

Violence against Women and Specialized Justice in Guatemala: Advances and Limitations

Erin Beck

This article provides the first detailed account of the structure, functioning, and impact of Guatemala's Femicide and Other Forms of Violence against Women Criminal Courts. I assess the achievements and limitations of these courts from two views: a bird's eye view, which explores how cases proceed through these specialized courts, and an insiders' view, which explores the perspectives and practices of their judges. Combined, these views demonstrate that judges' personal commitments and the courts' institutional frameworks benefit the minority of women whose cases are heard in them but that these benefits are undercut by the broader social and institutional contexts in which judges and courts operate. This can be seen both in a panoramic view that reveals key locations where cases involving violence against women and girls stall in the judicial process and also through judges' critiques of the systems in which they are embedded. Both views provide insights that should guide policy makers and activists seeking to better fulfill the promise of these courts.

In 1996, representatives of the Guatemalan government and leftist guerrilla forces signed peace accords that put a formal end to thirty-six years of armed conflict in which police, military, and paramilitary forces regularly committed acts of genocide and gender-based violence. Despite the conflict's formal end, post-conflict Guatemala continued to be shaped by an undeclared war on women that resulted in the third highest femicide¹ rate globally. Between six and nine hundred women were killed annually from 2005 to 2008, and countless others suffered psychological, physical, sexual, and economic violence (Grupo Guatemalteco de Mujeres 2020). Yet government officials failed

Erin Beck, Associate Professor, Department of Political Science, University of Oregon, Eugene, OR, United States Email: Beck@UOregon.edu

The author's work on violence against women courts in Guatemala has been supported by the Harry Frank Guggenheim Foundation (Grant no. 4410H0) as well as by the University of Oregon's Center for Latino/a and Latin American Studies, the Center for the Study of Women in Society, and the Office of the Vice President for Research and Innovation. Her research received Institutional Review Board's (IRB) approval (University of Oregon IRB Protocol no. 04252016.037). Much of the research for this project was conducted alongside Lynn Stephen, Philip H. Knight Chair, professor of anthropology at the University of Oregon. The author would like to thank Lynn Stephen, Alison Gash, Priscilla Yamin, and the four anonymous reviewers for their thoughtful feedback on earlier versions of this manuscript. Lastly, she thanks the many Guatemalans who lent their time, energy, and expertise to this project, especially the personnel associated with violence against women and girls (VAWG) courts in Guatemala City, Huehuetenango, and Quetzaltenango.

1. Femicide is the murder of a woman rooted in misogyny. Some use "femicide" to implicate the state in the gender-based murder of women, but I use "femicide" here to reflect Guatemalan legal terminology.

to act, investigating just 30 percent of women's murders and making arrests in 3 percent of cases (Amnesty International 2005). The 2008 Law against Femicide and Other Forms of Violence against Women (VAWG Law) sought to address impunity by criminalizing various forms of violence against women and girls (VAWG), establishing femicide as a crime with a higher mandatory minimum sentence than other forms of homicide and mandating the creation of specialized Femicide and Other Forms of Violence against Women Criminal Courts (VAWG courts) that would adopt victim-centered approaches and feature specially trained judges and personnel.² Although they have been functioning since 2010, we lack analysis into the organization, daily functioning, and impact of these VAWG courts.³

This article draws on quantitative data, interviews, courtroom observations, and case files to offer the first analysis of the structure and effectiveness of Guatemala's VAWG courts and the career pathways within them for specialized judges. It shows how judges' personal commitments and the courts' institutional frameworks open opportunities for access to justice for some VAWG victims, while failing to do so for many others. I analyze the functioning and impacts of the specialized VAWG justice system's functioning and impacts from two perspectives. First, from a bird's eye view, wherein I explore how cases do or do not proceed through specialized institutions to provide a sense of these institutions' overall functioning. Second, from an insiders' view, I analyze the advances and limitations of the VAWG courts through the perspectives and practices of judges who hear cases in them. I have found that the VAWG courts offer advantages to the minority of women whose cases are heard in them but that these courts are embedded in a broader social and institutional context that undercuts their impacts for individual victims and society at large. This can be seen in the panoramic view that reveals key locations where VAWG cases stall in the judicial process. It can also be seen through judges' critiques of the systems in which they are embedded and the ways in which they express their personal commitments and frustrations in the context of trials. I provide insights that should guide policy makers and activists seeking to better fulfill the promise of the VAWG Law.

STUDYING VAWG INSTITUTIONS IN THE CONTEXT OF A "PATCHWORK STATE"

Studies that focus on the impact of VAWG reforms often reveal state actors undercutting these reforms in their everyday interactions with victims and perpetrators. Pamela Neumann (2017) found that even specialized women's police and prosecutors in Nicaragua tended to dismiss women's experiences of violence as trivial and to act in direct contradiction of the law. Cecilia Menjívar and Shannon Drysdale Walsh (2016) showed that, when confronted with intimate partner violence, Guatemalan police and non-specialized judges applied laws governing property rights or marriage, which

2. Ley contra Femicidio y Otras Formas de Violencia Contra la Mujer, Decreto 22-2008, 2008, https://www.congreso.gob.gt/assets/uploads/info_legislativo/decretos/2008/22-2008.pdf.

3. For exceptions, see Beck 2019; Beck and Stephen 2021. Others address persistent impunity after femicide courts were created but do not focus on VAWG courts (Walsh and Menjívar 2016).

disadvantaged women, rather than VAWG laws. Evidence also suggests that similar patterns existed in Chilean courtrooms, where judges hearing VAWG cases have prioritized family unity and reconciliation in contradiction to VAWG reforms, as observed by Lidia Casas, Francisca Rivera, and Macarena Vargas (2010). Ronald Kramer (2016) highlights that New Zealand domestic violence court officials display a cultural tolerance for men's domestic violence by giving lighter sentences for intimate partner assault than those given for non-intimate partner assault. He argues that the disconnect between the desire to take domestic violence seriously, which spurred the creation of domestic violence courts, and the reality of lighter sentences was influenced by legal professionals who "have vested interests in ensuring workloads are managed, cases get processed and collegial relationships are preserved" (703). This context made it "difficult to ensure substantive value orientations, such as ending men's violence against women, are consistently prioritized" (703). These studies demonstrate that state institutions can perpetuate VAWG even in the face of policy reforms aimed at challenging impunity for gender-based violence, including the creation of specialized institutions, when public-facing officials have internalized prevailing gender norms, are motivated by competing drives in their daily work, and/or are too under-resourced and overwhelmed to prioritize the difficult goals of changing social and legal norms.

Because the state is internally heterogenous and influenced by diverse institutional gender regimes (Haney 1996), institutions are likely to vary in the degree to which they uphold gender inequalities, and—in contrast to the above examples—certain public-facing officials may become allies in the fight against VAWG. For example, Rekha Mirchandani (2006) observed judges in Salt Lake City's domestic violence courts challenging defendants' understanding of VAWG as normal, rejecting victim-blaming tendencies, and cultivating a consensus-based approach to justice that better addressed VAWG's root causes than did purely punitive approaches. Cecilia Santos (2005) noted that, even though sexual harassment was not criminalized at the time, Brazilian police-women in specialized women's police stations who had absorbed feminist ideas received complaints of harassment as serious offenses. Erin Beck (2021b) found that municipal women's office officials donated their personal money to cover women's bus fares to report violence. Alongside street-level bureaucrats that undercut reforms, then, are state officials who maneuver around the limitations of reforms and work to realize and extend reforms. These actors are often knowledgeable and critical of the state's deficiencies when it comes to addressing VAWG. They are personally affected when confronted with the mismatch between their ideals, the goals of reforms, and the realities on the ground.

Law and society literature highlights the key role of specialized court judges in shaping the practice and experience of justice. For example, Vicki Lens (2015) found that, despite facing the same institutional constraints as their peers, some judges in traditional US family courts went against dominant norms by adopting more conversational, active, and inclusive roles and thus provided litigants with the experience of therapeutic justice. Sarah Picard-Fritsche and colleagues (2011) concluded that the presiding judge mattered more for respondents' perceptions of their US family court experiences than whether they experienced traditional or problem-solving courts. Similarly, judicial styles in US drug courts that incorporated praise, support, and other positive

attributes translated into fewer crimes and less drug use by participants (Rossman et al. 2011). This research shows how the personal orientations of specialized court judges combine with their social and institutional contexts to shape their court's effectiveness and litigants' experiences.

In Guatemala, varying commitment to addressing VAWG has led to what I have called a patchwork state: one that is neither uniformly weak and patriarchal nor uniformly effective and benevolent (Beck 2021b). Rather, the Guatemalan state is uneven in its effectiveness in, and commitment to, addressing VAWG. Pockets of dedicated public servants and isolated, but committed, individuals exist in a broader context of under-reformed, ineffective institutions and political will that varies across institutions and administrations. There have been well-placed committed individuals—people like former Attorneys General Claudia Paz y Paz and Thelma Aldana at the national level and individuals like those found in the Indigenous Women's Defense Offices at the local level—that have pushed against impunity for VAWG. Yet there have also been those who deprioritized or actively resisted change at every level—from presidents to police. At the level of policy making, the concept of a patchwork state demonstrates why governments like Guatemala's may pass progressive laws, spearheaded by committed policy makers working with domestic movements and international allies but then fail to fully fund or implement those laws (Beck 2021a). After all, different actors and institutions are involved in the passage of reforms, budgetary allocations, and the implementation and operationalization of reforms.

