachery, for a reward, with premeditation, with cruelty, by impulse, in preparation, facilitation, or concealment of another crime, or for purposes of terrorism).

<sup>95</sup> Decree 22-2008, *supra* note 11, art. 6.

<sup>96</sup> The term "woman" in Spanish.

community's rights.<sup>97</sup> Joint experts from various Latin American and international organizations created a report urging Guatemala to recognize transgender women and to create laws to prevent, investigate, and prosecute incidents of gender-based violence and killings of transgender women.<sup>98</sup>

Additionally, while the text does not explicitly state whether the individual committing these acts must be a man, it implies that the actor is likely one, because the act itself must occur when there is an unequal balance of power between a man and a woman. However, the law defines a victim as a *woman* of any age who has been inflicted with violence.<sup>99</sup> The Decree also defines "power relations" as a manifestation of control or dominion that results in the submission of a *woman* and the discrimination against her.<sup>100</sup> Therefore, if the victim is a woman, it is likely that the actor would be a man in order to meet the element that the act occurs within a "framework of relationships that have an unequal balance of power between a man and a woman."<sup>101</sup> It does seem possible within a plain reading of the text, that a woman could commit femicide against another because of the woman-actor's view that the woman-victim is less than a man and kills the woman-victim on behalf of a man or on behalf of a relationship with a man. Similarly, while it does not explicitly state that the actor must be a man, one element of the commission of femicide results from an imbalance of gender power between men and women.<sup>102</sup>

The Decree explicitly criminalizes femicide and provides sentencing guidelines to those who commit femicide.<sup>103</sup> Those convicted of femicide can be sentenced up to fifty years in prison without the possibility of a sentence reduction.<sup>104</sup> The Decree also calls for

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<sup>97</sup> Inter-American Comm'n on Human Rights, *Situación de Derechos Humanos en Guatemala* [Status of Human Rights in Guatemala], at 149 ¶ 342, OEA/Ser. L/V/II. Doc. 43/15 (Dec. 31, 2015), <http://www.oas.org/es/cidh/informes/pdfs/guatemala2016.pdf>. In 2018, Guatemala's Congress passed a bill that discriminated against LGBT people. See *Guatemala Events of 2019*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2020/country-chapters/guatemala#> (last visited Mar. 8, 2021).

<sup>98</sup> ORGANIZACIÓN TRANS REINAS DE LA NOCHE (OTRANS) ET AL., HUMAN RIGHTS VIOLATIONS AGAINST TRANSGENDER WOMEN IN GUATEMALA (submitted for consideration at the 122nd Session of the Human Rights Comm., Geneva, Feb. 2018).

<sup>99</sup> Decree 22-2008, *supra* note 11, art. 3(i) (emphasis added).

<sup>100</sup> *Id.* art. 3(g) (emphasis added).

<sup>101</sup> *Id.* art. 6.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* Compare Código Penal, *supra* note 94, art.123 (Stating someone convicted of "simple homicide" can be sentenced 15-40 years in prison).

strengthening existing government agencies that investigate and address VAW.<sup>105</sup>

*B. Criminalization of Femicide and Criminalization of Other Forms of Violence Against Women (VAW)*

Along with femicide, the Decree identifies and criminalizes three other types of VAW, including physical/sexual violence, psychological violence, and economic violence.<sup>106</sup>

The Decree states that violence against women is committed when someone exercises physical, sexual, or psychological violence against a woman in an enumerated list of scenarios.<sup>107</sup> VAW can occur when the perpetrator repeatedly and unsuccessfully tries to establish or reestablish a relationship of intimacy with the victim.<sup>108</sup> For example, it can occur when the preparator commits violence while trying to maintain a familiar relationship with the victim.<sup>109</sup> It can also occur between two individuals who are spouses, those living together, or those who share an intimate relationship, a courtship, friendship, companionship, or an educational or religious connection.<sup>110</sup> The violence can also occur as a result of group rites, in the process of disregarding the victim's body, by committing acts of mutilation, or even for misogynist purposes.<sup>111</sup> Individuals found guilty of physical or sexual VAW are sentenced between five to twelve years in prison, and an individual guilty of psychological violence is sentenced from five to eight years in prison, depending on the crimes' gravity.<sup>112</sup>

The Decree criminalizes economic VAW, with sentences between five to eight years in prison.<sup>113</sup> It also prohibits someone from invoking religious or cultural grounds as justification to commit violence against women.<sup>114</sup> Article 10 provides a framework to analyze whether aggravating circumstances existed surrounding the attack's circumstances, including the power relations existing between the victim and attacker, the victim's harm, and the mechanism and means used to perpetrate the violent act.<sup>115</sup>

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<sup>105</sup> Hector Ruiz, *No Justice for Women: An Update Twenty Years After Guatemala's First Violence Against Women Law*, 29 HASTINGS WOMEN'S L.J. 101, 102 (2018).

<sup>106</sup> Decree 22-2008, *supra* note 11, arts. 7–10.

<sup>107</sup> *Id.* art. 7.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* art. 8.

<sup>114</sup> *Id.* art. 9.

<sup>115</sup> *Id.* art. 10.

