

Guatemala

1. Discrimination in the family

a) Overarching legal framework for marriage

Women in Guatemala have the same rights as men to enter into marriage (Decree 8-2015, Art 81). There is no specific legal provision which prohibits forced marriage, but there are provisions in the Criminal Code that are used to address the latter. More specifically, the article 231 of the Criminal Code penalizes parents giving their consent to a marriage without previously asking for their child's consent. In a study conducted in 2015 by the NGO CAMY, in most cases, sexual violence was intrinsically linked to forced marriages (CAMY, 2015).

Guatemalan law recognizes both civil and religious marriage. The marriage can be performed by a civil officer, which includes the mayor, a notary, or a legally authorized religious representative (Civil Code, art 92). The law provides for the official registration of informal partnerships (Civil Code, Article 173), which are regulated by law.

b) Child marriage

In 2015, Guatemala increased the minimum age of marriage to 18 years for both women and men in order to reflect international standards (Decree No. 8-2015). Previously, the minimum age for marriage was 14 for girls and 16 for boys. In addition, de facto unions between minors are not allowed anymore (Decree 8-2015, Art 177). In August 2017, law makers voted in Decree 13-2017 to remove an exception which allowed judges to authorize marriages between adults and children between the ages of 16 and 18 years old with a judge's permission (Girls not Brides, 2017). However, child marriages, if performed, are not void as mentioned in the law, but there are sanctions and penalties for civil officers authorizing and performing them (Civil Code, Art 90).

According to the NGO Girls Not Brides, nearly one in five girls across Latin America and the Caribbean are married off before the age of 18. In Guatemala, this number represents nearly one in three girls (Girls Not Brides, 2016). According to the same NGO, child marriage in Guatemala is mostly driven by tradition, poverty, discriminatory gender norms and a lack of access to education. Also, financial support of a male guardian is one of the principal reasons for parents wanting to secure a girl's marriage at a young age. Child marriage is most common among the Mayan indigenous communities who largely reside in rural areas and have poor access to basic services, few educational and economic opportunities, and higher rates of poverty than the non-indigenous population. Evidence show that once married, girls are expected and often pressured to start a family, with sometimes severe health consequences for young girls. As a result, maternal mortality rates are among the highest in the region, and are three times higher among indigenous populations than non-indigenous women (Girls not Brides, 2017).

c) Household responsibilities

Article 47 of the Civil Code provides that the State must protect the family and promote its organization on the basis of marriage, equal rights of the spouses, responsible fatherhood and the right to decide freely on the number and spacing of children. The equal rights of the spouses are also recognised in Article 79 of the Civil Code. Therefore, women have the same rights as men to be

recognised as head of the household and wives are not required to obey their husbands.

Regarding legal guardianship of children, the Civil Code (Arts. 109 & 167) grants both the mother and father equal rights and responsibilities to their children during and after marriage. The same rights are guaranteed to couples in stable informal unions (Civil Code, Art. 184). However, Article 162 of the Civil Code creates a specific hierarchy of relatives for the legal guardianship of children if the parents are unable to care for them after a divorce, which gives first preference to the paternal grandfather, then to the maternal grandfather, followed by the paternal grandmother and then the maternal grandmother, after whom follow siblings undifferentiated by sex or lineage (Menjívar et al., 2016).

Traditionally, the father is the head of the family while the wife is in charge of the household chores (CultureGrams, 2014). Nevertheless, the repartition of gender roles is slowly evolving. Due to the internal armed conflict, which lasted almost 36 years, the breakdown of family life resulting from the conflict forced women to cast off this traditional role and become heads of household (CEDAW, 2008).

d) Divorce

The Civil Code does not discriminate against women in terms of divorce rights. Both women and men have the same right to initiate divorce (Civil Code, Art 154). In the case of divorce, both parents continue to share parental authority over their children (Civil Code, Article 167). In the interest of the child, a judge can decide to give parental authority to one of the parents or to another family member (Civil Code, Article 166).