The reality of a patchwork state suggests the need to investigate the state in its local instantiations and explore the diverse and often contradictory ways that top-down reforms get filtered through varying institutional cultures and worldviews. This article therefore takes, in part, a micro-sociological or "street-level-bureaucracy" view by zeroing in on institutions and actors that are key to the realization of VAWG reforms but that have been understudied in developing country and non-Western contexts: specialized VAWG criminal courts and the judges that preside over them (Lipsky 1980; Biland and Steinmetz 2017).⁴ My approach parallels a trend in the Latin American law and society literature that focuses on feminist legal activism related to VAWG (Friedman 2009; Roggeband 2016; Beck 2021a), understandings of VAWG inscribed in laws (Segato 2003; Casas and Mera 2004), the implementation of VAWG reforms (Santos 2005; Casas, Riveros, and Vargas 2010; Menjívar and Walsh 2016; Neumann 2017), and the challenges women confront when attempting to engage the criminal justice system (Arensburg and Lewin 2014; Walsh and Menjívar 2016; Beck 2021b; Beck and Stephen 2021). This work points to the limitations of purely criminal justice responses to VAWG based on a depoliticized view of VAWG as merely interpersonal, rather than structural, in nature (Segato 2003; Godoy-Paiz 2008; Arensburg and Lewin 2014; Beck and Stephen 2021). This article follows in this vein by uncovering both progress in addressing VAWG and ongoing sources of impunity in the wake of the VAWG reforms in Guatemala. It identifies key areas of disconnect that

4. For other micro-sociological views of family courts or domestic violence/VAWG courts outside of Western contexts, see Lazarus-Black and McCall 2006; Lazarus-Black 2007; Casas, Riveros, and Vargas 2010; Azócar 2018; Riquelme Espinosa 2021.

prevent most VAWG cases from arriving in VAWG courts and limit the feminist ideals inscribed in the law from being fully realized for those cases that arrive in courts. As found elsewhere in the region, for example, ineffective public prosecutors and weak investigations and overburdened courts contribute to long delays and persistently high levels of impunity for VAWG in Guatemala (Casas, Riveros, and Vargas 2010; Pierobom do Ávila 2018). Yet, in contrast to much of the literature on criminal justice approaches to VAWG in Latin America, this article demonstrates that there are indeed pockets of political commitment and internal resistance to the status quo, even in the face of disappointing central government responses.

My article also builds on and contributes to the law and society literature on judging that recognizes that judges are not “intellectual giants, oracles or calculating machines” but, rather, “human workers, responding to the conditions around them” (Darbyshire 2011). This literature finds that courtroom interactions are shaped by judges’ worldviews and cognitive shortcuts in the face of incomplete information, courts’ organizational and institutional cultures, socio-legal contexts, and mundane aspects of work such as caseloads, “business-as-usual” routines, and administrative division of labor (Lazarus-Black and McCall 2006; Agnew-Brune, Moracco, and Bowling 2017; Hersant and Vigour 2017; Travers 2017). In Guatemala, I have found that VAWG judges are affected by their understandings of VAWG and the emotional impact of their jobs, alongside the broader contexts of a weak criminal justice system and a Guatemalan society and central government that devalues women’s lives and their deaths.

Historically, much of the judging literature has focused on higher-level courts and common law contexts, where there is considerable judicial autonomy. By focusing on courtroom dynamics in lower-level courts in a developing country and in a civil law context, this article contributes to a growing literature on lower-level, problem-solving courts (Tsai 2000; Eley 2003; Gover, MacDonald, and Alpert 2003; Maytal 2008; Lens 2015; Castellano 2017) and on courtroom ethnography and judging outside of Western contexts (Lazarus-Black and McCall 2006; Lazarus-Black 2007; Ginsburg and Moustafa 2008; Clarke 2012; Azócar 2018; Sieder, Ansolabehere, and Alfonso 2019). It provides the first detailed account of the structure and functioning of Guatemala’s VAWG courts, the career pathways, perspectives, and practices of judges who preside in them, and the rates at which cases move through them (or stall out).

This article also contributes to the law and society literature by taking judges seriously as social actors who both effect the implementation of specialized justice and who are personally affected by engaging with specialized justice. Much of the literature has focused on the former but not on the latter (for exceptions, see Azócar 2018; Darbyshire 2011; Frankel 2013; Jaffe et al. 2003). Similarly, existing work on VAWG reforms in Latin America have rightly focused on the effects of reforms for women and/or society at large. Yet few focus on the impacts of reforms on state officials as embodied social actors (for an exception, see Riquelme Espinosa 2021). This article adds to the literature by doing both. It finds that, despite expectations of stoicism, Guatemala’s VAWG court judges are personally affected by VAWG reforms and the contradictions that exist between reforms’ lofty goals, their personal commitments, and the institutional and social realities that they confront every day. Their frustrations point us to a path forward to better realize the ideals of the VAWG Law.

DATA AND RESEARCH METHODS

I draw on data collected as part of a collaborative project on access to justice for Guatemalan VAWG survivors, which has been ongoing since 2016 with Lynn Stephen. I conducted research across three departments⁵ that have significant experience with VAWG courts: (1) Guatemala, an urban department with lower levels of poverty and a largely *ladino* (non-Indigenous) population, which has been home to VAWG courts since 2010; (2) Quetzaltenango, a mixed urban/rural department that is roughly half Indigenous, with medium levels of poverty, which has been home to VAWG courts since 2010; and (3) Huehuetenango, a largely rural department with a majority Indigenous population and high levels of poverty, which has been home to VAWG courts since 2012. At the time of my research, there were twenty-four specialized VAWG judges in the department of Guatemala (six overseeing pretrial hearings and eighteen overseeing criminal trials) and four judges each in Huehuetenango and in Quetzaltenango's specialized courts (one overseeing pretrial hearings and three overseeing criminal trials).⁶

I draw on four data sources. First, I analyzed quantitative data on VAWG cases as they advance through the judicial process, combining data from multiple reports and agencies issued between 2008 and 2021. I do not use this data to complete regression analyses but, rather, to provide relatively simple, but, up until now, inaccessible, summary data. The VAWG Law required various institutions to report annually on the number of victims attended to, on the verdicts rendered, and so on. Yet this data is dispersed across various institutions that use slightly different measures and definitions, is difficult to locate and understand, and is rarely compiled longitudinally.⁷ As such, providing readers with a simple statement such as “at the end of any given year, only an average of 6 percent of reports from that year were in the process of pretrial hearings or had reached a sentence” often required combining data from multiple reports. This data being publicly available increases government accountability, but this accountability is undermined when case-tracked data is unavailable and considerable labor is needed to have make basic assessments of criminal justice institutions. Second, I draw on over thirty hours of observations in VAWG criminal courts. Hearings are open to

5. Departments are roughly equivalent to US states.

6. The difference in the number of judges in Guatemala versus Quetzaltenango and Huehuetenango reflects the tendency to concentrate resources in the capital. It also reflects the department of Guatemala's high level of need. In 2018, 20 percent of the population lived there, and 17 percent of reports of VAWG originated there (Instituto Nacional de Estadísticas 2018b, 2019). These numbers align with victimization surveys in which women in the department report experiencing intimate partner violence at similar, though slightly lower, rates than national averages. In 2014–15, 5.5 percent of women (aged fifteen to forty-nine) in the department of Guatemala reported that they experienced intimate partner physical violence in the previous twelve months compared to 6.5 percent of women nationally (Ministerio de Salud Pública y Asistencia Social 2017, 459, 466). Despite having more VAWG courts, the department of Guatemala is still underserved. An oversight study found that the average time between an incident of VAWG and a verdict in the department of Guatemala (three years, three months) was the longest of all departments studied (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2019, 103).

7. For this article, I drew on reports and data published between 2008 and 2022 by the National Statistics Office, the Public Prosecutor's Women's Observatory, and the oversight agency for VAWG judicial institutions, among others.

the public, except for those that involve minors and some sexual violence cases. Trials are separated into multiple hearings that may be weeks apart, impeding my ability to observe trials from start to finish in each research trip. Therefore, I observed hearings that varied according to the type of violence involved, the judge, and the trial phases. Because of space limitations, I provide short quotes or descriptions from VAWG trials that demonstrate judges' influence on specialized justice rather than longer excerpts. Third, I draw on interviews with seven judges, the head of an oversight agency for VAWG judicial institutions, and eight lawyers who litigate cases in VAWG courts. These semi-structured interviews lasted one to two-and-a-half hours and were recorded and transcribed. Some people were interviewed multiple times for a total of twenty-two interviews. I additionally conducted informal interviews over shared meals, pauses between trials, as well as regular Whatsapp and email correspondences between research trips. It is worth noting that, while I speak Spanish and have been conducting research in Guatemala since 2006, my identity as a white, American female academic likely affected my respondents' answers. Fourth, I analyzed a sample of ten case files randomly selected from a list of completed cases in Quetzaltenango and Huehuetenango VAWG courts. I focus my analysis here on the judges' written verdicts to reflect on their legal reasoning. To protect the identities of my respondents, I assign them pseudonyms and remove identifying information when quoting from interviews, verdicts, or observations.