Additionally, there should be reparations to the victim that are proportional to the damage caused by the attacker.<sup>116</sup> In the case where a victim has died, as in femicide, the right of reparations extends to the successor.<sup>117</sup> Finally, the State has an obligation to comply with the Guatemalan Constitution and ratified international conventions and treaties on human rights.<sup>118</sup> The State can be held jointly and severally liable for its actions or omissions incurred by public officials who impede, delay, or deny compliance with the Decree's sanctions.<sup>119</sup>

These additional articles highlight the prevalence of not only femicide, but other forms of VAW. It points to a deeply rooted and systemic oppression of Guatemalan women that the Congress hoped the law would relieve. Yet within the Decree, femicide is in a separate article from the other forms of VAW, which emphasizes the importance of addressing this issue.<sup>120</sup> It also underscores the government's role in suppressing or denying women the right to legal recourse, their human rights, and justice for femicide and other forms of VAW, including economic and psychological harm.

### *C. The State's Plan to Prevent Femicide*

The Decree specifies that the State and various government agencies are obligated to provide women and their families protection after suffering from violence.<sup>121</sup> It guarantees victims access to information and comprehensive assistance.<sup>122</sup> If a public official fails to assist the victim or denies or delays providing them information without justifiable reasons, civil and criminal penalties can ensue.<sup>123</sup> The Decree also creates an obligation on the State to provide free legal assistance to victims or their families, such as a public defender, to guarantee that they can exercise their rights.<sup>124</sup>

The Decree requires the Public Ministry to create an investigatory division to specifically investigate crimes against the life and physical integrity of women, called the Prosecutor's Office for Crimes against Life and Physical Integrity of Women.<sup>125</sup> In order to comply with the law, the office must have a budget for resources that

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<sup>116</sup> *Id.* art. 11.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* art. 12.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* art. 6.

<sup>121</sup> *Id.* art. 13.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* art. 19.

<sup>125</sup> *Id.* art. 14.

allows them to investigate crimes contained in the Decree.<sup>126</sup> This office was to be established twelve months after the Decree went into effect.<sup>127</sup> If offices were not established, the Attorney General and Head of the Public Ministry were charged with determining what prosecutor would work on these specific cases.<sup>128</sup>

Similarly, the Decree charged the Supreme Court of Justice to create specialized courts.<sup>129</sup> These courts have specialized training for the above-mentioned crimes and create a 24-hour court to offer services related to violence towards women.<sup>130</sup> These specialized courts have jurisdiction to hear cases brought under the Decree as determined by the Supreme Court of Justice.<sup>131</sup> The courts should have been progressively established within twelve months following the date when the Decree went into effect.<sup>132</sup>

The Decree also assigned the National Coordinator for the Prevention of Intrafamily Violence Against Women (CONPREVI) agency to coordinate, advise, and promote public policies related to VAW.<sup>133</sup> CONPREVI's role includes overseeing the creation of the "Comprehensive Support Center for Women Survivors of Violence" and training on VAW and ethnic-cultural relevant programs aimed at public officials, especially police and the judiciary.<sup>134</sup> Additionally, it requires the formation of a national centralized system of data from various federal and local agencies that can share information in regards to specific crimes or statistical information about femicide and other forms of VAW.<sup>135</sup> The Decree should be interpreted by the Guatemalan Constitution, the CEDAW, the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women.<sup>136</sup>

### III. TWELVE YEARS LATER: ARE GUATEMALAN WOMEN ANY SAFER?

The Decree's purpose is ineffective if the programs are not properly implemented and funded. Data shows that since the Decree went into effect, the number of femicides rose some years and remained stagnant others, but overall, they are not decreasing. While there are stories of program success and court systems being implemented, there

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.* art. 23.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* art. 15.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* art. 22.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* arts. 16–18.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* art. 20.

<sup>136</sup> *Id.* art. 26.



are far more women who continue to live in fear. While activists continue pushing the government to protect women, there is a countermovement that finds these very same laws unconstitutional. At the cry of activists and the families of the deceased, it is well past time for Guatemala to explore other ways to protect women.

*A. Statistics Since the Decree Went into Effect*

Data collected has shown that not only has there been no decrease in femicide rates since 2008, but that in fact, there has been an increase in rates since the Decree became law.<sup>137</sup> From 2008 until 2017, there were over 7,273 acts of femicide in Guatemala.<sup>138</sup> This number almost doubles the number of women murdered from the previous eight years.<sup>139</sup> In 2010, there were only 127 convictions in cases involving VAW even though there were over 46,000 complaints filed with the national police.<sup>140</sup> Meanwhile in 2017 alone there was an average of 62 women murdered each month.<sup>141</sup> Women were either shot (373), asphyxiated (144), stabbed (63), or dismembered (8).<sup>142</sup> The report also revealed that authorities registered more than 1,000 cases of girls under 14 being raped that year.<sup>143</sup> In 2018, 718 women were killed, 692 in 2019, and 504 in 2020.<sup>144</sup> According to Grupo Gutaemalteco de

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<sup>137</sup> *At Least 62 Women Killed Every Month in Guatemala: Report*, *supra* note 14.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*; GUATEMALA HUMAN RIGHTS COMM'N, GUATEMALA'S FEMICIDE LAW: PROGRESS AGAINST IMPUNITY?, *supra* note 13, at 1 (reporting over 4,000 women were murdered from 2000 to 2008).

<sup>140</sup> Kara Andrade, *Protecting the Rights of Guatemalan Women*, AM. Q. (Oct. 13, 2011), <https://www.americasquarterly.org/node/2963>.