However, certain articles related to divorce still differentiate between women and men in several ways. Article 155 of the Guatemalan Civil Code mentions the causes for obtaining a separation or a divorce. For instance, if a woman gives birth to a child that was conceived before the marriage, but the man did not know about the pregnancy before marrying, this constitutes grounds for divorce or separation. Nevertheless, the law does not stipulate a parallel condition for the men. Also, in cases of alimony, Article 169 of the Civil Code establishes that women who are not at fault for the divorce (which includes infidelity, murder attempt) will have the right to alimony only if they observe “good conduct” and remain unmarried. Men who are not at fault in a divorce have the same rights to alimony, but only when they are unable to work to earn a living and remain unmarried. Creating expectations of “good conduct” for divorced women in order to receive alimony payment places women at a serious disadvantage (Menjívar et al., 2016).

In addition, in 2010, Decree No. 27-2010 abolished article 229 of Decree No. 17-73 (Criminal Code), according to which a widow or divorced woman was unable to remarry for a period of time set forth in the Civil Code. But no such provision was applicable to the widower or divorced man (CEDAW, 2016).

Divorce is rare in Guatemala, the divorce rate hovers well below 1% as considerable social stigma is associated with divorce, particularly for women, who find it much harder to remarry than men do, especially if they have children (CultureGrams, 2014).

e) Inheritance

Daughters and female surviving spouses have equal rights to men to inherit land and non-land assets (Civil Code, Article 1078). Women also have equal rights to execute or administer a will (Civil Code, Article 934).

In practice, there is a regional legal trend in Latin America that enables children to immediately inherit part of the estate of a male spouse, rather than have it go first to the widow. This puts widowed women in a precariously dependent position upon their children. The situation is even more precarious for women in common-law marriages (*uniones de hecho*) because the widow has to demonstrate that the property was acquired during the union. Since common-law marriage is widespread in Guatemala, this makes widows more vulnerable, particularly to conflict with children (Menjívar et al., 2016). In addition, widows whose names are not on land titles often lose their inheritance rights (Mercy Corps, 2012).

2. Restricted Physical integrity

a) Violence against women

Guatemala ratified the Convention of Belem do Para in 1995. This Convention takes precedence over domestic legislation (Constitution, Art. 46). In addition to the convention, Guatemala adopted in 2008 a law against femicide and violence against women (*Ley contra el Femicidio y otras Formas de Violencia Contra la Mujer Decreto Numero 22-2008*). However, this law was adopted with fervent political resistance mostly by male Congressmen, some of them even made remarks which demonstrated their deeply-held beliefs that women were responsible for the “harm that was brought upon them” (Menjívar et al., 2016).

The legal framework is complemented by several governments’ entities working on combatting and preventing violence against women: the National Coordination Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI) operates in coordination with the Ministry of the Interior (MINGOB), through the Office of the Third Vice-Minister in charge of Violence and Crime Prevention. In addition, a Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET) and the Office for the Defence of Indigenous Women (DEMI) also work on implementing the legal framework (CEDAW 2016; *Acuerdo Gubernativo No. 259-2013*). Furthermore, the most recent National Policy for the Promotion and Comprehensive Development of Women (PNPDIM 2008 – 2023) called for combatting all forms of discrimination and violence against women and set specific goals with allocated budgets.

High levels of violence against women and impunity in Guatemala have reached crisis proportions and have received increased international attention in recent years. According to UN Women, Guatemala ranks among the countries with the highest rate of violent deaths among women (9.7 in 100,000) (UN Women, n.d.). Despite the existent legal framework on violence against women, police, prosecutors, and judges often leverage other adjacent laws, including the family, divorce, marriage, alimony and property laws. One of the reasons behind such behaviour is that for these officials, as for the people in women’s lives and for the women themselves, “violence in their lives is part of life” (Menjívar et al., 2016).

b) Domestic violence

The Law against Femicide and Other Forms of Violence against Women (*Ley contra el Femicidio y otras Formas de Violencia contra la Mujer*) was approved in April 2008. Prior to this law, the 1996 Law to Prevent, Punish, and Eradicate Family Violence (*Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar*) addressed violence against women; however, it only provided protective measures for women facing domestic violence and was not intended to punish aggressors. The 2008 law recognizes domestic violence as a punishable crime (with a sentence of 15 to 40 days in prison, (Criminal Code, Art. 483). It also allows for the issuance of restraining orders against alleged aggressors and police

protection for victims, and requires the Police to intervene in violent situations in the home. The definition of domestic violence given by this law covers psychological, physical and economic violence (Criminal Code, Art. 483).