JUDGING IN GUATEMALA

Guatemala comes from the civil law tradition, which leaves less room for judges' interpretations than do common law systems, and it has oral, adversarial trials in which the presiding judge(s) renders verdicts (there are no juries). The justice system was reformed to increase judicial independence after the signing of the 1996 Peace Accords, which ended thirty-six years of armed conflict and authoritarian rule. The resulting Law of Judicial Careers (passed in 1999, reformed in 2016) created a bifurcated system with different procedures for judicial appointment and promotion in lower- and upper-level courts.⁸ Lower-level courts include municipal-level courts overseen by justices of the peace (*jueces de paz*) who resolve local conflicts and rule on minor crimes associated with fines other than prison sentences. Lower-level courts also include "first instance courts" (*tribunales de primera instancia*) and sentencing courts. First instance courts consist of general criminal or civil courts as well as courts that focus on one subject area such as labor or family courts. Specialized VAWG courts are first instance courts that focus exclusively on crimes related to the VAWG Law or to sexual violence against women or minors. Upper-level courts consist of appellate courts, the Supreme Court, and the Constitutional Court.

The School of Judicial Studies (Escuela de Estudios Judiciales) trains judges, magistrates, and judicial civil servants. Those with law degrees, regardless of their litigation experience, can enroll in intensive courses for a chance at being awarded a judicial

8. Ley de la Carrera Judicial, Decreto 32-2016, 2016, https://www.congreso.gob.gt/assets/uploads/info_legislativo/decretos/2016/32-2016.pdf.

appointment in lower-level courts. The Law of Judicial Careers mandated that the judiciary name the best qualified judges to lower-level courts to enhance judicial professionalization and independence. Thus, those who rise to the top of their classes are generally first in line to fill open judgeships. Candidates for judgeships in lower-level courts start at the bottom, first serving as justices of the peace, before being offered the chance to enroll in more courses to be appointed to either general or specialized first instance courts or sentencing courts. Historically, judges have had no say about where in the country they will serve at this point, such that some have served as justices of the peace far away from their homes.⁹ Thereafter, judges can enroll in further courses to compete for judgeships in first instance or sentencing courts out of a desire to occupy more prestigious, better compensated jobs and/or to vie for openings in more desirable locations.¹⁰ Appointment for judges in lower-levels courts (justice of the peace, first instance courts, and sentencing courts) is relatively meritocratic with some possibility for promotion within this tier.

The judges appointed to VAWG courts followed this career trajectory. They enrolled in courses at the School of Judicial Studies to be appointed a justice of the peace. In this position, they were likely exposed to continuing education classes run by the School of Judicial Studies on equal access to justice through the lens of human rights and due process, which incorporates discussions of women's rights and VAWG. After serving as justices of the peace at one or more locations, they enrolled in courses (lasting at least six months) for the chance to be appointed to a first instance court. Some went directly to VAWG courts; others first served in different first instance courts before moving to VAWG courts. Regardless, before being appointed to a VAWG court, judges must complete an additional course at the School of Judicial Studies on specialized VAWG justice. This six-week course covers topics including gender analysis, cycles of VAWG, and national and international laws related to women and victims' rights, among others. Training materials draw on the methodology established by the feminist jurist Alda Facio for a gender-based analysis of legal phenomena to recognize and challenge the androcentric nature of law,¹¹ including steps to recognize gender bias in one's personal life, in the law, and in society.¹²

Judges thus often had significant education and judicial experience prior to their appointment to VAWG courts that informed their perspectives on the criminal justice system. For example, many VAWG judges who I interviewed served as justices of the peace in rural and Indigenous municipalities, which increased their understanding of the various barriers that poor, Indigenous women faced when attempting to access VAWG courts. In 2014, 54 percent of judges in VAWG courts were women, a percentage of women that was roughly 10 percent higher than what was found in other lower-level courts (Unidad de Control, Seguimiento y Evaluación de los Órganos

9. After 2017, candidates for open judgeships started to be able to apply for specific locations, giving them some input over where they would be appointed.

10. In 2018, justices of the peace earned an average salary of \$19,138 compared to first instance judges' average salary of \$31,896 (Lainfiesta 2018).

11. Alda Facio Montejo (1992) argues that women are disadvantaged when their biological or social differences are ignored because most laws are written with a male subject as a frame of reference.

12. Support staff in specialized courts are also required to be trained to interact with women in ways that reduce revictimization.

Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2019). Whereas there is a possibility of meritocratic promotion in lower-level courts, judges hit a ceiling when it comes to promotion beyond this tier of courts. The judiciary is not legally bound to take evaluations and merit into account in the appointment to upper-level courts—appellate courts, the Supreme Court, and the Constitutional Court (Williams 2018, 46–47). Judges in upper-level courts, called magistrates, serve five-year terms and hold much more prestige. They are chosen through a “quasi-political process” in which a selection committee proposes a list of candidates, half of whom Congress selects to serve (Bowen 2013, 838). In practice, these procedures have allowed for corruption and influence peddling in the development of the candidate list and in the selection of magistrates (Bowen 2017).

Thus, on the one hand, while there is meritocracy in appointment to lower-level courts (including VAWG courts), this is not true for upper-level courts, which leads to resentment among lower-level court judges. This resentment, alongside the under-resourcing of lower-level courts and frustrations with weaknesses in the criminal justice system, contribute to burn-out among some of the most dedicated judges. Yet, on the other hand, VAWG judges, located in less prestigious, lower-level courts that focus on a topic (VAWG) that is seen as marginal to the interests of the political and economic elites, are less affected by political interference and corruption than are judges in upper-level courts.

THE SOCIO-INSTITUTIONAL CONTEXT CONFRONTED BY VAWG COURTS

VAWG courts are embedded in a socio-institutional context that normalizes VAWG and gender inequality. Over the course of Guatemala’s armed conflict from 1960 to 1996, over one hundred thousand women and girls were raped by state forces (Comisión de Esclarecimiento Histórico 1999). Heteropatriarchal norms that continued to prevail in the post-conflict period promoted a view of men as leaders of households, communities, and institutions and women as dependents or property to be controlled, at times through violence (Menjívar 2011). Women were expected to be submissive and to defer to their partners while making household decisions. Female sexual purity was prized, and women were to maintain this purity by limiting their relations with men beyond their intimate partner. Indeed, in a 2015 survey, 38 percent of Guatemalan women reported that their current/former partner got angry if they spoke to other men, 19 percent said that their partners frequently accused them of being unfaithful, and 30 percent said that their partners wanted to know where they were at all times. In addition to high levels of poverty that affect all Guatemalans, women have been disadvantaged when it comes to control over the limited income that exists, making it difficult to leave abusive partners. In total, 12 percent of women say that their partners do not trust them to manage the household money (Ministerio de Salud Pública y Asistencia Social 2017, 490).

Because women and girls are often seen as the property of their male kin/partners, acceptance of VAWG is high. A greater percentage of Guatemalans than any other population in the region believe that violence is justified when infidelity is suspected

(58 percent). These rates are similarly high for those with varying levels of education and across genders, demonstrating widespread internalization of misogynistic social norms (Azpuru 2015). This means that women may not view domestic abuse as a violation of their rights but, rather, as a normal part of their familial and romantic relationships (Menjívar 2011). Historically, Guatemalan statutes and norms have failed to see VAWG as violence (Godoy-Paiz 2008; England 2014). Even after the passage of the 1996 Law to Prevent, Punish, and Eradicate Intrafamilial Violence (Intrafamilial Violence Law), police and justices of the peace resisted interfering in domestic abuse, encouraged reconciliation, and failed to issue legally mandated restraining orders (Walsh 2008; Trujillo 2010).¹³

Thus, activists and their government and international allies lobbied for legislation that fully criminalized VAWG, recognized the gendered nature of these crimes, and mandated the creation of specialized criminal justice institutions (Beck 2021a). Article 5 of the resulting VAWG Law criminalized economic, psychological, sexual, physical violence, and femicide. It established VAWG as a public offense, obligating the state to pursue cases even if survivors recanted. It disallowed the long-standing practice of government officials (judges, police, prosecutors) encouraging victims and abusers to “reconcile” rather than issuing criminal charges or restraining orders. The law required reparations that returned victims to their state prior to the criminal acts, including economic compensation and medical, psychological, and social support. Article 14 of the law also mandated that the government strengthen institutions for criminal investigation into VAWG, and Article 15 stated that the government must establish specialized VAWG courts to enhance victims’ access to justice. Subsequent protocols were developed for VAWG courts that adopted best practices to reduce revictimization, including prioritizing victim’s initial statements to reduce their need to testify, using a screen to block the perpetrator from the victim’s view, and having victims accompanied by a psychologist during their testimony (Organismo Judicial 2010).