<sup>141</sup> *At Least 62 Women Killed Every Month in Guatemala: Report*, *supra* note 14.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Necropsias Realizadas del 01 de Enero al 31 de Diciembre de 2018 a Nivel Nacional* [Autopsies Performed from January 1 to December 31 of 2018 at a National Level], CIENCIAS FORENSES DE GUATEMALA, <https://www.inacif.gob.gt/docs/estadisticas/anual/AnualM2018.pdf>, (listing causes of death associated with criminal acts such as death by projectile firearm, explosives, asphyxiation by strangulation, suffocation, hangings, drownings, decapitation, and dismemberment for both females and males); *Necropsias Realizadas del 01 de Enero al 31 de Diciembre de 2019 a Nivel Nacional* [Autopsies Performed from January 1 to December 31 of 2019 at a National Level], CIENCIAS FORENSES DE GUATEMALA, <https://www.inacif.gob.gt/docs/estadisticas/anual/AnualM2019.pdf>, (listing same causes of death as 2018); *Necropsias Realizadas del 01 de Enero al 31 de Diciembre de 2018 a Nivel Nacional* [Autopsies Performed from January 1 to December 31 of 2020 at a National Level], CIENCIAS FORENSES GUATEMALA, <https://www.inacif.gob.gt/docs/estadisticas/anual/AnualM2020.pdf>, (listing same causes of death as in previous years).

Mujeres,<sup>145</sup> out of the 400 deaths of women that occurred between January and October of 2020, 223 were femicides.<sup>146</sup>

After Guatemala went into lockdown in March of 2020, the Public Prosecutor's Office initially stated that in March there were only 3,556 complaint of violence against women, but without a proper explanation, the Office updated their numbers up to 4,399 after 800 complaints were not originally included in that data.<sup>147</sup> The National Institute of Forensics in Guatemala (INACIF) reported 140 violent female deaths between March and June in 2020.<sup>148</sup> According to the Grupo Gutaemalteco de Mujeres, 49 percent of those were femicides.<sup>149</sup>

### *B. Governmental Efforts to Curb Femicide*

Since the Decree went into effect, the Federal Government has taken steps to follow through with its obligations.<sup>150</sup> It is important to note that many of these steps are preventative measures to provide protective mechanisms for women already suffering from violence, in hopes of preventing femicide.

Initially, the federal government set up the Office of the Presidential Commission Against Femicide.<sup>151</sup> This commission was tasked with implementing the law, creating anti-femicide units in the national police, launching anti-femicide publicity campaigns, and bolstering public-prosecutorial offices that specialize in VAW.<sup>152</sup> The Institutions responsible for the compliance of the Decree are the Public Ministry, the National Institute of Forensic Sciences (INACIF), CONAPREVI, the Supreme Court of Justice, the Institute of Public Criminal Defense, the National Statistics Institute, the Defensoría de la

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<sup>145</sup> *About Us*, EL GRUPO GUATEMALTECO, <http://ggm.org.gt/quienes-somos/> (stating that Guatemalan Group for Women is an independent feminist organization which was created in 1988 that investigates violence against women, collects data to help with the eradication of femicide and other violent acts against women).

<sup>146</sup> *Datos estadísticos: Violencia contra la Mujer, Muertos Violentos de Mujeres-MVM FEMICIDOS República de Guatemala ACTUALIZADO* [Statistical Data: Violence Against Women, Violent Deaths of Women-MVM Femicides Republic of Guatemala UPDATED] 3 (2020), EL GRUPO GUATEMALTECO, [http://ggm.org.gt/wp-content/uploads/2020/10/Datos-estad%C3%ADsticos\\_-MVM-ACTUALIZADO-1-de-enero-al-12-de-octubre-2020.pdf](http://ggm.org.gt/wp-content/uploads/2020/10/Datos-estad%C3%ADsticos_-MVM-ACTUALIZADO-1-de-enero-al-12-de-octubre-2020.pdf) (last visited Mar. 8, 2021).

<sup>147</sup> Miranda Mazariegos & Melisa Rabanales, *COVID Has Caused Extra Harm for Guatemala's Victims of Gendered Violence*, VICE WORLD NEWS, <https://www.vice.com/en/article/88974v/covid-has-caused-extra-harm-for-guatemalas-victims-of-gendered-violence>.

<sup>148</sup> *Id.*

<sup>149</sup> *Datos estadísticos*, *supra* note 146.

<sup>150</sup> *Id.*

<sup>151</sup> Aaron Shulman, *The Rise of Femicide*, NEW REPUBLIC (Dec. 28, 2010), <https://newrepublic.com/article/80556/femicide-guatemala-decree-22>.

