

THE GENDERED VIOLENCE OF ASYLUM REPORTING REQUIREMENTS

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ABSTRACT

In the past two decades, some U.S. courts have created and imposed hardline, or “per se,” reporting requirements that bar protection to asylum applicants who did not first report persecution from non-state actors to the authorities before fleeing. These requirements provide no exceptions, even in the face of undisputed evidence that reporting would have been futile, dangerous, or even impossible. While prior legal scholarship has addressed the dangers of reporting requirements generally, this Article explores the unique burdens that these requirements place on applicants with gender-based claims.

This Article applies feminist theory and an interdisciplinary approach to explore the reasons why reporting is often futile, dangerous, or impossible for women and girls fleeing gender-based violence in Guatemala, Honduras, and El Salvador—three of the top countries of origin for applicants seeking protection in the United States. This Article contends that the same misogyny that fuels gender-based violence also infuses the very government structures charged with providing protection from that violence. It argues that when U.S. courts minimize or ignore an applicant’s reasons for not reporting gender-based violence, they condone and perpetuate the same violence that the applicant fled. By using both English- and Spanish-language sources and centering the voices and experiences of Latin American scholars and advocates from and in the focus countries, this Article also challenges the hegemony of U.S. government reports in establishing country conditions in U.S. asylum proceedings. For both reasons, this Article will provide an important

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contribution to refugees, academics, practitioners, and policymakers working to challenge the application of reporting requirements and to fortify gender-based refugee protections.

TABLE OF CONTENTS

INTRODUCTION.....	408
I. PER SE REPORTING REQUIREMENTS IN GENDER-BASED CLAIMS FOR PROTECTION	414
A. An Overview of Protections in U.S. Asylum Law	414
B. The Development of Per Se Reporting Requirements in Gender-based Claims.....	418
C. The Harms of Per Se Reporting Requirements	421
II. A FEMINIST CRITIQUE OF REPORTING REQUIREMENTS	423
III. BARRIERS TO REPORTING GENDER-BASED VIOLENCE IN THE NORTHERN TRIANGLE.....	428
A. Guatemala.....	430
1. Symbolic Violence: Devalued and Blamed	433
2. Political Violence: State Terror and Echoes of La Violencia	437
3. Structural Violence: Exclusion of Women and Anti- Indigenous Racism	441
B. Honduras	445
1. Symbolic Violence: “[S]low, [R]evictimizing, and [I]nadequate” Legal Institutions.....	447
2. Political Violence: Post-Coup State Violence	452
3. Structural Violence: Denial of Economic and Citizenship Rights	458
C. El Salvador.....	461
1. Symbolic Violence: Societal Acceptance of Gender-Based Violence.....	463
2. Political Violence: Death Squads and Other State Terror	467
3. Structural Violence: Culture of Silence	471
IV. STRATEGIES FOR CHALLENGING THE APPLICATION OF PER SE REPORTING REQUIREMENTS IN GENDER-BASED CLAIMS	475
A. Adjudication	475
B. Appeal	478
CONCLUSION.....	479

INTRODUCTION

“El patriarcado es un juez,
que nos juzga por nacer.
Y nuestro castigo
es la violencia que ya ves.
Es feminicidio.
Impunidad para el asesino.
[. . .]
Es los pacos.
Los jueces.
El Estado.
El presidente.
El Estado opresor es un macho
violador.”

“The patriarchy is a judge,
who judges us for being born.
And our punishment
is the violence that you see.
It’s feminicide.
Impunity for the murderer.
[. . .]
It’s the cops.
The judges.
The State.
The president.
The oppressive State is
a male rapist.”

Selection from “Un violador
en tu camino” (“A rapist in
your path”) by Chilean
feminist collective, Las
Tesis.¹

Rosaura Sánchez-Amador lived under the constant threat of sexual violence in her native Honduras before seeking safety in the United States. Throughout her childhood, Ms. Sánchez-Amador suffered horrific sexual abuse at the hands of her stepfather, uncle, cousin, and landlord’s son.² When she was an adult, the notorious MS-13 gang subjected her to threats of sexual violence and death. At first, the gang left her a note threatening to kill her son and her if she did not meet their extortion demands.³ When she ultimately could not afford these demands, Ms. Sánchez-Amador took her son to live with her mother while her husband was working in the United States.⁴ Yet, she could not escape the watchful eye of MS-13. A gang member called Macuto found and confronted Ms. Sánchez-Amador, warning her that if she did not pay within one week, the gang “would find her no matter where she hid” and that he would force her to be “his

1. ‘*Un violador en tu camino*’, *el himno contra el machismo que recorre el mundo: el baile y la letra completa* [‘*A rapist in your path*,’ *the hymn against machismo that has travelled the world: the dance and complete lyrics*], LA SEXTA (Dec. 8, 2019), https://www.lasexta.com/noticias/sociedad/un-violador-en-tu-camino_201912085decdd020cf2203004e7ea6e.html [https://perma.cc/7N9N-D9EZ]. All translations contained in this Article are the Author’s own.

2. Sánchez-Amador v. Garland, 30 F.4th 529, 531 (5th Cir. 2022).

3. *Id.* at 532.

4. *Id.*

woman.”⁵ Ms. Sánchez-Amador believed this threat to mean Macuto would force her to join the gang and rape her.⁶ Ms. Sánchez-Amador and her son then decided to seek safety in the United States, where she, along with her husband and child, applied for defensive asylum.⁷ Because Ms. Sánchez-Amador fled non-state persecutors, she had to show, among other things, that the Honduran government was unable or unwilling to protect her.⁸

Before the immigration court, Ms. Sánchez-Amador argued that she could not rely on the Honduran government to protect her from her childhood sexual abusers or MS-13.⁹ She testified that she did not report the sexual abuse because it would have been futile. Citing Honduras’ “culture of ‘machismo,’” Ms. Sánchez-Amador believed that, among other things, Honduran police “often do not act on sexual assault claims” and that sexual assault was commonplace in Honduras as a result.¹⁰ Indeed, her own mother and aunt had also suffered sexual assaults.¹¹ Ms. Sánchez-Amador did report the MS-13 threats, but despite MS-13’s impending one-week deadline, the authorities told her their investigation would take at least two weeks.¹² Instead of risking her safety by waiting for police action, Ms. Sánchez-Amador and her son decided to flee the country before MS-13’s deadline expired.¹³ In support of her fears of police inaction, Ms. Sánchez-Amador “presented substantial country condition evidence

5. *Id.*

6. *Id.*

7. *Id.* at 531. A defensive asylum application is an application for asylum as a defense to removal proceedings in the United States. *Obtaining Asylum in the United States*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Sept. 13, 2023), <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states> [<https://perma.cc/6RVM-4Y52>].

8. *Sanchez-Amador*, 30 F.4th at 533. Applicants fleeing non-state actors must demonstrate that the state was unable or unwilling to protect them from that actor. On the other hand, applicants fleeing state persecution need not make this showing, as courts assume the state will not protect an applicant from state harm. *See, e.g.*, *Baballah v. Ashcroft*, 367 F.3d 1067, 1078 (9th Cir. 2004) (“Only where non-governmental actors are responsible for persecution do we consider whether an applicant reported the incidents to police, because in such cases a report of this nature may show governmental inability to control the actors.”).

9. *Id.* at 532.

10. *Id.*

11. *Id.*

12. *Id.* at 532, 534.