The criminalization of VAWG meant that these cases could no longer be handled by justices of the peace or other civil court judges but had to be referred to criminal courts—either general first instance criminal courts or, where they existed, first instance VAWG courts. In 2010, the first three VAWG criminal courts were created; sixteen additional VAWG courts were subsequently added between 2010 and 2022. Initially, judges in general pretrial courts were supposed to direct VAWG cases to VAWG criminal courts, but advocates noted that these judges, untrained in gender analysis, often misdirected cases. Thus, specialized VAWG pretrial courts (Juzgados de Femicidio y Otras Formas de Violencia Contra la Mujer) were created to parallel VAWG criminal courts (Tribunales Penales de Delitos de Femicidio y Otras Formas de Violencia Contra la Mujer). Additionally, specialized VAWG public prosecutors’ offices (Fiscalías de la Mujer) were created to parallel courts that would focus only on investigating and prosecuting VAWG cases.¹⁴

13. Ley Para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar, Decreto 97-1996, 1996, <http://www.oj.gob.gt/justiciadegenero/wp-content/uploads/2014/07/Ley-para-prevenir-sancionar-y-erradicar-la-violencia-intrafam.pdf>.

14. The Guatemalan government provides most of the funding for courts’ daily functioning, whereas international agencies assist with equipment donations, technical assistance, and the development of training materials and protocols.

Like US-based domestic violence courts, Guatemala's specialized justice systems aimed to concentrate judges, prosecutors, and resources into a central system to better attend to survivors. But while US-based problem-solving courts often involved judges, defense, prosecutors, and service providers collaborating to address the underlying causes of criminal offenses, provide victims tangible outcomes, and help offenders resume productive lives, this was not the case in Guatemala. There, VAWG judges did not take on "therapeutic" roles in their interactions with victims and defendants, meaning that they did not collaborate with other court actors to understand and address the underlying causes of VAWG. They mainly interacted with litigants by swearing them in, issuing and explaining their verdicts, and occasionally including provisions in their verdicts for access to psychological care or rehabilitative services (rarely enforced, as discussed below).

Guatemalan VAWG courts also differed from problem-solving courts in other countries because they were embedded in a criminal justice system characterized by insufficient resources, a dearth of professionalized officials, uneven political will to address VAWG and other serious crimes, and widespread corruption and impunity. Police commonly solicited and accepted bribes, discriminated against women, and rarely had the skills to effectively execute their duties, given that some had as little as six months of training (US State Department 2021, 4). For their part, public prosecutors were overloaded, under-resourced, and under-trained and, in some cases, corrupted. They often carried out incompetent investigations. In 2018, for example, the public prosecutor's office charged with serious crimes against persons such as homicide and assault successfully resolved less than 13 percent of cases (Mirador Judicial 2022). This reality has weakened public trust in criminal justice institutions. Only 43 percent of Guatemalans report trusting the police; 58 percent trust the Attorney General's Office; and less than half (44 percent) think that courts guarantee a fair trial (Azpuru, Rodríguez, and Zechmeister 2018). As discussed below, this institutional context disheartens VAWG judges and undercuts courts' impacts.

THE CRITICAL ROUTE FROM VAWG TO VERDICT

Many women experiencing violence do not report it because of fear of retribution; lack of knowledge about their rights; linguistic, cultural, and geographic barriers; lack of support from family or local authorities; and distrust in state authorities, among other reasons (Stephen 2019; Beck 2021b; Beck and Stephen 2021). The minority of women who do report violence can do so with several authorities, including the police, justices of the peace, public prosecutors, or public hospital employees, who in turn are supposed to refer complaints to the public prosecutor according to the VAWG Law, although the degree to which these authorities comply varies. Cases then potentially pass through three stages.

Investigatory Stage

In the first stage, the specialized VAWG public prosecutor's office is in control. These offices are designed to operate according to a model of holistic support so that

women can make a formal statement, be evaluated by a forensic psychologist and doctor, and get referrals for social workers and/or psychologists in the same place and on the same day. These systems are often overloaded so that, on many occasions, this ideal is not fulfilled. In Huehuetenango, for example, the public prosecutors office only had two interpreters, even though there were nine different Indigenous languages spoken in the area. To get by, they relied on other staff that were bilingual even if they were not trained in translation, asked to borrow interpreters from other offices, or asked women to return when they could find an interpreter.

VAWG public prosecutors determine if the report describes a crime and, if so, oversee an investigation and development of the accusation against the perpetrator. If the public prosecutor determines that the report does not describe a crime, if the victim's claims are contradicted by evidence, or if prosecutors cannot locate the victim after a long period (often because the victim has reconsidered and does not want to cooperate with the case), they can dismiss (*desestimar*) the case to avoid using scarce resources. These dismissals have to be approved by a judge in the VAWG pretrial courts.¹⁵ This is a common way in which cases drop out of the specialized VAWG system—in 2019–20, 21 percent of cases that entered the specialized VAWG judicial system were “resolved” through a dismissal proposed by the public prosecutor and approved by pretrial VAWG judges (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2022, 43–44). If the case is not dismissed, public prosecutors are supposed to conduct a full investigation of the report, collecting evidence alongside forensic psychologists and doctors and other technical experts such as photographers in the National Forensic Institute (Instituto Nacional de Ciencias Forenses de Guatemala or INACIF) office.

A specialized VAWG public prosecutor, Luisa, noted that weaknesses among INACIF forensic experts undercut the goals of holistic support: “[W]e have had complaints from victims themselves about the treatment they have received from [forensic] experts, especially in sexual [violence] cases. There isn’t this sensitivity, that you would want among the personnel in these different institutions.” The head of the oversight agency for specialized institutions, Monica, concurred: “Who, in the case of a rape, does the clinical exam? Men. Imagine it, for a victim, who has been a victim of rape. That the person that is going to give her a gynecological exam is a man. . . . [T]his is one of the great debts that the Guatemalan state owes women.” A significant source of ongoing impunity rests in the fact that most reports of VAWG stagnate at the investigatory stage. VAWG is the most commonly reported crime in the country, but VAWG public prosecutors are frequently understaffed. As a result, overloaded and poorly trained public prosecutors are simply unable to investigate and pursue all reports in a timely fashion and often fail to find evidence of a crime as a result. Luisa, a VAWG public prosecutor explained that her office’s caseload had increased dramatically since its creation but that their resources and personnel had not. According to Luisa, this introduced significant delays, during which women often regretted reporting the abuse. “[H]ere is where we enter the cycle of violence,” she explained, noting with frustration that “the people

15. The person who reported VAWG has ten days to challenge this decision in front of a judge, but few take advantage of this possibility.

with whom we fight with daily are the very victims themselves [who want to recant or drop out of the process].”

Given the importance of victim and witness declarations/testimony in advancing to trial and securing a guilty verdict, victims who stop cooperating with public prosecutors could make successful prosecution all but impossible. While data specific to specialized public prosecutors is not available, aggregated data from all public prosecutor offices shows that, at the end of any given year, on average, 81 percent of reports of VAWG from that year were still “in process” because they were under investigation (72 percent) or otherwise pending (waiting to be assigned to a prosecutor or for the investigation to begin), and 11 percent had been dismissed or permanently stayed. By contrast, only 6 percent of reports from that year were in the process of pretrial hearings or had reached a sentence (author calculations from Instituto Nacional de Estadísticas 2014, 2017, 2018a, 2019, 2021).

Intermediate Stage

Provided they adequately investigate the report and can find evidence of a crime, the public prosecutor then brings the case to hearings in the VAWG pretrial court where the judge determines if there is enough evidence to go to trial. VAWG pretrial courts operate according to a model of holistic attention—the courts provide women with a psychologist, a social worker, and free daycare services. In the pretrial courts, there is an initial hearing to determine if the described acts constitute a crime and if there is a possibility that the accused committed those acts. If the described acts do not constitute a crime, or if it is not possible that the accused committed the acts (for example, if he has an alibi), then the judge determines that the case lacks merit (*falta de mérito*) in this initial hearing. In 2019–20, 12.8 percent of cases that entered the specialized judicial system were found to lack merit (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2022, 43–44).

The remaining cases advance to the next hearings, and, here, the judge is looking for “minimal evidence,” as described to me by a VAWG pretrial judge. Minimal evidence is essentially any piece of evidence corroborating the victim’s declaration—physical evidence such as photographs of bruises, hospital reports; witness statements; and/or reports or testimony from forensic psychological or medical experts. Demonstrating the gender dimension of crimes is less central at this stage; prosecutors do not have to prove that the accused’s motives were gendered at this point. Instead, as a VAWG pretrial court judge explained to me in 2022, they merely must establish for the court the relationship between the victim and the accused, which is usually a familial or intimate partner relationship. Notably, victims attend and testify in these hearings using video and audio technology set up in a separate room so that they do not have to be in the same courtroom as the accused. They are accompanied by a psychologist from the court who supports them through the process. Questions are received and relayed to them by another psychologist from the public prosecutor’s office to further reduce the risk of revictimization. If needed, an interpreter is also present in the room from which the victim testifies.