However, the Police often failed to respond to requests for assistance related to domestic violence, and women's rights advocates reported that few officers received training on how to deal with domestic violence cases or to assist survivors (US Department of State, 2016). Because the police, prosecutors, and judges believe that men have the right to use violence against their partners to control them, they do not take cases of violence against women seriously (Menjívar et al., 2016).

In addition to the legal framework, there are several governmental entities specialized in preventing violence against women. The Institute of Public Criminal Defence, a government institution, provides free legal, medical, and psychological assistance to survivors of domestic violence. Another governmental program, the Program for the Prevention and Eradication of Domestic Violence (PROPEVI), also provides initiatives to prevent, treat and eradicate domestic violence (CEDAW, 2016). While the Coordinator for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI), serves as the domestic violence interagency coordinator and includes several civil society organizations (US Department of State, 2016). Furthermore, the government also established lower and final instance courts for femicide offences and other forms of violence against women in 11 of Guatemala's departments and 26 first instance courts specializing in femicide cases. To that end, judicial facilities were rearranged to allow hearings using oral proceedings and the possibility of video conferences to avoid direct contact between aggressors and their victims (US Department of State, 2016).

However, despite the comprehensive legal framework and specialized courts, many prosecutors do not consider domestic violence as a serious matter that warrants attention (US Department of State, 2016). There is also a pattern of prosecutors and judges urging conciliation of conflicts, rather than seeking to protect victims and survivors of domestic violence (US Department of State, 2016). Furthermore, the phenomenon of femicide is widespread in Latin America and particularly acute in Guatemala. And many cases (if not the majority) are rooted in violence that becomes concentrated in the family (Menjívar et al., 2016).

c) Rape

Decree No. 9-2009, "Law against Sexual Violence, Exploitation and Trafficking in Persons" reforming the Criminal Code aims to prevent, suppress, punish and eliminate sexual violence, exploitation and trafficking in persons and to ensure that survivors receive care and protection and are compensated for harm. Article 173 of the Criminal Code addresses sexual violence and criminalises rape (including spousal rape), punishable by 12 to 15 years of imprisonment. The law provides for increased penalties for aggravated forms of rape and sexual violence (Criminal Code, Art. 174) such as when the victim is a minor under 14 years of age or cognitively disabled, even when no physical or psychological violence is involved. In addition to Decree No. 9-2009, 20, clinics specializing in caring for survivors of sexual violence were established in 16 departments (CEDAW, 2016).

There is also an approved protocol with regard to professional who may deal with rape, (such as police forces, the judicial investigation system, or sanitary and social workers). This protocol provides a framework and set of guidelines for all institutions on how to protect and treat victims of the crimes of sexual violence and trafficking in persons. The state is also responsible for providing psychological,

legal and medical assistance to survivors of violence against women. (*Ley contra el Femicidio y otras Formas de Violencia Contra la Mujer*, Art 3,).

However, according to a 2016's report from the US Department of State, police had minimal training or capacity to investigate sexual crimes or assist survivors of such crimes and that impunity for perpetrators remained very high. Also, the length of criminal investigation remains a concern. The government's independent Office of the Human Rights Ombudsman mentioned that full investigation and prosecution of domestic took an average of two to three years if the victims had access to quality legal representation (US Department of State, 2016).

Violence by and impunity for gang members also creates an unsafe and violent environment for women in Guatemala. Women who come into contact with gangs are subject to threats, kidnapping, extortion, rape and sexual assault, and murder (The Advocates for Human Rights, 2015). Moreover, it has been reported that rape survivors frequently did not report crimes due to a lack confidence in the justice system, social stigma, and fear of reprisal (US Department of State, 2016). In addition, article 106 of the Penal Code allows the victim to pardon the perpetrator, including cases of rape and other sexual crime, making victims vulnerable to pressure not to file complaints (Amnesty International, 2011).