13. *Id.* at 532.

speaking to how ineffective [Honduran] authorities had been at combatting domestic violence.”¹⁴

Nevertheless, the immigration judge denied Ms. Sánchez-Amador’s asylum claim, in part, “because she never reported the sexual abuse she suffered, and she left before the police could complete their investigation into [MS-13’s] threats.”¹⁵ The Board of Immigration Appeals (BIA), the first level of appeal and highest administrative body hearing appeals from the immigration courts, affirmed.¹⁶ On appeal to the Fifth Circuit, the court denied Ms. Sánchez-Amador’s petition for review, agreeing with the findings below.¹⁷ As for the repeated childhood sexual abuse that Ms. Sánchez-Amador suffered, the court found that Ms. Sánchez-Amador’s subjective belief that the police would not help her “is not sufficient to overturn the BIA under the substantial evidence standard” and that “one would be hard-pressed to find that the authorities were unwilling or unable to help her if she never gave them the opportunity to do so.”¹⁸ As to the MS-13 report, the court found that “[t]he fact that the police could not complete their investigation to Sanchez-Amador’s satisfaction within a single week does not compel the conclusion that they were unable or unwilling to help her.”¹⁹

Nowhere did the decisions of the Fifth Circuit, BIA, and the immigration court meaningfully analyze Ms. Sánchez-Amador’s reasons for not reporting her sexual abuse and not waiting until MS-13’s deadline passed for the Honduran police to act. Nor did they meaningfully address her “substantial” and undisputed country conditions evidence demonstrating that the Honduran government was unable to provide protection.²⁰ Finally, they ignored binding precedent holding that reporting is not necessary if it would have been futile or exposed the applicant to greater peril.²¹ Following the rationale of this case, asylum seekers must not only report non-state actors’ actualized and threatened sexual violence to local law

14. *Id.* at 534.

15. *Id.* at 532.

16. *Id.*

17. *Id.* at 534–35.

18. *Id.* at 534. The court found that Ms. Sánchez-Amador’s brief only adequately challenged the “unable or unwilling” finding below as to MS-13. Therefore, it found that she waived similar challenges as to her stepfather and other “private actors,” but addressed those challenges nonetheless. *Id.*

19. *Id.*

20. *Id.*

21. See *infra* Section I.B. (discussing *In re S-A-*, 22 I. & N. Dec. 1328 (BIA 2000)).

enforcement, but also wait for a response—even if it likely would be to their peril—before being eligible for asylum in the United States.

This Article argues that decisions like *Sanchez-Amador* perpetuate continued violence against survivors of gender-based violence by disregarding the myriad of well-documented reasons why survivors do not report.²² While prior scholarship has identified and criticized these bright-line, or “per se,” reporting requirements generally,²³ this Article applies feminist theory and an interdisciplinary approach to analyze the systemic barriers to reporting that applicants with gender-based claims face in the Northern Triangle of Guatemala, Honduras, and El Salvador—three of the top countries of origin for applicants seeking protection in the United States.²⁴ By centering the Spanish- and English-language work of scholars and advocates from and in those countries, this Article examines the unique harms that reporting requirements impose on applicants with claims for protection based on their gender. In doing so, it outlines the hazards of reporting requirements in these three countries’ larger social, political, and historical contexts—with a particular focus on the misogynistic, symbolic, political, and structural violence that prevent someone from reporting gender-based violence.²⁵ Although this Article focuses on the harms that reporting requirements impose on women and girls fleeing gender-based violence in Guatemala, Honduras, and El Salvador (including heightened barriers and harms that trans, lesbian, and bisexual women may face), its broader argument may apply to claims based on gender identity, gender expression, and sexuality from any context.

22. See *infra* Parts II, III.

23. Amelia S. McGowan, *Forced Back into the Lion’s Mouth: Per Se Reporting Requirements in U.S. Asylum Law*, 107 MARQ. L. REV. 633, 637–39 (2024).

24. Nicole Ward & Jeanne Batalova, *Refugees and Asylees in the U.S.*, MIGRATION POL’Y INST. (June 15, 2023), <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states> [https://perma.cc/T6SX-9JUC].

25. This Article does not deny that reporting may be effective, and even lifesaving, in some cases. However, for many survivors of gender-based violence, the risks of reporting may outweigh the potential benefits—especially given the factors analyzed *infra* in Parts II and III. For this reason, rather than impose a per se reporting requirement, or even impose a presumption in favor of reporting, adjudicators should carefully review and weigh an applicant’s reasons for not reporting non-state actors.

U.S. courts prioritize U.S. government reports of country-conditions when determining the circumstances under which asylum seekers flee.²⁶ This Article challenges that norm, and instead, centers the perspectives of scholars and activists in the focus countries. This is an intentional decision for two primary reasons. First, the scholars and advocates in the focus countries are the true experts on the dynamics of gender-based violence and state impunity in those countries. Second, as U.S. legal scholar Karla McKanders argues, it is critical to challenge and decolonize the norms and stereotypes surrounding asylum and asylum seekers that the U.S. government, asylum law, and even asylum advocates in the U.S. perpetuate.²⁷ Professor McKanders notes that these norms replicate “essentialized gender and racialized narratives” that label asylum seekers as victims and remove their agency, causing further harm.²⁸ Quoting scholar Chaumtoli Huq, Professor McKanders notes that decoloniality, on the other hand, “seeks to untangle the production of knowledge from a primarily Eurocentric and white framework. Decoloniality at its heart is a liberatory project to dismantle structures of oppression that subjugate communities.”²⁹ This Article seeks to advocate for decoloniality in asylum law by centering the perspectives of scholars and advocates in the focus countries (rather than those of the U.S. government) as well as uplifting the agency and power of asylum seekers—not as victims, but rather as survivors advocating for their own safety and freedom.

Similarly, while this Article analyzes the dangers and futility of reporting in the focus countries, it also highlights the tremendous barriers that people seeking protection from gender-based violence face in the United States. Survivors in the United States, too, may face indifferent or hostile law enforcement or courts, systemic biases, and abusers who threaten to escalate the harm if the survivor

26. See, e.g., *Rojas v. I.N.S.*, 937 F.2d 186, 190 (5th Cir. 1991) (determining that the U.S. Department of State “is the most appropriate and perhaps the best resource the Board could look to in order to obtain information on political situations in foreign nations”).

27. Karla M. McKanders, *Decolonizing Colorblind Asylum Narratives*, 67 ST. LOUIS U. L. J. 523, 524–32 (2023).

28. *Id.* at 528.

29. *Id.* at 531 (quoting Chaumtoli Huq, *Teaching Contracts through a Critical Race & Decolonial Framework*, CONTRACTSPROF BLOG (July 13, 2020), https://lawprofessors.typepad.com/contractsprof_blog/2020/07/guest-post-by-chaumtoli-huq-part-i-the-decolonial-framework.html [https://perma.cc/48Y7-DGMB]).

reports.³⁰ In the asylum context, reporting requirements highlight just one facet of the United States' frequent failure and refusal to provide meaningful relief to people seeking protection based on their gender, among other grounds. In addition, asylum seekers may face U.S. immigration judges who attack their credibility because of cultural differences, misunderstandings, and the effects of trauma, or who do not fully appreciate the dynamics of violence based on gender.³¹ They may also face administrative policies that arbitrarily upend gender-based protections and deny them the opportunity to seek protection at all, among other things.³²

In Part I of the Article, I discuss the development of per se reporting requirements within the larger context of U.S. asylum law and gender-based protections, including some relevant BIA and courts of appeals decisions applying or rejecting per se reporting requirements in cases involving gender-based claims for protection. In Part II, using feminist theory, I delve into the many legitimate reasons that survivors of gender-based persecution do not report. In Part III, I analyze the country-specific structural and individual barriers that survivors of gender-based violence in Guatemala, Honduras, and El Salvador face in reporting, again through a feminist lens. In doing so, this Article exposes the many dangers of per se reporting requirements in the context of gender-based claims. Finally, in Part IV, I discuss legal strategies for advocates challenging the application of per se requirements in immigration proceedings.