<sup>152</sup> *Id.*

Mujer Indígena (DEMI), and the Secretaría Presidencial de la Mujer (SEPREM).<sup>153</sup>

Guatemala became the first country to introduce special courts to deal with gender-based violence in 2010, called the Criminal Court for Crimes of Femicide and Other Forms of Violence Against Women.<sup>154</sup> Guatemala's Attorney General, Thelma Aldana, helped established this network of special tribunals to deal with femicide cases.<sup>155</sup> There are now femicide tribunals in 11 of the 22 departments.<sup>156</sup> At these specialized tribunals, judges and police officers receive specific training on gender-related crimes.<sup>157</sup> In 2013, 3,560 cases went to trial and 1,460 sentences were handed out.<sup>158</sup> In 2015, there were 3,366 cases heard in these specialized courts.<sup>159</sup> Despite these successes, half of the country still lacks the trained law enforcement and a judicial system provided by these specialized courts.<sup>160</sup>

Victims should be able to take their cases to law enforcement and ask for protection. Individual law enforcement offices, lacking resources and proper training, have fallen short of providing adequate assistance to women and their families.<sup>161</sup> The State Prosecutor's Office, who determines what cases to try, does not have the capacity to take every case it receives, so it only chooses cases with the strongest evidence.<sup>162</sup> Even the special status of the law itself was and continues to be an impediment because of biases that exist within the judicial system.<sup>163</sup>

In accordance with the Decree, there is a 24-hour court in Guatemala City for Violence Against Women and Sexual Exploitation to ensure victims receive assistance and to help strengthen criminal investigations using scientific evidence.<sup>164</sup> On site, the 24-hour court has

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<sup>153</sup> Soledad Quartucci, *What Can I Do To Forget? Surviving Sexual Assault Through Poetry and Coordinated Enforcement of the Law in Guatemala*, LATINA REPUBLIC (MAY 18, 2020), <https://latinarepublic.com/2020/05/18/what-can-i-do-to-forget-surviving-sexual-assault-through-poetry-and-coordinated-enforcement-of-the-law-in-guatemala/>.

<sup>154</sup> Reynolds, *supra* note 13.

<sup>155</sup> Piette, *supra* note 38.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* (listing cases to include various forms of VAW, and not just femicide).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> Ruiz, *supra* note 105, at 114.

<sup>164</sup> Casey Wheeler de Vides & Carlos A. Rosales, *Guatemala's 24-Hour Courts: Changing the Way Women Access Justice*, USAID (Mar. 6, 2013), <https://blog.usaid.gov/2013/03/guatemalas-24-hour-courts-changing-the-way-women-access-justice/>; Guatemala

a criminal court, a public defense office, a police station, a forensic clinic, a prosecutor's office, and judges. This includes a victim service center to provide medical, psychological, and legal support for victims.<sup>165</sup> Part of the idea of the 24-hour court, was a 24-hour hotline where women can call for help, support, and legal advice.<sup>166</sup> In its first 10 months, the court provided 846 protective measures for women, issued 307 arrest warrants and sentenced 125 people for VAW.<sup>167</sup> The data does not specify whether any the arrests or imprisonments stemmed from investigations related to femicide. Again, this court is only available within Guatemala City, and women and families outside of this area are often unable to get access to this support.

In 2016, parliament passed the Immediate Search of Missing Women's Act and in 2018, the "Alerta Isabel-Claudina" system was launched.<sup>168</sup> This is a national alert system aimed at finding women who have disappeared.<sup>169</sup> This plan included collaboration from 10 institutions including the Office of the Public Prosecutor, the Attorney General's Office, police, the Ministry of Interior, and the Ministry of Foreign Affairs. Family can report the disappearance of their missing female family member to the Office of the Public Prosecutor or to the police who can enter the woman's information into a national data base.<sup>170</sup> The system alerts various governmental agencies and police offices throughout Guatemala when an individual has gone missing. There is a website where you can look for and track missing women too.<sup>171</sup>

In September 2018, the Public Ministry created the Isabel-Claudina Twitter account.<sup>172</sup> The account includes the names and vital information of missing women and a hotline number for individuals to call if they have information.<sup>173</sup> Since many disappearances of women

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2018 Human Rights Report: Executive Summary, U.S. DEP'T OF STATE 16, <https://www.state.gov/wp-content/uploads/2019/03/GUATEMALA-2018.pdf>.

<sup>165</sup> *Guatemala 2018 Human Rights Report: Executive Summary*, *supra* note 164.

<sup>166</sup> Mazariegos & Rabanales, *supra* note 147.

<sup>167</sup> Casey Wheeler de Vides & Carlos A. Rosales, *supra* note 164.

<sup>168</sup> *Guatemala, Honduras and El Salvador exchange experiences in Registry of Missing Persons*, INFOSEGURA (Mar. 5, 2019), <https://infosegura.org/en/2019/03/05/guatemala-honduras-and-el-salvador-exchange-experiences-in-registry-of-missing-persons/>.

<sup>169</sup> *Guatemala Sets Up Platform to Find Missing Women*, *supra* note 13; *Aleta Isabel-Claudina, Un Mecanismo de Búsqueda de Mujeres Desaparecidas en el País* [A Search Mechanism for Missing Women in the Country], PROCURADURÍA GENERAL DE LA NACIÓN (Aug. 6, 2018), <http://www.pgn.gob.gt/alerta-isabel-claudina-un-mecanismo-de-busqueda-de-mujeres-desaparecidas-en-el-pais/>.

<sup>170</sup> *Aleta Isabel-Claudina*, *supra* note 169.

<sup>171</sup> *Isabel Claudino*, OBSERVATORIO DE LAS MUJERES DEL MINISTERIO, <http://observatorio.mp.gob.gt/isabel-claudina/>.

<sup>172</sup> @isabel\_claudina, TWITTER (Sept. 2018), [https://twitter.com/isabel\\_claudina](https://twitter.com/isabel_claudina).