In this intermediary hearing, there are three main possible outcomes. First, the pretrial VAWG judge may issue a summary judgment on a plea deal. The option of a plea deal is only available if the victim agrees to it and if defendant is accused of a crime that carries a commutable sentence (five years or fewer). In 2019–20, 7 percent of VAWG cases that entered the specialized justice system were resolved through judgments on plea deals (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2022). Plea deals provide victims with some advantages. They speed up the judicial process and prevent victims from having to testify at, or attend, later criminal trials, which are often slow to start and subject to delays. Plea deals also require the accused to admit guilt and, often, to pay the victim financial reparations before the judge makes her judgment on the plea deal. This contrasts with reparations included in guilty verdicts in criminal trials, which, as discussed below, are rarely enforced.

Second, the judge may issue a stay or provisional closure for the case. Stays (*sobreseimientos*) are issued by judges when they find that the public prosecutors have failed to provide enough evidence to go to trial and order the permanent stop to legal proceedings. In 2019–20, 6.7 percent of cases that entered the VAWG justice system were issued stays. Provisional closures (*clausuras provisionales*) are issued by judges when they find that the public prosecutors do not have sufficient evidence to proceed to trial, and they pause the legal proceedings to allow prosecutors more time to collect evidence. In 2019–20, 5.7 percent of cases that entered the VAWG judicial system were issued provisional closures (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2022, 43–44).

Third, the judge may rule that there is enough evidence to go to trial and allow the case to enter the docket of VAWG criminal courts. Of the 12,457 cases that entered specialized VAWG pretrial hearings between 2019 and 2020, 46 percent had advanced to criminal trial by 2021. Given the numerous backlogs and delays, a portion of the cases that entered the pretrial courts later in the 2019–20 period may have subsequently advanced to the VAWG criminal courts after 2021 when the data collection was ended.

Oral Trial Stage

If the pretrial judge finds that there is enough evidence to proceed to trial, then it enters the docket of the VAWG criminal court. Those individuals involved in the case may have to wait months or longer for hearings to start because of the heavy caseload of these courts. Once they begin, trials are divided between several hearings, depending on the complexity of the case at hand. Hearings are often spaced out by days or weeks and may be suspended because the public prosecutors, public defenders, or interpreters have failed to arrive, earlier hearings run long, or witnesses do not arrive, all of which are common where geographic and language barriers complicate witnesses' communication with prosecutors and travel to courts. For example, in Huehuetenango's VAWG court, 26 percent of hearings were suspended in 2017, which introduces delays during which survivors may experience threats or retributive violence and may stop cooperating with prosecutors (Organismo Judicial 2017). An analysis of a sample of cases heard in

VAWG courts between 2016 and 2018 found that, on average, women waited twenty-six months after an incident of violence to receive a verdict (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2019, 103).

Despite their weaknesses, VAWG courts, compared to general courts, offer benefits to the minority of victims who can access them. While they attend criminal trial hearings, survivors have access to a free daycare center and are accompanied by a psychologist who sits next to them while they testify. The courts attempt to reduce revictimization by placing the defendant behind a screen when the survivor is in the courtroom and allow traumatized victims or witnesses, or those unable to travel, to testify via videoconferencing, provided the court has the appropriate technology (more common in Guatemala than in Quetzaltenango and Huehuetenango). The judiciary's protocols direct VAWG judges to prioritize victims' declarations made in pretrial hearings rather than requiring them to testify in the criminal trial hearings to limit revictimization whenever possible. They also instruct judges to avoid holding a victim's decision not to testify against them and to evaluate their retractions through a gender lens (Organismo Judicial 2010). An oversight study analyzing 220 VAWG court verdicts from 2011 to 2017 found that VAWG judges largely complied with these instructions. It found that victims testified in court in 36 percent of cases but that courts used videoconferencing for victims in 10 percent of cases or simply used the victim's initial declaration in 30 percent of cases. It additionally found that, in twenty-five cases analyzed, victims recanted their initial declarations, yet judges still found the defendant guilty in most of the cases (twenty-two), often referencing cycles of violence to analyze victims' retractions in their verdicts (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2019). Victims were not required to be present during the hearings and are thus usually only present when they testify (if needed) and when the verdict is read, decreasing the burdens placed on them and reducing their interactions with judges.

Survivors' cases are litigated by VAWG public prosecutors, but other lawyers may also attach themselves to cases as joint parties to the state prosecution on behalf of the victims, family members, or other interested parties. These are called joint plaintiff prosecutors (*querellantes adhesivos*); they may be private lawyers or lawyers from a non-governmental organization or the Indigenous Women's Defender's Office. They have the right to request forensic tests, participate in proceedings, and ask for judges' intervention if they object to the public prosecutors' line of investigation. The support of a joint plaintiff prosecutor increases the chances of a guilty verdict because it mitigates the effects of the public prosecutor's heavy workload and their weak investigation. A joint plaintiff prosecutor is only available to those with the resources to pay for a private lawyer or who have connections with legal aid, non-governmental organizations, or the local Indigenous Women's Defender's Office (if they are Indigenous).

VAWG cases are heard by a single judge, except in cases of femicide or attempted femicide, which are heard by three-judge panels. Lawyers lead the questioning, with judges largely sitting silently except to swear in witnesses, weigh in on objections and other procedural questions, and summarize their verdicts at the trial's end. Judges write out their verdicts for case files and summarize their findings orally in court. Prison sentences are set according to the ranges established in the law: twenty-five to

fifty years for femicide, five to eight years for economic or psychological violence, and five to twelve years for physical or sexual violence. VAWG judges are expected to assign the minimum sentence unless there are aggravating circumstances, such as if the victim was a minor or if the perpetrator was in a position of power over the victim. Prosecutors may request, and judges may include, reparations alongside jail time. As discussed below, monetary compensation is the most common form of reparations, although it is rarely enforced.

VAWG courts have high conviction rates, with guilty verdicts representing roughly three-quarters of the sentences rendered (author calculations from Instituto Nacional de Estadísticas 2017, 41–42; 2018a, 44–45; 2019, 45–47). It is worth emphasizing that these high conviction rates obscure the reality that only a minority of cases of VAWG are reported, that a tiny fraction of these reports are investigated and prosecuted in a meaningful way, and that some of the cases that are brought to pretrial hearings do not advance to trial. Between 2011 and 2018, there were 453,602 reports of violence that fell under the VAWG Law but only 12,923 guilty verdicts rendered in criminal courts, representing just 2.8 percent of the reports.¹⁶ If a guilty verdict is issued, a separate sentencing court oversees the execution of the sentence including reparations and prison time. In practice, mandated economic reparations are rarely paid as few perpetrators have the financial resources to comply with them. Prison sentences do not necessarily represent justice. Prisons in Guatemala are at 300 percent capacity, do not include any rehabilitative services, and are run by organized crime, which manage criminal rings from behind bars (Prison Insider 2017). As a result, most activists, judges, and prosecutors agree that men may leave prison more violent than they entered it.

JUDGES' VIEWS OF VAWG AND SPECIALIZED JUSTICE

Although Guatemalan judges do not take on therapeutic roles that seek to address the social and psychological causes of the problem like judges in US problem-solving courts, they remain critical to the implementation and experience of specialized justice. As the United Nations Women (2016, 17) office notes about Guatemala, although an “institutional architecture” has been created that recognizes VAWG as rooted in gender-based discrimination and requiring “a specialized vision,” for that vision to be realized, “a change in the imaginaries, attitudes and knowledge of justice staff” is necessary. Historically Guatemalan police, prosecutors, and judges have failed to take VAWG seriously and perpetuated gender inequality (Trujillo 2010). In the present day, state actors from police to presidents continue to shirk their duties to uphold women’s rights (Beck 2021b). The question then becomes: do VAWG judges hold damaging social norms or new attitudes? In their daily work, do they undercut reforms, uphold them, or attempt to extend them?

The VAWG judges that I interviewed largely expressed a personal commitment to combating VAWG and demonstrated an understanding of VAWG as connected to

16. It should be emphasized that this is not case-tracked data. Because of delays, there are likely cases reported during this period that received a guilty verdict after 2018, which would increase the percentage of cases ending in a guilty verdict.

gender inequality and damaging social norms.¹⁷ Three of the seven interviewed judges had developed an interest in women's rights prior to their appointment to a VAWG court. For example, Judge Isabel wrote her law school thesis on women's human rights fourteen years before she was appointed to a VAWG criminal court. The other four judges interviewed accepted their appointments to VAWG courts to advance in their careers or to live closer to family, only gaining knowledge and commitment through the training that they had received. For example, Judge Sergio, who sought an appointment to a VAWG court to be closer to family, remembers being one of the only men in the gender analysis course and being criticized as a result: "My other colleagues and judges said why did you [men] go to take this course, it is not for men. . . . They othered us, treated us like we were from the other side." Yet he was motivated by the trainings, explaining that "we started to see that there were a series of women's rights that we did not know, because we were raised in a patriarchal and *machista* society."