30. See, e.g., *Sexual Assault, Domestic Violence, and Policing*, ACLU (Oct. 26, 2015), <https://www.aclu.org/publications/sexual-assault-domestic-violence-and-policing> [<https://perma.cc/PK9K-WV8R>] (surveying over nine hundred U.S.-based advocates, service providers, and attorneys on state barriers to reporting in the United States).

31. Mica Rosenberg et al., *They Fled Danger at Home to Make a High-Stakes Bet on U.S. Immigration Courts*, REUTERS (Oct. 17, 2017), <https://www.reuters.com/investigates/special-report/usa-immigration-asylum/> [<https://perma.cc/8ZAS-VDZB>].

32. See *infra* Section I.A.

I. PER SE REPORTING REQUIREMENTS IN GENDER-BASED CLAIMS FOR PROTECTION

A. An Overview of Protections in U.S. Asylum Law

Asylum is one of the primary protections for non-citizens in the United States seeking protection from persecution. The remedy derives from the 1967 Protocol Relating to the Status of Refugees, to which the United States acceded and incorporated into domestic law and regulations through the Refugee Act of 1980.³³ In order to qualify for asylum, applicants must first show that they meet the Protocol's definition of a "refugee," which it defines as:

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion[.]³⁴

Under this definition, applicants must show that they suffered past persecution or face future persecution on account of one of the five protected grounds. Applicants fleeing non-state persecutors, like domestic abusers or gangs, also must show that the state was (in the case of past persecution) or would be (in the case of well-founded fear of future persecution) unable or unwilling to protect them from those persecutors, among other things.³⁵ Applicants may apply for asylum affirmatively with an asylum office or defensively

33. U.N. Protocol Relating to the Status of Refugees arts. I, IV, *entered into force* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 268. [hereinafter *Refugee Protocol*]; U.N. Treaty Collection, *Status of Treaties: Protocol Relating to the Status of Refugees* (status as of Feb. 10, 2024), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-5.en.pdf> [<https://perma.cc/SF3J-SAYV>]; 8 U.S.C. § 1158.

34. 8 U.S.C. § 1101(a)(42); Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.). The definition excludes anyone who "ordered, incited, assisted, or otherwise participated" in the persecution of anyone on account of these protected grounds. *Id.*

35. Charles Shane Ellison & Anjum Gupta, *Unwilling or Unable? The Failure to Confirm the Nonstate Actor Standard in Asylum Claims to the Refugee Act*, 52 COLUM. HUM. RTS. L. REV. 441, 445–92 (2021) (tracking the development of the non-state actor standard before the BIA and the federal circuit courts).

before an immigration court overseeing removal proceedings, depending on their individual circumstances.³⁶ In defensive proceedings, applicants may also be eligible for the related protection of withholding of removal, in addition to protection under the Convention Against Torture and other defensive remedies.³⁷

While the definition of “refugee” does not explicitly reference gender, the United Nations High Commissioner for Refugees (UNHCR), which provides guidelines on the 1967 Protocol, makes clear that the definition includes protection of people fleeing persecution on account of their gender.³⁸ Most frequently, these and related attributes often fall under the “particular social group” protected ground, but they may also involve any of the other grounds depending on the applicant’s individual circumstances.³⁹ In its Guidelines on International Protection No. 1 (claims based on gender), UNHCR notes that it is “widely accepted that [gender] can influence, or dictate, the type of persecution or harm suffered and the

36. See McGowan, *supra* note 23, at 639–42.

37. 8 U.S.C. §1231(b)(3); 8 C.F.R. § 208.16. The elements of withholding of removal largely resemble asylum; however, withholding applicants bear a higher burden of proof—showing that they will “more likely than not” face persecution on account of a protected ground—and they enjoy fewer protections—most notably, unlike asylum, withholding does not lead to a green card and does not permit the grantee to include derivatives or petition for spouses and children abroad. *Id.*; *The Difference Between Asylum and Withholding of Removal*, AM. IMMIGR. COUNCIL & NAT’L IMMIGRANT JUST. CTR., https://www.americanimmigrationcouncil.org/sites/default/files/research/the_difference_between_asylum_and_withholding_of_removal.pdf [https://perma.cc/4L9V-NNAJ]. On the other hand, withholding does not include many of asylum’s bars, including the one-year filing deadline (that includes limited exceptions) and some criminal bars. *Id.*

38. U.N. High Comm’r for Refugees, Guidelines on International Protection No. 1, ¶ 35, U.N. Doc. HCR/GIP/02/01 (May 7, 2002) [hereinafter Guidelines on Int’l Protection No. 1] (using the term “gender-related persecution” to discuss refugee claims based on gender).

39. *Id.* ¶ 28. While the United Nations notes that advocates and adjudicators often analyze gender-based claims under the particular social group ground, it adds that “in some cases, the emphasis given to the social group ground has meant that other applicable grounds, such as religion or political opinion, have been over-looked. Therefore, the interpretation given to this ground cannot render the other four Convention grounds superfluous.” *Id.*; see also U.N. High Comm’r for Refugees, Guidelines on International Protection No. 9, ¶¶ 36, 40, U.N. Doc. HCR/GIP/12/09 (Oct. 23, 2012) [hereinafter Guidelines on Int’l Protection No. 9] (highlighting how claims based on sexual orientation and/or gender identity are most often classified as a particular social group).

reasons for this treatment” and that adjudication of eligibility requires “a gender-sensitive interpretation.”⁴⁰

On forcing applicants to report sexuality-, gender identity-, or gender expression-based violence to law enforcement before seeking protection, the UNHCR adds:

State protection would normally neither be considered available nor effective, for instance, where the police fail to respond to requests for protection or the authorities refuse to investigate, prosecute or punish (non-State) perpetrators of violence against LGBTI individuals with due diligence. Depending on the situation in the country of origin, laws criminalizing same-sex relations are normally a sign that protection of LGB individuals is not available. Where the country of origin maintains such laws, it would be unreasonable to expect that the applicant first seek State protection against harm based on what is, in the view of the law, a criminal act. In such situations, it should be presumed, in the absence of evidence to the contrary, that the country concerned is unable or unwilling to protect the applicant. As in other types of claims, a claimant does not need to show that he or she approached the authorities for protection before flight. Rather he or she has to establish that the protection was not or unlikely to be available or effective upon return.⁴¹

Although these guidelines are not binding per se, they provide important insight into the proper application of the 1967 Protocol.⁴²

Gender-based protections under this definition have developed in an arduous and non-linear fashion in the United States.⁴³ While this development process is largely outside the scope of this Article, it is particularly relevant to the spread of per se

40. Guidelines on Int'l Protection No. 1, *supra* note 38, ¶¶ 6, 8.

41. Guidelines on Int'l Protection No. 9, *supra* note 39, ¶ 36 (internal citations omitted).

42. *Id.* at 1 (noting that the UNHCR's guidelines may serve as “legal interpretative guidance for governments, legal practitioners, decision makers and the judiciary”).