<sup>173</sup> *Id.*

relate to gender violence, the hope is that the alert system can locate women before it is too late.<sup>174</sup> From January to May of 2018, the Prosecutor's Office reported 287 cases of missing women.<sup>175</sup> In 2020, between January 1 to November 16, an average of four women were reported missing a day. Of those, 16 percent were not found by 2021.<sup>176</sup> That means in 2020, "each week, at least four women who were reported missing did not return to their homes and their whereabouts are unknown."<sup>177</sup> However, because it is a relatively new system, there is not data on how this system may affect VAW or femicide rates in Guatemala.

### *C. The Decree Has Created Small Pockets of Justice*

For many, the Decree represents a big step forward. But much needs to be done to protect Guatemalan women.<sup>178</sup> For others, the law has provided a pathway for justice for those who have lost loved ones as a result of femicide.

Unlike ordinary criminal courts in Guatemala, where only 10 percent of femicide cases lead to sentencing, in the specialized courts over 30 percent of femicide cases have led to sentencing.<sup>179</sup> Aliadas Hilda Morales Trujillo, the head of the Department for the Coordination of Victim Support in the Public Prosecutor's office, pins these successful numbers on those individuals working within the courts.<sup>180</sup> The individuals "have undergone thorough training [in gender issues]" to overcome the stereotypes perpetuating violence.<sup>181</sup> Most of the judges are women, and the courts have psychologists and social workers.<sup>182</sup> The courts also have child-care facilities, so women have someone to look after their children when they testify.<sup>183</sup> One judge has seen an increased

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<sup>174</sup> *Guatemala Sets Up Platform to Find Missing Women*, *supra* note 13.

<sup>175</sup> *Id.*

<sup>176</sup> Juan Manuel Vega, *Alerta Isabel Claudina: Twitter restringió por más de 24 horas cuenta de búsqueda de mujeres desaparecidas*, PRENSA LIBRE (Dec. 27, 2020, 2:12 PM), [https://www.prensalibre.com/guatemala/justicia/alerta-isabel-claudina-twitter-restringe-cuenta-de-busqueda-de-mujeres-desaparecidas/?utm\\_term=Autofeed&utm\\_medium=SocialEcho&utm\\_source=Facebook&fbclid=IwAR0m2D381ZVnJrw3kyrRSN2T10HiKWh3Fsf1AcJbqI5Z2EsoSDSDdOoBz2g#Echobox=1609102278](https://www.prensalibre.com/guatemala/justicia/alerta-isabel-claudina-twitter-restringe-cuenta-de-busqueda-de-mujeres-desaparecidas/?utm_term=Autofeed&utm_medium=SocialEcho&utm_source=Facebook&fbclid=IwAR0m2D381ZVnJrw3kyrRSN2T10HiKWh3Fsf1AcJbqI5Z2EsoSDSDdOoBz2g#Echobox=1609102278).

<sup>177</sup> *Id.*

<sup>178</sup> *See generally* Velasco, *supra* note 58.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

number of victims attend hearings since the childcare facility was implemented.<sup>184</sup>

For the family of individuals like Estéfani Julissa Estrada Neill, the law has provided justice for families who have lost loved ones as a result of femicide. Estéfani was one of the 759 women violently murdered in 2013.<sup>185</sup> She was part of the 21 percent of women strangled in Guatemala that year.<sup>186</sup> According to reports, Estéfani's ex-boyfriend became extremely irritated after learning that she was pregnant.<sup>187</sup> Not long after he learned about the pregnancy, Estéfani's body was discovered in the village of Xecaracoj in the department of Quetzaltenango.<sup>188</sup> Based on the evidence and witness statements, the Public Prosecutor's Office brought charges against the ex-boyfriend, Óscar Zacarías Ordóñez, for femicide at the Criminal Court for Crimes of Femicide and Other Forms of Violence Against Women in Quetzaltenango.<sup>189</sup> Óscar was convicted and sentenced to 50 years in prison without the possibility of parole.<sup>190</sup> While the sentencing of Óscar might have provided some comfort for Estéfani's family and friends, she was one of 759 women killed by femicide in Guatemala in 2013, which is 7 percent more femicides than the previous year.<sup>191</sup> For families like Estéfani's, the law has given them the ability to punish those responsible. But if the goal is to prevent and not react, these powerful anecdotes do not show how the Decree has really addressed the greater systemic issues surrounding femicide.

#### *D. Action Must Be Taken to Protect Women*

Moments of justice are overwhelmed by the rising number of women murdered each year.<sup>192</sup> In 2017 alone, femicide rates were increasing: between January and September there were 590 women murdered.<sup>193</sup> Yet, to date, there have only been 82 people convicted for femicide or attempted femicide.<sup>194</sup> All those convicted have been men.<sup>195</sup> However, lack of organization and ability to collect, preserve and maintain crucial forensic evidence continues to play a role in the

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<sup>184</sup> *Id.*

<sup>185</sup> Reynolds, *supra* note 13.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *At Least 62 Women Killed Every Month in Guatemala: Report*, *supra* note 14.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

disconnection between the law and the implementation.<sup>196</sup> Even more so, these specialized courts are not in every part of the country.<sup>197</sup> Quetzaltenango was one of five departments that had these specialized courts in 2013, and still today only eleven of the twenty-two of the Guatemalan departments have them.<sup>198</sup> For those that do not, the old court system, with judicial staff not trained in the specialized case load take on these cases, leading to disparate in judicial outcomes.<sup>199</sup>