There is also a high-level prevalence of teen pregnancies due to rape. Guatemala's children's prosecutor described the phenomenon as a "scourge". According to the head of Guatemala's Sexual and Reproductive Health Observatory, in the majority of cases of sexual violence against girls, most are committed by "family members, mainly by the girl's father or stepfather". But often it is the girl who is forced to leave the family home, and few perpetrators are punished as girls rarely report it (Moloney, 2017).

d) Sexual harassment

The Convention of Belém do Pará explicitly includes sexual harassment in the workplace as a form of violence against women, but does not precisely define the term. Apart from the Convention of Belém do Pará, no single law, including laws against sexual violence, deals directly with sexual harassment. Therefore, the Human Rights Committee has urged Guatemala to establish violence and acts of discrimination against women, including sexual harassment in the workplace, as punishable crimes (United Nations Human Rights Committee, 2010).

The government has established a pilot program consisting of social media and bus advertisements in order to promote greater awareness against sexual harassment and to encourage survivors and witnesses to report the crime (US Department of State, 2016).

There are currently no estimates of the frequency of sexual harassment. However, human rights organizations have reported that sexual harassment was frequent, especially at work (US Department of State, 2016).

e) Female genital mutilation

The law does not prohibit female genital mutilation or cutting. There are no reports suggesting that female genital mutilation is a concern or practiced in Guatemala.

f) Abortion

According to article 134 of the Criminal Code, the woman who causes her abortion or consents to another person to cause it, is punishable with imprisonment from one to three years. Guatemala allows abortions to be legally performed only if the mother's life is in danger (Criminal Code, Art 134). Therefore, most unwanted pregnancies are clandestinely terminated.

Legal abortion is nevertheless common, some 65,000 abortions being performed each year on women aged between 15 and 49 years (CEDAW, 2012). To perform therapeutic abortion, the woman's consent is necessary and third-party authorization is required. In addition, the physician performing the abortion must consult with another licensed general practitioner prior to the procedure. Guatemala has also established a protocol for providing therapeutic abortions in order to protect the life and health of the woman concerned (CEDAW, 2016).

In addition, there is also a strong stigma attached to abortion in Guatemala, which is why the subject is often taboo and women have to do it clandestinely. In a study conducted in 2014, almost all the respondents (96%) considered abortion as morally wrong (Pew Research Center, 2014)

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

The law provides for equal rights to married and unmarried women over the ownership, use, decision-making power, and use as collateral over land and non-land assets (Civil Code, Article 464). Article 131 of the Civil Code allows for both spouses to administer their personal assets and property and does not discriminate against women. The default marital regime is partial community of property and both partners must agree in the administration of marital property.

Although there are no legal restrictions on women's access and rights to land and non-land assets, the percentage of female landowners is extremely low (only 8%) due to discriminatory social norms (UNDP, 2017). In most families, the male head of household makes all major decisions concerning land-use. According to a 2016 report from USAID, within indigenous communities, women are even more marginalized. Furthermore, although the Constitution and Civil Code both recognize the concept of dual-headed households, there is a low incidence of joint land-registration among spouses (USAID, 2016). However, several public initiatives were established in order to facilitate rural women's access to land and encourage joint titling. In particular, the 1999 Land Fund Act, and its 2005 implementing regulations, creates a program to facilitate access to land by individuals, including *campesino* (peasant) individuals and communities (USAID, 2010). The programs "Access to land purchases and productive development" and "Land regularization" managed by the Land Fund (FONTIERRAS) require that both names of the spouse appear on the title deed of land (*Decreto núm. 24-99, Ley del fondo de tierras*, Article 20 & CEDAW, 2016). And in order to equitably involve women in rural areas in production processes and access to means of production, the Land Fund Act also requires a minimum of 30% of women's participation in community councils and municipalities (FAO Gender and Land Right's Database, n.d.).

b) Secure access to formal financial resources

Married and unmarried women have equal rights as men to open a bank account at a formal institution. They similarly have equal rights as men to obtain credit. However, in practice, a considerable issue faced by women in Guatemala, especially in rural areas, is lack of documentation,

which directly hinders their ability to access formal financial resources (credit and bank account). As without any official identification, a person has no legal existence. And a person's legal existence is intrinsically linked to the requirements for being able to have access to credit (CEDAW, 2008).