43. See, e.g., Minha Jutt, “Build Back Better”: Domestic Violence-Based Asylum After the “Death to Asylum” Rule, 70 U. KAN. L. REV. 561 (2022) (discussing the historical development of gender-based refugee claims in the United States); Anne Weis, *Fleeing for Their Lives: Domestic Violence Asylum and Matter of A-B-*, 108 CAL. L. REV. 1319 (2020) (discussing the historical development of gender-based refugee claims in the United States).

reporting requirements for gender-based claims in two key ways. First, the development reflects the escalated hostility applicants with gender-based claims faced during the Trump administration. Most notably, in 2018, Attorney General Jeff Sessions issued *Matter of A-B- (A-B- I)*, an Attorney General opinion that single-handedly overturned a landmark, precedential BIA decision that found that survivors of domestic violence may qualify for asylum based on their particular social group.⁴⁴ That precedential BIA case, *Matter of A-R-C-G*,⁴⁵ was not only monumental in itself, but also represented decades of advocacy and increased protections for asylum applicants with gender-based claims. In overturning *Matter of A-R-C-G*, Attorney General Sessions minimized many types of gender-based violence as “private criminal activity,” which he argued merited a higher showing that the state “condoned the private actions or at least demonstrated a complete helplessness to protect the victims” to show that the state was or would be unable or unwilling to provide protection.⁴⁶ In 2021, Attorney General Merrick Garland vacated *A-B- I* (and Attorney General Jefferey Rosen’s subsequent “clarifying” opinion in *Matter of A-B- II (A-B- II)*).⁴⁷ However, under the second Trump administration, Attorney General Pam Bondi overruled

44. *Matter of A-B-*, 27 I. & N. Dec. 316, 320 (A.G. 2018) (“*A-B- I*”), vacated, *Matter of A-B-*, 28 I. & N. Dec. 307 (A.G. 2021) (“*A-B- II*”).

45. *Matter of A-R-C-G*, 26 I. & N. Dec. 388, 390–91 (B.I.A. 2014). In this precedential opinion, the BIA formally recognized that domestic violence could be a basis for asylum in some circumstances. *Id.* at 390, 394–95. Specifically, it found the applicant, who had suffered years of horrific physical, sexual, and psychological abuse, to be a member of a particular social group composed of “married women in Guatemala who are unable to leave their relationship.” *Id.* at 392–93. The applicant, Ms. A.R.C.G., tried to report the abuse “several times,” but the police informed her that “they would not interfere in a marital relationship.” *Id.* at 389. Once, the police did go to her home after her husband abused her physically but did not arrest him. *Id.* Her husband then threatened to kill her if she continued to call the police. *Id.* The immigration judge found that Ms. A.R.C.G. did not show that she suffered past persecution or held a well-founded fear of future persecution on account of a protected ground. *Id.* On appeal, the BIA ordered remand for further factfinding and other matters, determining that Ms. A.R.C.G. suffered persecution on account of her proposed particular social group, which the Department of Homeland Security ultimately conceded. *Id.* at 389–90.

46. *A-B- I*, 27 I. & N. Dec. at 337, 343–44. The courts of appeals are not unified on whether *A-B- I* represented a new standard in the “unable or unwilling” analysis. Ellison & Gupta, *supra* note 35, at 494–503.

47. *Matter of A-B-*, 28 I. & N. Dec. 307, 307 (B.I.A. 2021) (“*A-B- III*”).

Garland's opinion and restored *Matter of A-B- I and II* in September 2025.⁴⁸

Second, the development of gender-based claims in the United States highlights the patchwork structure of U.S. asylum law and how that structure can exacerbate heightened barriers to asylum, such as reporting requirements. Even after Attorney General Garland's vacatur of *A-B- I and II*, *A-B- I* continued to haunt asylum seekers in some areas of the United States.⁴⁹ It did so because the circuit courts of appeals develop the bulk of asylum caselaw in the United States; the immigration courts and asylum offices hearing asylum claims do not create caselaw, and the only level of administrative appeal from immigration court removal orders—the BIA—issues just a small number of precedential decisions a year.⁵⁰ As a result, the courts of appeals may vary widely in their interpretations of various aspects of asylum law, including the treatment of gender- and sexuality-based claims. For example, while some courts of appeals rejected *A-B- I* from the outset, others, such as the Second and Fifth Circuits, cited it with approval and upheld it.⁵¹ The Fifth Circuit continued to chase the ghost of *A-B- I*, refusing to overturn its own cases based on *A-B- I*, even after its vacatur.⁵² This is merely one example of many highlighting the lack of uniformity—and even hostility—that applicants with gender- and sexuality-based claims may face throughout the United States.

B. The Development of Per Se Reporting Requirements in Gender-based Claims

Reporting requirements originated when immigration courts around the country began reading them into their analyses of the

48. *Matter of S-S-F-M-*, 29 I. & N. Dec. 207, 208 (A.G. 2025). Months before, the BIA also issued a published decision, *Matter of K-E-S-G-*, holding that “a particular social group defined by [an applicant's] sex or sex and nationality, standing alone, is overbroad and insufficiently particular to be cognizable under the INA.” 29 I. & N. Dec. 145, 151 (B.I.A. 2025).

49. For example, the Fifth Circuit continues to apply and rely on *A-B- I*. See *Jaco v. Garland*, 24 F.4th 395, 404–06 (5th Cir. 2021).

50. McGowan, *supra* note 23, at 640–42.

51. See, e.g., *Practice Advisory: Applying for Asylum After Matter of A-B- I and A-B- II*, NAT'L IMMIGRANT JUSTICE CTR., at 14–19 (Feb. 2021), <https://immigrantjustice.org/for-attorneys/legal-resources/file/practice-advisory-applying-asylum-after-matter-b> [<https://perma.cc/LJN5-MDYE>] (analyzing circuit splits); Ellison & Gupta, *supra* note 35, at 454, n. 48 (noting the Second and Fifth Circuits' approval of *A-B- I*).

52. *Jaco*, 24 F.4th at 404–06.

“unable or unwilling” component of the refugee definition in the 1967 Protocol.⁵³ In these cases, courts found that an applicant seeking protection from a non-state persecutor could not make the requisite showing that the state was, or would be, unable or unwilling to protect them if the applicant did not first contact the authorities before fleeing.⁵⁴ Courts imposing these requirements allow no exceptions, even where reporting would have been useless, dangerous, or otherwise unreasonable.⁵⁵

While it is impossible to trace the exact origin and early spread of reporting requirements in the immigration courts (as immigration court opinions are not publicly available), publicly available appellate decisions reviewing the imposition of reporting requirements below appeared by 2000.⁵⁶ It was that year that the BIA issued a rare published opinion rejecting an immigration court’s creation and application of a *per se* reporting requirement in the case of a Moroccan woman, Ms. S.A., whose father abused her because of her liberal religious beliefs supporting women’s rights.⁵⁷ His abuse included burning her thighs with a heated razor, beating her in the face with a metal ring, frequently punching and kicking her, forcing her into isolation, denying her an education, and verbally abusing her.⁵⁸ Ms. S.A. attempted suicide twice as a result.⁵⁹

Ms. S.A. testified that she did not seek protection from Moroccan authorities because her mother previously tried and was unsuccessful.⁶⁰ Her aunt added that “going to the police would have been futile” and noted the “unfettered power” of a father over his daughter in Morocco.⁶¹ Nevertheless, the immigration judge denied Ms. S.A.’s applications for asylum and related protections because Ms. S.A. did not first seek protection from Moroccan authorities.⁶² The immigration judge also determined that Ms. S.A. was not credible.⁶³

53. McGowan, *supra* note 23, at 639–45.

54. *Id.* at 643–45.

55. *Id.* at 644–45.

56. *Id.* For an overview of the appellate structure applicable to decisions on applications for relief in immigration court, see *id.* at 642–45.

57. *Id.* at 644–46; *In re S-A-*, 22 I. & N. Dec. 1328, 1328–31, 1337 (BIA 2000).

58. *In re S-A-*, 22 I. & N. Dec. at 1329–30.

59. *Id.* at 1330.

60. *Id.*

61. *Id.* at 1331.

62. *Id.* at 1328–31.

63. *Id.* at 1331.