The judges that I interviewed spoke eloquently about misogyny, patriarchy, and cycles of violence, indicating that they understood the feminist thinking related to VAWG included in their training. In interviews, they challenged social norms that devalued women, depicted violence in intimate partner relations as "normal," and relegated women to the private sphere. Judge Sergio argued that challenging the association of women with the private sphere was necessary to address VAWG: "When you are educated in the area of women's human rights and in gender issues, you understand that a wife is a person, she is not an object for beatings . . . she is not just a mother whose purpose is to have children or to prepare food, nourish, dress and raise children. No, instead she is a person who has rights and who should be respected." While these might seem relatively intuitive claims, in the Guatemalan context, they represented a break from prevailing gender roles and social norms that undergirded high rates of VAWG. Judge Catalina noted that, despite widespread assumptions that only poor or Indigenous women were victims of abuse, VAWG affected women from "all social classes and all economic conditions." The cases that she heard represented just a fraction of the broader experience of violence because "usually when they arrive at the justice system it is because they have already passed through a cycle of violence."

Interviewed VAWG judges were also adept at identifying barriers women confronted to accessing their courts, informed by their education and prior judicial experiences, reflecting the benefits of specialized training and career pathways within lower-level courts. All the interviewed judges highlighted how poverty and women's social and economic dependency prevented women from leaving abusive relationships and accessing justice, many referencing their experiences serving justices of the peace in poor municipalities. Judge Ariel, for example, argued that "one of the biggest challenges" that the system confronted was "not only to impose punishments on perpetrators but instead to be able to support the victim," who otherwise might struggle to get by on her own. Many also recognized that other state officials reproduced women's subordination, mentioning police and justices of the peace. For example, the head of the

17. It should be noted, however, that interviews with women's organizations and my analysis of emblematic cases of femicide heard elsewhere in the country reveal that there are indeed rare judges in VAWG courts that actively work against the goal of addressing impunity for VAWG (Beck and Mohamed 2021).

oversight agency for VAWG courts, Monica, explained that justices of the peace sometimes misapplied the law because “they are structurally products of this society, of *machismo*, of the patriarchal society.”

Judges had varied views on the degree to which VAWG prosecutors and courts effectively challenged VAWG’s root causes. All the judges saw them as helping to address impunity for VAWG and better supporting victims than did non-specialized criminal justice institutions. But many were also critical of the broader system in which they were embedded, arguing that the criminal justice system’s weaknesses sapped the impact of the VAWG courts, reflecting their frustrations with the patchwork nature of the Guatemalan state in relation to VAWG. Some identified weaknesses of the carceral approach to VAWG, even though they themselves participated in it. Most judges argued that their work rendered VAWG visible and challenged its normalization. While they were cognizant that underreporting remained, many pointed to the dramatic increase in the number of VAWG reports as evidence that the specialized justice system was encouraging women to recognize the abuse that they experienced as criminal and to break their silence.

Some judges also thought their work was preventing VAWG through deterrence, even though there was no clear evidence supporting this view. Judge Sergio, for example, explained that his verdicts “let everyone know that women have rights . . . [and that] the man who does not respect these rights is going to be punished.” As he elaborated, “[w]hen I impose a femicide sentence of 50 years, they are like ‘hello!’ For example, I sentenced someone to 25 years in prison for physical and psychological violence. So some said ‘geez, it is as if he killed her, why so much, why 25 years?’ . . . But it is according to the intensity of the damage involved. . . . [T]hey realize ‘if I do this, that is going to be my punishment.’ So they don’t do it.” Judges additionally pointed to public prosecutors’ and courts’ holistic models of support as better meeting women’s needs and reducing revictimization compared to general courts.

Still, judges, prosecutors, and oversight officials were open about the limitations of VAWG courts. Judges, especially those outside of Guatemala City, noted that they lacked adequate supplies and technology. Most expressed being overwhelmed by their caseloads or feeling that their work was not adequately prioritized, blaming weak political will and government corruption. For example, when she was asked if she thought her authorities would heed her recommendations to better support VAWG courts, Monica, the head of the oversight agency, responded bluntly: “It isn’t a priority. Women, we have not been, nor are we, a priority of the state. This isn’t going to change.” Judges also expressed frustration with the quality of the investigations undertaken by VAWG public prosecutors and forensic experts. For example, Judge Sergio recounted an instance in which investigators merely photographed the outside of a house in which a femicide occurred, even though protocols mandated that they document the specific crime scene (in this case, the bedroom). In other cases, the chain of custody was not kept, and judges had to throw out critical evidence.

Other critiques went beyond the lack of resources or failures of prosecutors and forensic experts to the limitations of a criminal justice approach to VAWG. Some complained that the sentencing ranges were too harsh. Judge Flor, for example, argued that people criticize them because “the punishments are very rigid. Five years or more. And you cannot apply alternative resolutions,” which limited judges’ discretion and their

ability to reduce their caseloads. Discomfort with sentencing ranges was heightened by Guatemala's dysfunctional prison system. For example, Judge Ana Lucia explained that she felt conflicted about sending men to jail because "[i]n Guatemala we do not have rehabilitation and resocialization in prison. It is not like other countries, instead it [prison] is a crime school as we say . . . they don't re-socialize or rehabilitate [men], so this raises the issue of proportionality of the punishment." Judge Sandy agreed, explaining that "[a]part from the fact that the punishments are very harsh for this type of crime, and not even a very harsh punishment is going to resolve the conflict. . . . Apart from the fact that prisons are in very bad conditions . . . no one receives any type of education for social reintegration. So there is no hope [for change]." Judges additionally complained that prison sentences did not necessarily help survivors. They recognized that women often depended economically on their abusers so sending perpetrators to jail generated mixed results. Judge Flor explained the double-edged nature of prison sentences: "Am I going to be able to feed a woman with a guilty verdict? No, but it is an affirmative measure. That the state recognizes 'yes, you were subjected to violence and the state recognizes that you have the right to live a life free of violence.'"

Judges also expressed frustration with the limited justice that they could provide women. The VAWG Law establishes a victim's right to holistic reparations, which includes economic compensation for legal costs and pain and suffering alongside medical, psychological, and social reparations. In practice, few perpetrators have sufficient funds to comply with these monetary reparations, especially if they were sent to prison where they could not earn an income, and enforcement of other forms of reparations (handled by different courts) are weak. Judge Flor lamented that those convicted of VAWG can rarely afford to pay reparations, and, if they can, they "prefer to pay the state [to commute their sentence] or a lawyer" than pay reparations to victims. Judge Flor argued that the criminal justice system is partially to blame because public prosecutors, pressed to produce positive statistics, focus only on securing guilty verdicts. After that, they "washed their hands of the matter" when it came to securing reparations. Judges Francisco and Flor both argued that international standards obligated the Guatemalan state to establish a fund to support survivors during and after the judicial process but that the government had failed to do so.

HOW VAWG JUDGES ARE IMPACTED BY THEIR WORK

The frustrations of VAWG judges with the de-prioritization of their work and the limitations of the criminal justice system, alongside the graphic nature of the violence that they have encountered, affected them as embodied social actors. Despite top-down pressures to become "verdict-rendering machines," as one judge put it, VAWG judges often found themselves psychologically and emotionally affected by their work. Whereas judges in general courts hear cases that involve crimes that vary in severity and levels of violence, judges in VAWG courts are more regularly exposed to graphic materials and narratives. Judges reported being impacted by their heavy caseloads and the violent nature of the crimes they judged. Judge Sandy said that, in comparison to her previous position as a justice of the peace and as a juvenile and criminal court judge, the VAWG courts exposed her to cases involving sexual violence, torture, and bodily

mutilation. Judge Sergio similarly noted that VAWG judges often had to examine gruesome images that were difficult to forget and that they were regularly affected by the “brutal ways that women are killed with such cruelty.” The personal costs associated with managing heavy workloads and being exposed to many disturbing cases increased after 2016, when cases of rape and sexual violence against minors were added to the competency of the VAWG courts.¹⁸ Judges and public prosecutors, many of whom were parents, expressed that cases involving children were especially difficult.

As noted above, judges were frustrated when they had to issue not-guilty verdicts because of a bungled investigation or a lack of evidence and felt anger at public prosecutors and/or forensic experts who were failing women and making their jobs more difficult. Judge Francisco, who was held in high esteem by service providers and activists, admitted that he was considering moving to another court because of the stress. He complained that, to complete everything that was expected of him, he had to bring case materials home with him in the evenings and over the weekends. “I recently had to suspend six or ten hearings because the stress made me sick,” he explained. “My eye became inflamed, and I couldn’t even see the computer screen. . . . They say that judges should not put their hearts into their cases, but they always affect you, in one way or another.” Judge Francisco’s experience suggests a somatic reaction to burnout and vicarious trauma, also found among US judges (Jaffe et al. 2003), which contrasts sharply with the image of judges’ “impartiality and detachment, both felt and exhibited” (Frankel 2013, 98).