Guatemala has established programmes expanding women's access to financial services, more particularly in remote and rural areas. In addition, in 2008, a programme supported by UNOPS and UN Women aimed at providing training to women on the topic "*Inicie su Negocio*" (start your business) was established. The purpose of this programme is to help increase women's economic options or personal autonomy by supporting vocational training and/or economic development by access to credit. The programme also focused on the prevention and reduction of violence against women (CEDAW, 2008).

c) Workplace rights

Guatemala has ratified ILO Conventions 100, 111, 156, but not 183 or 189.

The law mandates non-discrimination on the basis of sex in employment (Labour Code, Article 151). The labour code specifically covers job advertisements, selection criteria and terms and conditions. In addition, discrimination is also categorized as a crime under Article 202 of the Criminal Code, with prison terms of up to three years. The law also requires equal remuneration for work of equal value (Labour Code, Article 89,). While the law does not prohibit women from entering certain professions, article 147 of the Labour Code mentions that women and children's work have to be adapted to their capacity. Women can work the same night hours as men. Finally, women do not need permission from their husband or legal guardian to either choose a profession or register a business.

Guatemalan law mandates paid maternity leave of 12 weeks (Labour Code, Article 152) while paternity leave allows two consecutive days off which has to be paid by the employer (Labour Code, Article 61). The law protects women's employment security while they are on maternity leave (Labour Code, Article 151). There is currently no paid parental leave in Guatemala. In 2012 through Decision No. 136-012, a specific body was established to handle complaints in relation with sex-discrimination in employment. The Labour Management Directorate is charged with monitoring procedures put in place in the Labour and Social Insurance Courts to implement international agreements and treaties ratified by Guatemala and to avoid discrimination in the workplace (CEDAW, 2016).

However, evidence show that discrimination in the workplace is still widespread in the country. A study "Women in the local labour market" has recently been conducted to determine the employment status of women in the country. The document reveals that, in a sample of 1,000 working women, half of them said that age is a predominant factor for discrimination, because employers prefer women under 30. In addition, results from the report show that over 28% of working women stressed that they feel discriminated against for being indigenous, illiterate and/or belonging to a particular religion (Semlac, 2013). In addition, the 2015 Global Gender Gap Report estimated women's earned income was 56% that of men, and women on average received 64% of men's salaries for comparable work (World Economic Forum, 2015). Women also obtained employment more frequently in the informal sector, where pay was generally lower and benefits non-existent than in the formal sector (US Department of State, 2016). Also, there is still a social stigma attached to women working. In a study conducted by GALLUP and the ILO in 2017, 32% of the women surveyed answered that they would rather stay at home instead of working at a paid job (27%).

4. Restricted Civil liberties

a) Citizenship rights

Married and unmarried women have the same rights as men to acquire, change, their nationality, as well as confer their nationality to their children (Constitution, Art 144). Married women also have equal rights as married men to confer their nationality to their spouse. Regarding dual nationality, article 45 of the Nationality Law (Decree No. 1613) provides that a Guatemalan woman married to a foreign national shall retain her nationality, unless she opts for that of her husband. Children derive citizenship by birth in the country or from their parents. Article 79 of the nationality law also establishes that the children of Guatemalans born outside the national territory, even if their Guatemalan nationality has not been determined, shall be granted permission to enter Guatemala or a permit shall be stamped in their parents' passport (CEDAW, 2016). Married and unmarried women have equal rights as men to register the birth of their children (Civil Code, Article 392).

However, UNICEF described low birth registration as a “serious problem,” and UNHCR reported that problems in registering births were especially acute in indigenous communities' due to inadequate government registration and documentation systems (CEDAW, 2016). The CEDAW committee also expressed its concerns on the fact that the need to travel to unfamiliar urban areas, to interact with nonindigenous male government officials, and to speak Spanish inhibited some indigenous women from registering their children (CEDAW, 2016).

b) Voting

Women received the right to vote and stand for election in 1945 (Sloan, 2011). The law provides the rights of women and minorities to vote, run for office, serve as electoral monitors, and participate in political life. However, according to a survey conducted by the Latin American Public Opinion Project (LAPOP) in 2007, the non-participation rate among uneducated women was extremely high, reaching almost 70% in rural areas and almost 64% in urban areas. Among the women with some primary education, almost 55% did not vote. Even among women with some university education, the abstention rate was higher than among men with a university education (Vanderblit University, 2007). However, the CEDAW Committee noted an improvement in the recent years: in the 2011 general elections, 7,340,841 persons registered as eligible to vote, 51% of whom (3,736,169) were women, up 4% compared to the 2007 elections (CEDAW, 2016).