On appeal, the BIA not only reversed the immigration judge's decision, but also did so in a rare published opinion, which is binding on all immigration courts.⁶⁴ The BIA first found that the immigration judge's adverse credibility finding was "not supported by specific and cogent reasons" and that Ms. S.A.'s father's "repeated physical assaults, imposed isolation, and deprivation of education" constituted past persecution on account of Ms. S.A.'s liberal religious beliefs, which "differed from her father concerning the proper role of women in Moroccan society."⁶⁵ The BIA concluded that Ms. S.A.'s father persecuted her for her beliefs combined with her gender, noting that her father singled her out for abuse and did not similarly harm her brothers.⁶⁶ Importantly, it also found that the immigration court erred in imposing a reporting requirement, concluding that "the evidence convinces us that even if [Ms. S.A.] had turned to the government for help, Moroccan authorities would have been unable or unwilling to control her father's conduct. [Ms. S.A.] would have been compelled to return to her domestic situation and her circumstances may well have worsened."⁶⁷

Through *In re S-A*-, the BIA emphasized that reporting is not always necessary to demonstrate a state's inability and/or unwillingness to provide protection.⁶⁸ It also recognized the central role that gender may play not only in the persecution that applicants suffer and flee, but also in an applicant's inability to rely on the state for protection. Indeed, the BIA acknowledged that forcing applicants to report may push them into greater harm.⁶⁹

But despite *In re S-A*-'s binding effect on all immigration courts and the BIA itself, reporting requirements have persisted—and even proliferated—throughout the United States.⁷⁰ Not only do some immigration judges continue to impose reporting requirements on asylum seekers, but the BIA itself at times upholds them in unpublished decisions that are not currently publicly available.⁷¹ Since the BIA's decision in *In re S-A*-, every court of appeals hearing

64. *Id.* at 1332, 1337. Under 8 C.F.R. § 103.10(b), all published BIA opinions "shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States," unless modified or overturned.

65. *In re S-A*-, 22 I. & N. Dec. 1328, 1332, 1335 (BIA 2000).

66. *Id.* at 1336.

67. *Id.* at 1335.

68. McGowan, *supra* note 23, at 645–46.

69. *In re S-A*-, 22 I. & N. Dec. at 1333.

70. See McGowan, *supra* note 23, at 645–72.

71. *Id.* at 646–72.

appeals from removal proceedings have reviewed decisions in which the immigration court and/or the BIA below have imposed or upheld reporting requirements.⁷² These decisions indicate that immigration judges and the BIA frequently ignore *In re S-A-*. As of August 2025, one court of appeals—the Seventh Circuit—outright approves of per se reporting requirements.⁷³ Seven other circuits reject them, while the remaining three have taken unclear or inconsistent recent positions.⁷⁴ While the BIA again rejected per se reporting requirements in another published opinion, *Matter of C-G-T-* in 2023,⁷⁵ the decision may not result in a meaningful “correction.” The BIA’s and immigration courts’ consistent failure to follow *In re S-A-* and some courts’ of appeals decisions to impose per se reporting requirements will persist to overshadow the BIA’s position in *Matter of C-G-T-*.⁷⁶ Therefore, continued advocacy against the application of reporting requirements is necessary.

C. The Harms of Per Se Reporting Requirements

Per se reporting requirements raise several legal and policy concerns for *all* seeking protection in the United States from non-

72. *Id.* at 647–72.

73. *Id.* at 649–51. The Seventh Circuit’s decision in *Silais v. Sessions* did not disturb the imposition of a reporting requirement below, potentially opening the door for immigration judges and asylum officers in that circuit to impose reporting requirements. And notably, the decision did not explicitly overturn—nor even mention—*In re S-A-*. *Id.*

74. *Id.* at 651–71. As of August 2025, the First, Second, Third, Fourth, Sixth, Ninth, and Tenth Circuits have rejected reporting requirements while the Fifth, Eighth, and Eleventh Circuits have taken unclear or inconsistent positions.

75. *Matter of C-G-T-*, 28 I. & N. Dec. 740, 743–45 (BIA 2023). In *Matter of C-G-T-*, the applicant suffered abuse as a child because of his sexual orientation. *Id.* at 741. He did not report the abuse, as he believed doing so as a child would have been futile and could have exposed him to further abuse. *Id.* at 743. Nevertheless, the immigration judge imposed a per se reporting requirement, finding that Mr. C.G.T. could not show that the Dominican Republic was unable or unwilling to protect him because he did not report. *Id.* On appeal, the BIA ordered remand, noting its own prior decision in *In re S-A-* and prior courts of appeals decisions finding that non-reporting is “not necessarily fatal” to an applicant’s claim if reporting would have been futile or dangerous. *Id.* at 743. The BIA instructed the immigration judge on remand to “consider the reasonableness” of Mr. C.G.T.’s non-reporting. *Id.* at 744–45. In doing so, the immigration judge was to consider “all evidence” regarding the Dominican Republic’s inability or unwillingness to provide protection, including the applicant’s own “testimony, available corroborating evidence, and country conditions reports.” *Id.* at 744.

76. McGowan, *supra* note 23, at 641–51, 662–72.

state persecutors.⁷⁷ Most importantly, they deny protection to some of the most vulnerable asylum seekers and at times even expose them to greater danger.⁷⁸ They also imperil the rule of law; among other things, these reporting requirements have no basis in the 1967 U.N. Protocol Relating to the Status of Refugees nor U.S. statutes and regulations governing asylum or withholding of removal.⁷⁹ In addition, they permit adjudicators to ignore evidence concerning the danger and/or futility of reporting, to disregard binding precedent like *In re S-A-*, and to violate U.S. treaty obligations in the case of withholding of removal.⁸⁰ As a result, such requirements present a danger to all asylum applicants fleeing non-state persecutors.

Reporting requirements also cause particular harm to applicants with gender-based claims that scholarship has not yet explored. Many decisions from the courts of appeals addressing *per se* reporting requirements involve applicants fleeing gender-based violence.⁸¹ These opinions reveal some of the tremendous barriers—and even dangers—that applicants with gender-based claims often face in reporting.

Some applicants fear impunity and worsening harm from their abusers if they report. Ms. Sánchez-Amador's case in the Fifth Circuit is one example. In another case, in the Sixth Circuit, Ms. Ana Mercedes Zometa-Orellana fled her domestic partner in El Salvador who verbally, physically, and sexually abused her on numerous occasions.⁸² She did not first seek the protection of Salvadoran authorities because she feared reporting would have been futile and that her partner would have retaliated if she did.⁸³ In support of her

77. *Id.* at 672–81 (analyzing the many legal and policy problems that *per se* reporting requirements present).

78. *Id.* at 673–74.

79. *Id.* at 677. Indeed, the United Nations advises state parties to the 1967 Protocol Relating to the Status of Refugees that “a claimant [for protection] does not need to show that he or she approached the authorities for protection before flight. Rather he or she has to establish that the protection was not or unlikely to be available or effective upon return.” Guidelines on Int’l Protection No. 9, *supra* note 39, ¶ 36.

80. *Id.* at 647, 675–76, 678–81.

81. *See, e.g.,* *de Ruiz v. Garland*, No. 18-70265, 2023 WL 2261401, at *1 (9th Cir. 2023) (upholding the imposition of a reporting requirement below because even though the record showed that “police often do not respond to domestic violence complaints and convictions for intrafamily violence are rare,” “legal protections exist and the government is working to provide services for survivors of domestic violence”).

82. *Zometa-Orellana v. Garland*, 19 F.4th 970, 974 (6th Cir. 2021).