VAWG JUDGES SHAPING SPECIALIZED JUSTICE

Judges in VAWG courts are bound by standards of evidence and sentencing ranges, largely take on “umpire” roles during hearings, and feel pressure to move quickly through cases. Yet, even within these constraints, they find ways to express their personal commitments and feelings of frustration, shaping the implementation of specialized justice in the process. The most evident ways in which judges work to uphold their mandates and express their training and personal commitments is through verdicts. Written verdicts can be forty pages or more and include discussions of the testimony and evidence presented, the judges’ legal reasoning for assigning each probative value (or not), and their final determination regarding innocence/guilt, sentencing, and reparations. In court, judges share oral summaries of their findings and the verdict, giving them an opportunity to explain their reasoning in less formal terms. Judges often expressed their specialized knowledge by encoding their written verdicts and oral summaries with feminist concepts and referencing international conventions related to women’s rights. Judge Sandy, for example, combined legal and feminist terminology

18. Between 2010 and 2018, 26 percent of the VAWG courts’ verdicts fell under the Law against Sexual Violence, Exploitation and Trafficking (Ley Contra la Violencia Sexual, Explotación y Trata de Personas, Decreto 9-2009, 2009, http://observatorio.mp.gob.gt/wordpress/wp-content/uploads/2019/10/ley-contra-la-violencia-sexual-explotacion-y-trata-de-personas_-_decreto_9-2009_-_guatemala.pdf), which focuses on sexual violence against women or minors; 74 percent related to other forms of VAWG or femicide detailed in the VAWG Law (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2019).

in her verdicts, as can be seen from an excerpt from her 2016 written verdict for a case of attempted physical violence:

[I]t has been established that [the accused] . . . consciously and voluntarily, based on his disdain for her status as a woman, with the intention of dominating and controlling her, arrived at the house of his ex-partner and entered without her permission . . . he scolded her and tried to attack her with a knife that he put to her throat, but he did not succeed in his intentions . . . with the accused's actions affecting his ex-partner's bodily integrity, freedom, dignity, and equality, juridical elements that encompass her right to live a life free from violence guaranteed in the Constitution and in the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women. . . . It was established that there was an intimate relationship [between the accused and the victim] and that the assault that the accused attempted was related to her being a woman, conduct that reveals itself to be a manifestation of discrimination and disdain for her as a woman, and an effort to control her.

In this verdict, Judge Sandy draws on her training and knowledge to interpret the accused's actions as motivated by gender, therefore establishing the accused's assault as relating to the VAWG Law rather than the general criminal code. The gendered analysis of violence found in Sandy's verdict is of course required by the VAWG Law, which defines these crimes as rooted in unequal gender power relations. Yet in a context in which non-specialized judges and other government officials are known to undermine laws protecting women and shirk their mandates, verdicts such as these should be seen as significant advances. Judge Francisco, who did not have an interest in issues of VAWG prior to his appointment, also demonstrated that he had understood his training. For example, in his written verdict on a case of physical and sexual assault, Judge Francisco referenced the "methodology of legal gender analysis, whose end from the gender perspective, as author Alda Facio notes, is to work to democratize the law." In this verdict, Judge Francisco also stated that, because the accused was "raised in a patriarchal and *machista* system," it was necessary that he receive appropriate professional help "to change his mental paradigms and eliminate his sexist and discriminatory behaviors" so that he could rejoin society upon completing his sentence. Given that Judge Francisco acknowledged the lack of rehabilitative care in prisons in interviews, such statements can be seen as largely aspirational mandates rather than mandates that he reasonably expected to be enforced.

At times, judges also used their oral summaries of verdicts to express their praise or, more often, criticisms of public prosecutors and public defenders. For example, in a hearing I observed overseen by Judge Sandy, the public prosecutor accused the defendant of the crime of physical violence against women for injuring his sister-in-law in the context of an intrafamilial fight. In her closing statement, the prosecutor summarized the physical evidence in the case, showing that the defendant hit his sister-in-law with a stick, causing her to fall to the ground and bruising her left hip, hand, and knee. The prosecutor argued that this act fell under the VAWG Law because "it is a typical action

which is characterized by a man harming a woman . . . which results in the physical suffering including injuries in the context of unequal power relations and of family relations.” The defense countered in her closing statement that the victim was injured in a larger intrafamilial brawl and, therefore, that this case did not constitute VAWG because it lacked a gender dimension. As she reflected, “during my time working in this area, I have seen that the [VAWG Law] can be used well but it can also be used badly.” After a forty-five-minute recess, Judge Sandy returned with a verdict. With obvious annoyance, Judge Sandy stated:

Violence against women is a problem both in the public and private spheres, a very serious social problem that has obligated the state to create laws like . . . the Law against Femicide and Other Forms of Violence Against Women The public prosecutor is obliged to investigate the incident but unfortunately in this case they have failed . . . they isolated evidence, extracting certain circumstances, and claimed that the [VAWG Law] applied. They did not establish that the act was driven by the victim’s condition of being a woman The public prosecutor omitted, and not because she didn’t know it, that there are other [judicial] processes against other people related to the same incident. The prosecutor should have investigated the incident altogether—you cannot split it up so that injuries against women are violence against women and injuries against children constitute child abuse.

In this response, Judge Sandy expressed her frustration with the disingenuous work of the public prosecutor as well as with the misapplication of the VAWG Law to an intrafamilial fight over territory. Judges reported that such misuses of the VAWG Law were rare but that they expressed their frustration with them because they undermined the very real need for the VAWG Law to address violence that was genuinely rooted in gender inequalities. They were likely also sensitive to misuses because they were overloaded with cases that did belong in their courts.

Judge Sergio similarly used his oral verdicts to express his discontent with the public prosecutor’s investigations. He recounted a case in which the public prosecutor had failed to gather evidence and ensure a chain of custody, leading him to render a not guilty verdict even though he personally believed the defendant was guilty. To express his frustration, he ensured that the victim was present when he was reading the summary of his sentence “so that the victim realized that if justice was not done in her case, it was because the public prosecutor failed in something, that is, that they undertook an inadequate investigation.” In another case, Judge Sergio issued a not-guilty verdict because of defects in the public prosecutor’s investigation and used his verdict to officially call for an investigation into eight officials from the forensic and public prosecutor’s offices, who he deemed to be in possible breach of duty for their bungling of the case.

Judge Isabel similarly recounted a time that she scolded a defense attorney who was protesting the fact that a victim was asking as part of her reparations for reimbursements for the costs of attending hearings, including the cost of meals. The defense accused the woman of taking advantage of the system, calling the woman a *huevona* (a pejorative way of saying lazy). Judge Isabel continued:

I had to chastise him . . . I made him see, I am a woman, I am a mother, and I get up at five in the morning so I can leave breakfast and lunchboxes made up. . . . I am not a lazy woman, but sometimes I do not have breakfast . . . so I have to come and buy food outside the courts and this doesn't mean that I am lazy, but simply that the rhythm of my day does not allow me [to make myself breakfast]. . . . I told the lawyer "No, the majority of women if not all, practice, experience, logic tells us that they prefer to take care of their children first and women come last, and it's even worse because we are in this *machista* and patriarchal system where men are served first and children and, women don't eat."

Here, Judge Isabel expressed her distaste for the defense's strategy of undermining the victim's character by drawing on her own personal, gendered, experiences and her analysis of Guatemalan society as patriarchal.

Upon issuing their verdicts, judges in VAWG courts sometimes asked if the parties wanted to proceed to having a discussion of reparations right away, waiving the right to have a separate hearing, established in Article 153 of Code of Criminal Procedure.¹⁹ This practice was seen as a positive development to prevent VAWG victims from having to attend an additional hearing, which would have added time, energy, and financial costs. Still, victims' rights to holistic reparations were rarely fulfilled. Overworked and undertrained public prosecutors who were fixated on securing guilty verdicts often failed to collect evidence on damages in their investigations or to make specific petitions for reparations when prosecuting a case (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2019, 117). Even when they were requested and granted, reparations were rarely enforced.

Judges reacted to barriers to establishing meaningful and enforceable reparations in a variety of ways. Some did not include reparations at all in their verdicts. In a sample of 127 guilty verdicts analyzed by an oversight agency, for example, 20 percent contained no mention of reparations. More often, judges assigned monetary reparations to recognize women's legal costs and their pain and suffering, even though they knew that these reparations were "largely symbolic," as Judge Sergio explained, because they were rarely enforced. The above-mentioned study found that 46 percent of the analyzed verdicts included monetary reparations (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2019, 119). Judge Flor highlighted the contradictory nature of reparations. She admitted that "the Interamerican Court of Human Rights says [pain and suffering caused by VAWG] is an incalculable damage. We cannot put a value on it, we cannot say okay my dignity as a woman is worth one thousand quetzals. But here comes something very difficult. Why? The [legal] code says you must award damages for pain and suffering, you have to pay her a sum of money." Thus, Judge Flor looked to money, with its apparent ability to render comparable otherwise hard-to-value phenomena like physical harm or emotional distress (Fourcade 2011). To calculate reparations for an abused

19. Código Procesal Penal, Decreto 51-92, 1992, http://www.cicad.oas.org/fortalecimiento_institucional/legislations/pdf/gt/decreto_congresional_51-92_codigo_procesal_penal.pdf.

stay-at-home mother, for example, Judge Flor said that she multiplies the number of days the victim spent in recovery and in the judicial proceedings by the daily minimum wage to recognize the value of the unpaid labor that she performed in the household and to provide an accounting for the damages she suffered.