Neither the criminal classification of femicide nor the government's efforts so far have been enough to eradicate femicide.<sup>200</sup> Alicia Bárcena, ECLAC's Executive Secretary, has called on countries to prioritize public policies aimed at prevention, sanctions and the eradication of all forms of violence in the Latin American region.<sup>201</sup> The Decree criminalizes acts of violence that have already occurred and the State has only partially set up the systems and programs designed to prevent femicide or other acts of violence. Many of these resources are still not preventative; they are reactive to the violence. They still do not address how they are going to protect and support women from the outset. In order to see changes in the number of femicides in Guatemala, there must be a policy shift that focuses on supporting women and preventing discrimination and femicide before it occurs.

Less than 4 percent of femicide cases have resulted in some form of justice.<sup>202</sup> On the surface, the Decree says that the Guatemalan government values the lives of women.<sup>203</sup> However, the flawed investigations, lack of training, and lack of resources sends another message.<sup>204</sup> Laws are a good first step but implementing them is another. Government authorities must have the will and the resources to carry out the message.<sup>205</sup> They must also have community support and they must

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<sup>196</sup> Ruiz, *supra* note 105, at 111.

<sup>197</sup> *Id.* at 109.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> Press Release, ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN (ECLAC), *At Least 2,795 Women Were Victims of Femicide in 23 Countries of Latin America and the Caribbean in 2017*, U.N. Press Release (Nov. 15, 2018), <https://www.cepal.org/en/pressreleases/eclac-least-2795-women-were-victims-femicide-23-countries-latin-america-and-caribbean>.

<sup>201</sup> Press Release, Economic Commission for Latin America and the Caribbean (ECLAC), *ECLAC Warns About High Number of Femicides in Latin America and the Caribbean*, U.N. Press Release (Nov. 24, 2015), <https://www.cepal.org/en/comunicados/cepal-advierte-elevado-numero-femicidios-america-latina-caribe>.

<sup>202</sup> *Why Does Guatemala Have One of the Highest Rates of Femicide in the World?*, AMNESTY INT'L (Jan. 23, 2013), <https://www.amnestyusa.org/why-does-guatemala-have-one-of-the-highest-rates-of-femicide-in-the-world/>.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

have the buy-in from the individual actors who are charged with carrying out justice.<sup>206</sup> Additionally, the government must have the community's support and trust: victims willing to come forward, and families and communities willing to talk about the deeper issues at place such as inequality, domestic violence, and a long history of mistreatment of women.

For the conversations to be effective, they must include considering a woman's diversity to really identify various ways in which violence against them manifested.<sup>207</sup> This includes looking beyond the idea of gender rooted in someone being assigned male at birth against someone who is assigned female at birth and looking at an intersection between sex, gender, economic, age, race, culture, religion, as well as other factors.<sup>208</sup>

Health care professionals are making their way into the conversation as well, because they feel that there are other ways to reach women experiencing violence before it is too late.<sup>209</sup> Health care workers have the protocols and legal framework to report crimes.<sup>210</sup> In other countries, health care workers are often on the frontlines of caring for domestic violence victims.<sup>211</sup> However, in Guatemala, health care workers are not adequately trained to see signs of VAW.<sup>212</sup> Ligia Gomez, a psychologist, in Quetzaltenango wants to change that.<sup>213</sup> Gomez and other healthcare workers have a system where every pregnant woman who receives health services in the department of Quetzaltenango is given a questionnaire regarding mental wellbeing and abuse.<sup>214</sup> Gomez then is able to evaluate the questionnaires and if she considers them to be victims of domestic violence, she can encourage them to report it, or recommend psychological support.<sup>215</sup> Gomez notes that the lack of mental health providers and victims fear of coming forward are hurdles to her method, but for her, it's a start.<sup>216</sup> She has been traveling across

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<sup>206</sup> *Id.*

<sup>207</sup> *At Least 2,795 Women Were Victims of Femicide in 23 Countries of Latin America and the Caribbean in 2017*, *supra* note 200.

<sup>208</sup> *Id.*

<sup>209</sup> Sarah Johnson, *Can Health Workers Stop Thousands of Women from Being Killed in Guatemala?*, THE GUARDIAN (Mar. 7, 2018), <https://www.theguardian.com/healthcare-network/2018/mar/07/health-workers-stop-thousand-women-killed-guatemala-femicide>.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*



Guatemala and training others to expand this program.<sup>217</sup> A concern she has is the lack of healthcare workers and interpreters for indigenous women, since providing these services for those who do not speak Spanish is currently non-existent.<sup>218</sup> For Gomez and others, it still takes a network to provide support for women who are victims of violence before it becomes femicide.<sup>219</sup>

Providing screenings through health services for pregnant individuals is one way to target the issue.<sup>220</sup> However, why not expand this screening beyond pregnant individuals to any woman (or person) who enters a health clinic? This could be one way to target individuals who are not in the legal system or on any radar for domestic violence and be another step towards bringing the issue of VAW to the surface. The health providers could support the women experiencing violence, provide them resources, and possibly guide them through the legal system, if patients choose that recourse.