83. *Id.* at 979.

beliefs, Ms. Zometa-Orellana submitted a Canadian government report noting that “in light of inadequate protection systems, many women [in El Salvador] feared reporting their domestic violence incidents to the police and that ‘making a report puts the victim even more at risk of further violence by her abuser.’”⁸⁴ A United Nations source in the record recounted one survivor in El Salvador “standing in front of the police, bleeding, and the police said, ‘Well, he’s your husband.’”⁸⁵ The Sixth Circuit rejected the immigration judge’s and the BIA’s reliance on a per se reporting requirement in denying relief, finding that they “completely disregarded and failed to address the documentary evidence” explaining why Ms. Zometa-Orellana did not report.⁸⁶

These cases provide limited glimpses into the many reasons preventing survivors of gender-based violence from reporting. A deeper analysis of the dynamics and barriers that prevent survivors of gender-based violence from reporting is necessary to understand the dangers of reporting requirements more fully.

II. A FEMINIST CRITIQUE OF REPORTING REQUIREMENTS

Reporting requirements willfully ignore the harsh realities that survivors of gender-based violence face—including the many individual and systemic reasons why they may not seek the assistance of authorities. As this Part will demonstrate, Latin American feminist theorists and scholars argue that the structural forces that fuel misogynistic persecution are the same structural forces that prevent survivors from relying on the state for protection. Country-level analyses in Guatemala, Honduras, and El Salvador support this argument.⁸⁷ In disregarding these reasons and forcing survivors to expose themselves to further harm by reporting, agencies and courts that impose per se reporting requirements are thus complicit in this violence.

Experts identify both “internal and external” barriers that survivors of gender-based violence face in reporting that may be individual or societal in origin.⁸⁸ Some of the internal reasons a

84. *Id.* at 980 (internal citation omitted).

85. *Id.* at 980 (internal citation omitted).

86. *Id.* at 979–80.

87. *See infra* Sections III.A–C.

88. Victoria Aurora Ferrer Pérez & Esperanza Bosch Fiol, *Barreras que dificultan la denuncia de la violencia de género: Reflexiones a propósito de los resultados de la macroencuesta* [Barriers that make it difficult to report gender

survivor may not report include their emotional attachment to the abuser, lack of knowledge about reporting and the judicial process, economic difficulties, feelings of shame and/or self-blame, and fear of the abuser and/or the judicial process.⁸⁹ External barriers often accompany and influence these internal reasons, and may include “socialization in traditional gender roles,” stigmatization, and societal tolerance—or even positive treatment of—gender-based violence.⁹⁰

Many sociologists and feminist scholars argue that these structural barriers—namely, systemic gender inequality and impunity—both fuel gender-based violence and create the impunity and corruption that prevent and discourage survivors from reporting.⁹¹ The United Nations High Commissioner for Human Rights defines impunity as:

the impossibility, de jure or de facto, of bringing the perpetrators of violations to account—whether in criminal, civil, administrative or disciplinary proceedings—since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.⁹²

The Mexican feminist organization EQUIS urges a broader interpretation of impunity to include not only the absence of punishment, but also an acknowledgement “of the rest of the offenses that the criminal justice system does not see, either because they are

violence: Reflections on the macro survey results], in MUJERES E INVESTIGACIÓN. APORTACIONES INTERDISCIPLINARES: VI CONGRESO UNIVERSITARIO INTERNACIONAL INVESTIGACIÓN Y GÉNERO 256, 258 (Carmen García-Gil et al. eds., 2016) (internal citations omitted); Belén Zurita, *¿Por qué las mujeres no denuncian la violencia de género? [Why don't women report gender violence?]*, POR TI MUJER (Nov. 24, 2021), <https://asociacionportimujer.org/por-que-las-mujeres-no-denuncian-la-violencia-de-genero/> [<https://perma.cc/G66J-8WYL>]; *Conoce las barreras que enfrentan las mujeres al denunciar una situación de violencia [Know the barriers that women face in reporting a violent situation]*, PERÚ21 (Nov. 25, 2022), <https://peru21.pe/vida/conoce-las-barreras-que-enfrentan-las-mujeres-al-denunciar-una-situacion-de-violencia> [<https://perma.cc/3JL8-TRRY>].

89. *Id.* at 258–59.

90. *Id.*

91. Celeste Saccomano, *El feminicidio en América Latina: ¿Vacío legal o déficit del estado de derecho? [Feminicide in Latin America: Legal vacuum or defect in the rule of law?]*, 117 REVISTA CIDOB D'AFERS INTERNACIONALS 51, 56 (2017); see *infra* Sections III.A–C.

92. U.N. Econ. & Soc. Council, Comm'n on Hum. Rts., *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, U.N. Doc. E/CN.4/2005/102/Add.1, at 6 (Feb. 8, 2005).

not crimes or because they are not reported” as well as the “structural obstacles—based on gender” that victims confront when reporting.⁹³

For many Latin American feminist scholars, gender-based violence and the state complicity that often makes reporting such violence futile, dangerous, or otherwise unreasonable are two sides of the same sexist coin. Mexican sociologist José Manuel Valenzuela Arce argues that the patriarchy’s “unequal power relationship between men and women . . . is (re)produced in social structures, in institutional settings, in everyday settings, and in cultural and symbolic frameworks.”⁹⁴ Mexican anthropologist and feminist scholar Marcela Lagarde argues that such a structure creates “institutional violence,” which she defines as “discrimination and the administration of justice and the application of the law.”⁹⁵ The many barriers that institutional violence raises prevents victims from reporting, but even where victims do, “the police and judges often do not take women’s accounts seriously.”⁹⁶ Both violence against women and the state’s refusal to protect, therefore, are a “product of a structural system of repression, through which men have always tried to maintain power over society and women”—and fertile ground for impunity.⁹⁷

This impunity, in turn, encourages gender-based violence—including its most extreme expression of *feminicidio*, or the killing of a woman or girl because of her gender and/or sex.⁹⁸ Lagarde proposes the term *feminicidio* (“feminicide”) rather than “femicide” to capture both the misogynistic motivations of the abuser as well as the state’s in excusing and perpetuating that misogyny.⁹⁹ As she argues:

93. JUSTICIAS PARA LAS MUJERES, VIOLENCIA CONTRA MUJERES E IMPUNIDAD: ¿MÁS ALLÁ DEL PUNITIVISMO? [VIOLENCE AGAINST WOMEN AND IMPUNITY: BEYOND PUNITIVISM?] 7 (2019), <https://equis.org.mx/violencia-contra-las-mujeres-mas-alla-del-punitivismo/> [<https://perma.cc/KYE7-5XZT>].

94. José Manuel Valenzuela Arce, *NI UNA MÁS ¿La lucha contra el feminicidio traciona al feminismo? [NOT ONE MORE: Does the fight against femicide betray feminism?]*, in *Heteronomías en las ciencias sociales: Procesos investigativos y violencias simbólicas* 77, 81 (2020).

95. Saccomano, *supra* note 91, at 59.

96. *Id.*

97. *Id.* at 54–55, 57.

98. *Id.* at 54.

99. *Id.* at 54–55. Some sources use the terms “femicide” and “feminicide” interchangeably (or only “femicide”). Org. of Am. States (OAS), Comm. of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), *Declaration on Femicide*, OEA/Ser.L/II.7.10 MESECVI/CEVI/DEC. 1/08, at 3–5 (Aug. 15, 2008). This Article will use “feminicide” to stress the term’s gender focus.

The explanation of femicide is found in the domain of gender: characterized by both male supremacy and by oppression, discrimination, exploitation, and, above all, the social exclusion of girls and women as Haydee Birgin proposes. All of this, legitimized by a devaluing, hostile, and degrading social perception towards women. Arbitrariness and social inequality are enhanced by social and judicial impunity around crimes against women.¹⁰⁰

State impunity, then, becomes a critical force behind these gender-based killings.