c) Political voice

Women in Guatemala have equal rights to men to hold public and political office in the legislature, executive and judiciary. According to article 136 of the Constitution “to elect and be elected” are part of the rights and duties of the citizens. Over the past years, Guatemala has been trying to introduce gender quotas in its law, so far without success. According to the “Quota Project”, in 1997, a women's association proposed a quota for candidates to elected posts (maximum 44 percent for either sex), however, the Electoral Reform Commission argued that the provision was discriminatory. A similar bill was introduced in 1998 in Congress proposing a system of quotas but was also rejected (The Quota Project, n.d.). Following the 2011 elections, reforms to Article 212 of the Electoral and Political Parties Law were submitted trying to achieve gender parity in the electoral process. However, the legislature rejected the amendments. Currently, there is a 30% non-binding gender quota for political parties' nominations that does not require alternation, reducing the chances of more women being elected to office (IFES, 2015). There are currently only two parties applying these quotas (The quota project, n.d.).

While there are currently no gender quotas in place, in 2010, the Municipal Code, Decree No. 22-2010 established the Municipal Women's Office (OMM) responsible for attending to specific needs of women in the municipality and to foster community leadership and economic, social and political participation for women (CEDAW, 2016). Another initiative to train and encourage women leaders was the programme "Free and Informed Participation" established in 2011 with the help of UN women and whose aim was to raise the awareness of indigenous women of their right to vote and to increase their political presence. The Programme included radio spots in five languages (Quiche, Cakchiquel, Mam, Q'eqchi and Spanish) that encouraged indigenous women to vote (UN Women, 2011).

In Guatemala women make up about 52% of the population, and of those eligible to vote (IFES, 2015). However, social norms hinder the political participation of women and members of indigenous groups (US Department of State, 2016). There is still a great gap between men and women running and occupying elected office. In the current legislature, there are only 19 women out of 158 Representatives (IFES, 2015). Seven women served on the 13-member Supreme Court, and five women served on the 10-member Constitutional Court--the most women in either court's history. While the indigenous population constituted 44% of the population, according to the latest 2002 government census, indigenous representation in national government was minimal (US Department of State, 2016).

d) Access to justice

Married and unmarried women have equal capacity to men to be sued. Married and unmarried women's testimony also carries the same evidentiary weight as a man's in civil, criminal, family court, and tribunals. There are no specific measures in place to protect women from violence in political and public life, despite widespread reports of harassment of human rights defenders (Amnesty International, 2011)

Women's access to justice has been problematic from a sociolinguistic standpoint, in that the administration of justice is conducted in Spanish (CEDAW, 2008), a language generally not spoken by the indigenous population. To address this situation, action has been taken to facilitate access to justice for Guatemalans who do not speak Spanish, by drawing on the services of interpreters. Since 2013, the judiciary has had an Indigenous Interpretation and Translation Centre to facilitate access to justice, especially for indigenous women and children, in their own language (CEDAW, 2016). In July 2014, the same Unit developed the Guide for Indigenous Women and Children's Assistance on access to Justice, addressed to all people working in the Judiciary, so that they have a useful and comprehensive tool that allows them to observe the specific rights of indigenous women when they come to seek the services of the administration of justice (Guatemala Human Rights Ombudsman, n.d.).

In addition to translation facilities and guidelines, The Office for the Defence of Indigenous Women (DEMI) was set up to promote the full realization of their rights and contribute to the eradication of all forms of violence against indigenous women.

Other institutions in place monitoring women's rights are: the Presidential Secretariat for Women (SEPREM), the Ombudsman's office for the defence of women, Gender Units in each of the Ministries; and the Vice-President's Special Cabinet for Women (GEM) (UN Women, n.d.). Since 2008, the National Statistics Institute (INE) also incorporated variables showing the situation, status and position of women in the production of official statistics compiled (CEDAW, 2016)

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