These ideas are small pieces to the larger puzzle, but they illustrate how criminalization alone has been ineffective.<sup>221</sup> Because there is a lack of resources, lack of support, and the fact that these systems have still not reached every department and every community in Guatemala, the Decree's objective has largely been ineffective for a large portion of women.<sup>222</sup> If you have a family member who was murdered and that murder would fall under the category of femicide, but there is not a specialized court in your department or your department lacks the forensic policing resources, the case may not be heard.

The Decree itself also does not address a vital issue that exacerbates femicide: the traditional social fabric of Guatemalan norms that clash with women's changing roles.<sup>223</sup> This is evident in the resistance to the Decree by both politicians and individuals who feel that these are family issues individuals and that including gender in the mix

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<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> See Rep. of U.N. Human Rights Comm., International Covenant on Civil and Political Rights, *Concluding Observations on the fourth periodic report of Guatemala*, CCPR/C/GTM/CO/4, 7 (May 7, 2018) (detailing their concerns about the alarming number of femicides and conditions of victims' bodies in conjunction with the limited number of prosecutions despite the increase in these specialized courts); Rep. Inter-Am. Comm'n H.R., *Rep. of the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion* 53, (Dec. 31, 2017) (finding 755 femicide cases in Guatemala in 2013); Redacción La Hora, *Cepal Advierte Sobre Alto Número de Femicidios* [ECLAC Warns About High Number of Femicides], *CEPAL Advierte Sobre Alto Número de Femicidios*, LA HORA (November 25, 2015), <https://lahora.gt/cepal-advier-te-sobre-alto-numero-de-femicidios/> (reporting 876 femicides in Guatemala in 2014).

<sup>222</sup> Ruiz, *supra* note 105, at 112–13.

<sup>223</sup> Andrade, *supra* note 140.

is harmful towards men.<sup>224</sup> Some have argued this matter all the way to the Guatemala Constitutional Court.<sup>225</sup> Manuel Alberto Chinchilla Solís and Ethel Katherine Girón Reyes brought an action of unconstitutionality regarding the Decree.<sup>226</sup> Specifically, it was argued a portion of Article 6 was unconstitutional.<sup>227</sup> On July 3, 2018, the Guatemala Constitutional Court declared Article 6 of the Decree partially unconstitutional.<sup>228</sup> The Court ruled the provision, “the reduction of the penalty cannot be granted for any reason” of Article 6 was unconstitutional, allowing for the reduction of sentences for femicide, based on an argument of equal opportunity and responsibilities between men and women.<sup>229</sup> This decision caused immediate outcry from local and international organizations.<sup>230</sup> The Committee of Experts of the Belém Do Para Convention called this decision a win for the patriarchal system and contrary to the Convention’s Article 7.<sup>231</sup>

The Decree mainly focuses on deterring individuals from committing femicide by heightened penalties and provides resolutions for families after the act is committed.<sup>232</sup> Yet, women are still being murdered, and families and communities are still grieving.<sup>233</sup> As VAW continues, prosecuting a small percentage of the perpetrators is not enough. Guatemalan women appear to be done waiting for their government to act.

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<sup>224</sup> In 2008, a male Congressman threatened to leave the floor to prevent a vote on the Decree.

<sup>225</sup> This court is the highest court of civil law in Guatemala that was established in 1985 within Guatemala’s new constitution and that which reviews the general constitutionality of laws or state actions.

<sup>226</sup> Henry Galindo, *A Problem of Equality? Understand Guatemala’s Decision Regarding Femicide*, LATIN AMERICAN POST (July 21, 2018), <https://latinamericanpost.com/22244-a-problem-of-equality-understand-guatemalas-decision-regarding-femicide>.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Constitutional Court, Resolution 1749-2017 (Unconstitutional aspects of the Law against Femicide), July 3, 2018, <https://cc.gob.gt/2018/07/03/resolucion-1749-2017-inconstitucionalidad-ley-contra-el-femicidio/>; Galindo, *supra* note 226.

<sup>230</sup> *See Annual Report 2018: Chapter V Follow-Up Recommendations Issued by the IACHR in Its Country or Thematic Reports*, INTER-AM. COMM’N H.R., 614, 631, [http://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018\\_cap.5GU-en.pdf](http://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018_cap.5GU-en.pdf).

<sup>231</sup> *Committee of Experts laments the decision of the Constitutional Court regarding femicide in Guatemala*, THE COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM TO THE BELÉM DO PARÁ CONVENTION (MESECVI), <https://www.oas.org/es/mesecvi/docs/CEVI-ComunicadoGuatemala1-2018-EN.pdf>.

<sup>232</sup> *See Decree 22-2008, supra* note 11.

<sup>233</sup> *Guatemala’s Femicide Law: Progress Against Impunity?*, *supra* note 13, at 6.