Due to pervasive societal misogyny, laws and policies intended to protect survivors of gender-based violence—such as those with enhanced penalties for femicides—operate much differently in practice and often facilitate the same violence they seek to combat. Costa Rican feminist lawyer and scholar Alda Facio calls this phenomenon the “political-cultural” or the societal “customs, attitudes, traditions, and knowledge aspect” of the law that impacts the application (or disregard) of formal, written laws.¹⁰¹ This aspect manifests itself as the “informal rule[] that determine[s] who has access to justice, when and how, and which are the rights of each one.”¹⁰²

Sociologists Cecilia Menjívar, originally from El Salvador, and Shannon Drysdale Walsh provide a useful framework for analyzing the many ways that states directly and indirectly support gender-based violence. Focusing their study on Honduras, Menjívar and

and the state’s complicity in this violence, unless “femicide” appears as a legal term or in a quotation or direct translation.

100. Marcela Lagarde y de los Ríos, *¿A qué llamamos feminicidio? [What do we call femicide?]*, *Statement to the Comisión Especial para Conocer y dar seguimiento a las Investigaciones Relacionadas con los Femicidios en la República Mexicana y a la Procuración de Justicia Vinculada*, 59TH LEGISLATURE – CHAMBER OF DEPUTIES (MEX.), at 1 (2004–2005), https://xenero.webs.uvigo.es/profesorado/marcela_lagarde/feminicidio.pdf [<https://perma.cc/44LV-68Z3>].

101. Alda Facio, *Through Feminism One Sees Another Justice*, WOMEN & L. IN S. AFR. RSCH. AND EDUC. TRUST (Nov. 2006), <https://www.wlsa.org.mz/article-through-feminism-one-sees-another-justice/> [<https://perma.cc/XXN6-C6V8>]; ORGANIZACIÓN DE MUJERES SALVADOREÑAS POR LA PAZ, ESTUDIO SOBRE INSTITUCIONALIZACIÓN DE POLÍTICAS Y NORMATIVAS NACIONALES COMO ESTRATEGIA PARA EL DE LA CULTURA DE VIOLACIÓN [STUDY ON THE INSTITUTIONALIZATION OF NATIONAL POLICIES AND LAWS AS A STRATEGY TO COMBAT RAPE CULTURE] 1, 26 (2022), <https://ormusa.org/estrategia-para-el-desmontaje-de-la-cultura-de-la-violacion> [<https://perma.cc/T2FF-DERT>].

102. Facio, *supra* note 101.

Walsh analyzed the state's acts of omission—including the “failure to provide prevention, protection, and prosecution” and “failure to implement laws to protect women”—and commission, including committing acts of violence against women.¹⁰³ They concluded that both acts of omission and commission “have roots in the same social context that normalizes and sustains violence as well as in profound gender inequalities.”¹⁰⁴ Moreover, the social context clouds the ways that state actors perceive survivors and their stories, and implement or ignore laws.¹⁰⁵

Menjívar and Walsh's research dissects the conditions that influence both gender violence as well as state responses to it.¹⁰⁶ In particular, they analyze the interplay between structural, symbolic, political, and gender-based violence.¹⁰⁷ Structural violence manifests itself as inequality and marginalization, which includes state actions and policies designed to keep women “disproportionally poor” and thus limit their citizenship rights.¹⁰⁸ Symbolic violence, first coined by French sociologist Pierre Bourdieu, describes the ways that individuals and institutions internalize inequalities, such as sexism.¹⁰⁹ This type of violence normalizes and minimizes gendered violence and sexist behavior as part of the “social order of things.”¹¹⁰ Beyond the individual level, symbolic violence infuses the state and drives state actions and inactions that marginalize, ignore, and revictimize survivors of gender-based violence.¹¹¹ Finally, political violence and state terror include the militarization of society and the state's direct use of force against people—including targeting opposition voices.¹¹² U.S. feminist theorist Cynthia Enloe argues that this state terror creeps into the private spheres as well, as “militarized views and attitudes are taken as natural and unproblematic.”¹¹³

Together, these forms of violence both fuel and normalize gender-based violence and the state's acts of commission and

103. Cecilia Menjívar & Shannon Drysdale Walsh, *The Architecture of Femicide*, 52 *LATIN AM. RSCH REV.* 221, 222 (2017).

104. *Id.*

105. *Id.*

106. *Id.* at 223–24.

107. *Id.* at 223.

108. *Id.* at 224.

109. *Id.*

110. *Id.* at 224, 236.

111. *Id.* at 225.

112. *Id.* at 224.

113. *Id.*

omission that condone and encourage it.¹¹⁴ As Menjívar and Walsh argue:

The layered and interconnected nature of these forms of violence contributes to their normalization and the internalization of frames through which individuals understand and make sense of the social world. A multilayered, normalized context of violence shapes the views, frameworks, and cognitive frames through which individuals (including justice system personnel) view violence, and in this way forms a sociopolitical architecture that orders life and shapes frames of reference. Thus, those who perpetuate violent acts and those in charge of implementing the law to address such acts draw their frameworks, viewpoints, and attitudes about gender roles, women, and violence from the same social ‘order of things.’¹¹⁵

As discussed *infra*, this violence and its resulting barriers to reporting only increase for some women because of intersectional factors—including their race, sexual orientation, gender expression and identity, disability, class, and other characteristics.¹¹⁶

This Article applies Menjívar and Walsh’s framework to argue that despite laws that may appear to be protective against gender-based violence, a state may still be an unreasonable—and even dangerous—place to report and seek protection. Therefore, when determining whether reporting gender-based violence would be unreasonable, it is imperative that asylum adjudicators meaningfully consider evidence of the state’s acts of symbolic, political, and structural violence against women and girls, even in the face of seemingly protective laws, policies, and programs.

III. BARRIERS TO REPORTING GENDER-BASED VIOLENCE IN THE NORTHERN TRIANGLE

On paper, the Northern Triangle countries of Guatemala, Honduras, and El Salvador have several progressive laws and policies to combat gender-based violence. Due in large part to the powerful advocacy of women’s advocates and organizations, all three countries experienced legal reforms over the past thirty years aimed at

114. *Id.* at 221–25.

115. *Id.* at 223–24.

116. *See infra* Part III. Barriers to Reporting Gender-Based Violence in the Northern Triangle

eradicating violence against many women.¹¹⁷ In addition to domestic reforms, all three countries ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention)¹¹⁸ that “establishes that women have the right to live a life free from violence and that violence against women constitutes a violation of human rights and fundamental freedoms.”¹¹⁹ The United States has not.¹²⁰

U.S. adjudicators often point to the existence of these laws to claim that the governments of Guatemala, Honduras, and El Salvador are able and willing to respond to protect survivors from gender-based violence; they therefore argue it is reasonable to require survivors to seek the protection of those governments before seeking asylum in the United States.¹²¹ Yet, as this Part argues, such conclusions ignore the states’ failure and even outright refusal to enforce these laws. Misogyny infuses the very institutions charged with carrying out these laws, forcing survivors to seek protection in systems that normalize and minimize the very violence from which they seek protection.¹²² These are also states that have carried out violence and terror against their populations (frequently with U.S. backing), making them untrustworthy sources of protection for many.¹²³ Finally, these states have upheld and perpetuated profound structural inequalities that deny women access to full citizenship and access to justice.¹²⁴ As argued *infra*, this structural violence particularly harms women who face additional forms of discrimination because of their race, gender identity, disability, or

117. Ana María Méndez Dardón, *Regressive Wave for Women in Central America*, WASHINGTON OFF. ON LATIN AM. (WOLA) (Mar. 8, 2023), <https://www.wola.org/analysis/regressive-wave-women-central-america/> [https://perma.cc/ZD3Q-3MYH]. Notably, many of these reforms have excluded trans women from protection. *Id.*

118. *Status of Signatures & Ratifications: Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)* (status as of Feb. 11, 2024), ORG. OF AM. STATES [OAS], <https://www.oas.org/en/mesecvi/docs/Signatories-Table-EN.pdf> [https://perma.cc/53EK-3WS7].