Some judges tried, mostly in vain, to increase the chances that reparations would be paid. In addition to establishing monetary reparations in her verdicts, Judge Flor also encouraged the prosecution and defense to negotiate an amount that the defendant could and would pay. She lamented that the accused and his defense attorney only agreed to do so in 2 or 3 percent of cases, in her estimation. After all, the defense knew that enforcement of any reparations was unlikely so they had little incentive to negotiate. Judge Francisco, frustrated that poor men were unable to comply with reparations, attempted to explore alternatives with the Indigenous Women's Defense Office's lawyer who often served as a prosecutor for the joint plaintiff. He suggested assigning reparations that were more realistic, especially in rural, Indigenous contexts, such as bags of corn, beans, or clothing. He reported that his idea had not been widely embraced because defense lawyers took advantage of how difficult it was to enforce reparations and would tell their clients: "Let them ask for the amount they want, they cannot enforce it because you don't have anything."

Some of the judges I interviewed often also included statements in their rulings guaranteeing the victim psychological counselling, offered through public agencies or non-governmental organizations, as did 26 percent of guilty verdicts analyzed by an oversight agency (Unidad de Control, Seguimiento y Evaluación de los Órganos Especializados en Delitos de Femicidio y Otras Formas de Violencia contra la Mujer 2019, 119). In practice, most of these agencies had long wait times, insufficient personnel, and were in urban departmental capitals. Thus, survivors, especially those who lived in rural areas, did not have effective access to these services. Judges sometimes also prescribed psychological counseling for men who were sent to prison, as Judge Francisco did, knowing that such services were essentially non-existent in prison. The judges I interviewed were cognizant of these limitations. Their decision to include such provisions in their verdicts could thus be seen, at least in part, as expressions of their moral commitments and desire to uphold women's rights to holistic reparations, even in the context of a broader system that failed to do so.

Beyond their verdicts and establishment of reparations, judges sometimes intervened in hearings in ways that reflected a desire to better fulfill the spirit of the VAWG Law and other laws guaranteeing access to justice, despite the many barriers that the criminal justice system presented to doing so. For example, Judge Francisco was an Indigenous man from a rural municipality who grew up speaking both Spanish and an Indigenous language and had served as a justice of the peace in six Indigenous municipalities. He thus understood that the VAWG courts could be intimidating for less-educated witnesses with little exposure to bureaucratic procedures. More than the other judges I observed, he skillfully adjusted his language to those who were present in the courtroom. For example, when swearing in survivors and non-expert witnesses, he explained the meaning of "perjury" colloquially as "telling lies." Judge Francisco's background also better positioned him to ensure that Indigenous peoples' rights to

translation were adequately met. For example, I observed him suspend a hearing when he noted that the witness and translator were speaking different regional variants of the same Indigenous language (which Judge Francisco also spoke), preventing them from understanding each other. Not all judges were equally likely to speak, or capable of speaking, in plain terms or overseeing the quality of translation, but judges that undertook such strategies enacted their personal commitments in an institutional context not designed for Indigenous or poor citizens or those from rural areas.

Judges sometimes also shaped otherwise rote hearings in ways that were meaningful for them even if their underlying motivation was not transparent to those present. Judge Catalina privately explained to me that the very experience of a criminal trial could be considered part of the perpetrator's punishment. As an example, she recounted a recent femicide trial that included gruesome autopsy photographs of the victim's injuries as evidence. She boasted that she ensured that each of the photographs was projected for the accused to see, noting with satisfaction that the accused, unaccustomed to such graphic photos, was visibly affected by them. In her view, this was a subtle way that she could force the accused to confront the damage that he had caused.

Not all judges shaped specialized justice in ways that feminists would support. Judge Alejandra expressed discomfort with the long prison sentence associated with the VAWG Law because of the state of Guatemalan prisons. She explained that, generally, she issued the minimum sentence of five years, which was commutable, and only assigned sentences above five years in rare circumstances. She detailed her reasoning by explaining that "there are cases [in which she has to render a verdict] in which the woman is helping the accused or already back with him." She also expressed that there were some parts of VAWG Law "that you need to adjust to fit the context" of rural and poor communities. As an example, she stated that she often adjusted restraining orders assigned under the Intrafamilial Violence Law because victims and accused rarely could afford to live in separate households: "[W]hat I do is enforce paragraph 'I' which says you cannot intimidate or threaten the woman and I explain to them what that means. But I drop paragraph 'J,'" which states that the accused cannot enter the woman's house, place of work or study." Activists and service providers would likely find Judge Alejandra's decision to adjust restraining orders to the realities of Indigenous and rural contexts controversial. This example therefore differs from the above examples of judges maneuvering to better fulfill the VAWG Law's spirit.

In sum, through their verdicts, the assignment of (unenforced) reparations, and interventions into hearings, judges shaped the practice and experience of specialized justice to express their personal commitments and their frustrations with a system that failed to adequately deliver true justice. Their critiques and attempts to maneuver to better fulfill the VAWG Law's goals provide a powerful portrait of the strengths and the limitations of specialized justice. They are emblematic of a patchwork state characterized by pockets of commitment in a broader context of normalized VAWG, weak state institutions, and uneven political will. Their attempts to challenge social norms, critique public prosecutors, and argue for meaningful reparations illuminate a path forward to better realize the goals of the VAWG Law and specialized justice.

CONCLUSIONS

The institutional framework of Guatemala's VAWG courts has opened limited opportunities for the minority of women whose cases are heard in them. These women experience courts that are better designed for their needs and work with public servants who are better situated, through training and personal commitment, to fulfill their mandates. This increases the likelihood that their experiences will be validated and their humanity recognized compared to women accessing non-specialized courts. The VAWG Law and the VAWG courts more broadly challenge a view of VAWG as being normal and/or private, which over the long term may indirectly shift misogynistic social norms that are widespread. That women are beginning to view the violence they experience as criminal is evidenced by the dramatic increase in women lodging VAWG reports with government authorities since the passage of the VAWG Law. In 2008, there were 12,431 reports of crimes that fell under the VAWG Law; by 2018, that number had risen to 45,958 (Instituto Nacional de Estadísticas 2014, 2021). Most activists argue that the increase in VAWG criminal reports reflects more women breaking their silence rather than higher rates of violence. This interpretation is bolstered by evidence from victimization surveys that ask women if they have experienced intimate partner violence in the previous year, regardless of whether they reported it to the authorities. In six years following the passage of the VAWG Law, the percentage of women (aged fifteen to forty-nine) who said that they had experienced physical intimate partner violence in the previous year dropped from 7.8 percent in 2008 to 6 percent in 2014–15.²⁰ Those who responded to surveyors that they had experienced sexual intimate partner violence in the previous year also dropped from 4.8 percent in 2008 to 2.6 percent in 2014–15 (Ministerio de Salud Pública y Asistencia Social 2011, 382; 2017, 474).

Critically, the VAWG Law and specialized VAWG criminal justice institutions have also generated a new cadre of judges (and other civil servants) educated about cycles of violence and gender analysis. They express their commitment to addressing VAWG and increasing women's access to justice through their words and actions during court proceedings. These pockets of commitment break with patterns found in the judiciary historically and in the present day in other non-specialized institutions such as the police. They also challenge overly generalized descriptions of the Guatemalan state as weak or patriarchal. While these descriptions accurately describe many institutions and officials, they effectively erase the institutional advances that VAWG courts represent as well as the daily struggles of those laboring in them who are potential allies in the fight for broader change. The analysis of VAWG judges suggests that even inadequately enforced laws may produce new identities and cultural understandings that take root not just among the public but also among government actors themselves.

Yet judges' insider critiques and expressions of frustration also place in stark relief just how far there is yet to go to guarantee Guatemalan women a life free from violence. They highlight the limitations of creating parallel, specialized institutions while failing

20. These surveys have historically focused on intimate partner violence rather than on all forms of gender-based violence, which narrows the longitudinal comparisons we can draw. This question, for example, was only asked of women who were partnered at the time or who had previously been partnered and thus did not capture women who have never had a partner but who have nonetheless experienced VAWG.

to adequately support them or to strengthen and reform non-specialized institutions like justices of the peace, police, or prisons. This strategy has created a patchwork state in which only a minority of women who experience violence report it, a tiny fraction of the VAWG reports are properly investigated and prosecuted in a timely manner, some cases do not advance past the pretrial stage because of a lack of evidence, and meaningful reparations are almost never fulfilled even in the small minority of cases that achieve guilty verdicts. It has created a situation in which even women who access VAWG courts often must wait over two years to receive a verdict. Indeed, the bird's eye view of how cases advance through the specialized VAWG system presented above confirms judges' assessments that one of the most important sources of ongoing impunity are weaknesses with public prosecutors' offices and forensic experts, even those that are supposed to be specialized to meet women's needs. As a result of the deficiencies in these and other offices, women who have their cases heard in VAWG criminal courts represent a minuscule percent of the total number of women and girls who suffer VAWG.

VAWG judges recognize that the guilty verdicts that they render are insufficient to guarantee survivors justice in the full sense of the word. Too often, guilty verdicts leave women financially destitute and/or socially isolated and put men in situations in which they may become more violent. In their concerns about jail time and the lack of meaningful reparations, then, judges signal the limits of a carceral approach to VAWG detached from structural change. In the context of such contradictions, VAWG judges' critiques and acts of resistance alone are unlikely to transform the systems in which they are embedded. But they are critical because they draw our attention to the debt that the Guatemalan government owes women and those who labor on their behalf.

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