### *E. COVID-19 Reveals the Cracks in the System*

COVID-19 has revealed that the Decree and the systems it put in place are largely ineffective. Until the pandemic hit, the 24-hour hotline was not intended for use as an emergency call system—it was previously meant to solely guide women through an emergency and their legal options.<sup>234</sup> In addition, it was only available in Spanish and a few other languages, when over 24 languages are spoken in the country.<sup>235</sup> COVID-19 caused courts to close and others to push back hearings as far out as 2024, some related to women’s rights issues.<sup>236</sup>

On October 9, 2020, women and activists took to the streets in multiple departments throughout Guatemala to protest the violent acts against women, including the increase of violence since COVID-19 lockdowns and the closure of many courts and services.<sup>237</sup> In the midst of the COVID-19 pandemic, these women went out in the streets of protest the most recent victims of femicide attacks, Laura Daniela Hernandez, and Litzy Cordon. Protesters interviewed proclaimed that they are sick of living in fear. As COVID-19 rages the country, violent domestic cases continue to rise and women fear calling the police on their partners while in lockdown.<sup>238</sup> For these women, this protest is part of a greater social movement to protect themselves and their right to life.<sup>239</sup>

## IV. FUTURE OF ADDRESSING AND CURBING FEMICIDE, GLOBALLY AND LOCALLY

Efforts to curb femicide rates are occurring both at the international level and domestically in Guatemala. But more must be done to stop these human rights abuses from repeating.

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<sup>234</sup> Mazariego & Rabanales, *supra* 147.

<sup>235</sup> *Id.*

<sup>236</sup> Mazariego & Rabanales, *supra* note 147; *Guatemala: Thousands of Women Take to the Streets Against Femicides*, TELESUR (Oct. 11, 2020), <https://www.telesurenglish.net/news/Guatemala-Thousands-of-Women-Take-to-the-Streets-Against-Femicides-20201011-0001.html>.

<sup>237</sup> See Sandra Cuffe, *'I am Tired of it': Femicides Spark Outrage Across Guatemala*, ALJAZEERA (Oct. 10, 2020), <https://www.aljazeera.com/news/2020/10/10/i-am-tired-of-it-femicides-spark-outrage-across-guatemala>; *Guatemala: Thousands of Women Take to the Streets Against Femicides*, *supra* note 236; Mazariegos & Rabanales, *supra* note 147.

<sup>238</sup> *Guatemala: Thousands of Women Take to the Streets Against Femicides*, *supra* note 236.

<sup>239</sup> Cuffe, *supra* note 237.

### A. *International Solutions to Address Femicide*

Human rights advocates in Latin America and the Caribbean have expressed a need to effectively measure femicide rates in order to design, implement, and evaluate public policies aimed at protecting victims from gender-based violence.<sup>240</sup> More specifically to prevent femicide, provide reparation for collateral victims, and punish perpetrators, there is a need for an international system to track and measure rates of femicide.<sup>241</sup> ECLAC has pushed for a Femicide Registration System in Latin American and Caribbean countries.<sup>242</sup> Those working on this initiative believe this tool would improve the quality of national information to deepen the analysis of femicide and strengthen regional cooperation.<sup>243</sup> This is similar to the Spotlight Initiative, created by the United Nations and European Union, to focus on the elimination of femicide in this region.<sup>244</sup>

The data will allow these international organizations to support individual countries to address femicide. However, more must be done on a local level, because each country has unique legal and cultural differences that will affect the eradication of femicide.

### B. *Guatemala Must Continue to Make Progress to Eradicate Femicide*

Criminalizing femicide, providing support for victims and violence survivors, and support for murder victim's families, are all just pieces of the puzzle. If women are to have "a right to be free from violence,"<sup>245</sup> then the norms must shift. Twelve years after Congress signed the Decree in the law, femicide numbers appear stagnant. Women have taken to the streets in frustration, because they do not feel safe, they do not feel protected by their government, and they do not feel as if the words written into the Decree play out in their everyday lives.

To address femicide, Guatemala must go beyond these solutions and seek to educate individuals of their rights and ensure that those rights are enforced.<sup>246</sup> This support can start in schools, churches, and other community venues where people find comfort and trust. Activists must find a way to connect with community resistance and break down generations of deeply rooted expectations of women and

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<sup>240</sup> *In 2018, At Least 3,529 Women Were Victims of Femicide in 25 Latin American and Caribbean Countries*, *supra* note 14.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> Decree 22-2008, *supra* note 11, art. 2.

<sup>246</sup> Andrade, *supra* note 140.

their role in families and society in order to create the change they want to see in the communities.

#### CONCLUSION

While the Decree has not been effective to stop femicide in Guatemala, it has allowed Guatemala to make bold and important statements to the international community and its citizens through the Decree.<sup>247</sup> It recognized that femicide and violence against women is illegal.<sup>248</sup> It codifies a woman's right to be treated equally and to live a life free from violence.<sup>249</sup> It provides legal recourse for women who are subjected to this violence and punishment for those who do not respect the rights of women.<sup>250</sup> It also explicitly says that the State's obligation is to ensure women have these rights, and that State and public officials can be held liable for their failure to support women's rights in Guatemala.<sup>251</sup> Making these bold statements is a huge step in the right direction, however, Guatemala cannot stop there. These statements must be carried forward through with action, with enforcement, and with proper funding of resources. The government must continue to find ways to address femicide. It must turn to education, support, and follow-through on the Decree it has so proudly brandished. Then, maybe, women in Guatemala can see a future without living in constant fear of femicide or other forms of violence.

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<sup>247</sup> *See generally* Decree 22-2008, *supra* note 11.

<sup>248</sup> *Id.* art. 6–7.

<sup>249</sup> *Id.* art. 1.

<sup>250</sup> *See generally id.*

<sup>251</sup> *Id.* art. 12.