119. *About the Belém do Pará Convention*, ORG. OF AM. STATES [OAS], <https://www.oas.org/en/mesecvi/convention.asp> [https://perma.cc/Y4ZS-RNZ4].

120. *Id.*

121. See generally Ellison & Gupta, *supra* note 35 (reviewing the interpretation of the non-state actor standard before the Attorney General, BIA, and courts of appeals).

122. See *infra* Sections III.A–C.

123. *Id.*

124. *Id.*

other characteristics.¹²⁵ These forms of violence significantly undermine the states' will in implementing these gender-based protections, and often make reporting futile, dangerous, or otherwise unreasonable for women.

Using Menjívar and Walsh's framework, this Part will analyze the structural, symbolic, and political barriers to reporting gender-based violence in the Northern Triangle countries.¹²⁶

A. Guatemala

If only she could be
a ripe orange in the hand of a child
instead of an empty rind,
an image shining in the looking-glass
not a fleeting reflection,
a clear voice,
not a deafening silence.
If only she could be
listened to at times.

From "There Are Times . . ." by
Alaíde Foppa,
Guatemalan poet and feminist
professor, kidnapped and
presumed to be murdered by
government forces in Guatemala
City in 1980.¹²⁷

Reporting gender-based crimes in Guatemala is often futile, dangerous, or even impossible because of centuries of deeply-entrenched symbolic violence, political violence, and structural violence. This includes violence and systemic racism against the country's large Indigenous population.¹²⁸ These barriers do not exist

125. *Id.*

126. These country analyses draw on source material from and before February 2024. However, gender-based violence has remained a major challenge and driver of migration in the region. See, e.g., *El Salvador, Guatemala and Honduras Emergency*, UNHCR US (June 15, 2025), <https://www.unhcr.org/us/emergencies/el-salvador-guatemala-and-honduras-emergency> (on file with the *Columbia Human Rights Law Review*).

127. Alaíde Foppa, *There Are Times*, 7 SIGNS 1, 4 (Jean Franco trans.) (1981).

128. CENTRO DE INVESTIGACIONES ECONÓMICAS NACIONALES (CIEN), LOS DELITOS CONTRA LA MUJER EN GUATEMALA CON ÉNFASIS EN EL DELITO DE FEMICIDIO [CRIMES AGAINST THE WOMAN IN GUATEMALA WITH AN EMPHASIS ON

in a vacuum, but rather have profound historical roots that span centuries and continue to strangle even the strongest efforts for meaningful reform. They arise from centuries of “the social and juridical acceptance of impunity and gender inequality as well as the normalization of violence as a social and political relationship” in Guatemala.¹²⁹ Statistics and asylum country conditions reports often do not capture this historical context.¹³⁰ Yet it is necessary for understanding the intransience of the barriers women survivors face in accessing justice.

Under the weight of this history, women often face insurmountable barriers in reporting gender-based violence in Guatemala. Societal acceptance of gender-based violence, particularly against Indigenous women, also infects the state systems upon which women must rely to seek safety and justice.¹³¹ As a result, impunity for gender-based crimes in Guatemala is high. Estimated rates of impunity in Guatemala range from 90% for all gender-based crimes¹³² to 71% of all femicides in the country since 2008.¹³³ Consequently,

THE CRIME OF FEMICIDE] 7 (May 2022), <https://cien.org.gt/wp-content/uploads/2022/05/Documento-Violencia-contra-la-Mujer-y-Femicidio-mayo-2022-vf.pdf> (on file with the *Columbia Human Rights Law Review*); see *infra* Sections III.A.1–3.

129. David Carey Jr. & M. Gabriela Torres, *Precursors to Femicide: Guatemalan Women in a Vortex of Violence*, 45 *LATIN AM. RSCH. REV.* 142, 162 (2010).

130. *Id.*

131. Ana Lucía Ola, *Cada hora dos mujeres denuncian violencia psicológica en el país: qué efectos tiene en la víctima y las barreras para que las denuncias prosperen* [Every hour two women report psychological violence in the country: what effects does it have on the victim and what are the barriers to successful reports?], *PRENSA LIBRE* (Apr. 22, 2023), <https://www.prensalibre.com/guatemala/comunitario/cada-hora-dos-mujeres-denuncia-violencia-psicologica-en-el-pais-que-efectos-tiene-en-la-victima-y-la-barreras-para-que-las-denuncias-prosperen/> [https://perma.cc/ZK4T-YMRE] (quoting Guatemalan sociologist Ana María Monzón).

132. Edgar Calderón, *El Teatro Como Sanación A La Violencia Doméstica Para Mujeres En Guatemala* [Theatre as Healing from Domestic Violence for Women in Guatemala], *BARRON'S* (June 11, 2022), <https://www.barrons.com/news/spanish/el-teatro-como-sanacion-a-la-violencia-domestica-para-mujeres-en-guatemala-01655050807> [https://perma.cc/GGE6-3A5X] (citing Tamara Castro, representative of the Asociación Solidaria Andaluza de Desarrollo (ASAD)).

133. *El 71% de los asesinatos de mujeres en Guatemala quedan impunes* [71% of murders of women in Guatemala go unpunished], *SWISSINFO* (Mar. 23, 2022) [hereinafter *El 71% de los asesinatos*], https://www.swissinfo.ch/spa/guatemala-feminicidios_el-71---de-los-asesinatos-de-mujeres-en-guatemala-quedan-impunes/47455526 [https://perma.cc/WL5F-EU7H].

some women do not report because they do not trust the Guatemalan state to protect them.¹³⁴ At least in part because of this impunity, reporting may also do little to protect women from escalating violence or even death. Researcher Corinne Dedik of the Guatemalan NGO Centro de Investigaciones Económicas (CIEN) identified that in 2021, 40% of femicide victims in Guatemala reported at least one incident of gender-based violence within the two years before their murder.¹³⁵

134. Melissa Rabanales & Miranda Mazariegos, *Encerradas y en Silencio: Denunciar durante la Cuarentena en Guatemala [Locked up and in Silence: Reporting during the Quarantine in Guatemala]*, AGENCIA OCOTE (Apr. 30, 2020), <https://www.agenciaocote.com/blog/2020/04/30/encerradas-y-en-silencio-denunciar-durante-la-cuarentena-en-guatemala/> [<https://perma.cc/WL5F-EU7H>].

135. *El 71% de los asesinatos*, *supra* note 133; CENTRO DE INVESTIGACIONES ECONÓMICAS NACIONALES, *supra* note 128. Also, notably, in 2014, the Inter-American Court of Human Rights found that the State of Guatemala violated both the American Convention and the Convention of Belém do Pará on the Prevention, Punishment, and Eradication of Violence Against Women when it seriously mishandled the investigation of the disappearance and murder of a young woman, María Isabel Veliz Franco. Veliz Franco et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 277, ¶ 1, 138–58 (May 19, 2014). Among other things, the court found that “gender-based violence against women is a historical, social and cultural problem that is deeply-rooted in Guatemalan society.” *Id.* ¶ 223. While the court noted important steps that the Guatemalan state had taken to combat gender-based violence—such as enacting a law against femicide—it concluded that impunity for gender-based crimes remained alarmingly high nevertheless. *Id.* ¶¶ 82–90. In the instant case, the court found that, despite the evidence that María Isabel’s murder could have been committed for reasons of gender, the investigation was not conducted with a gender perspective; it has also been proved that there was a lack of due diligence and that it included actions of a discriminatory nature. The investigation has greatly exceeded a reasonable time and the initial investigative stage was still underway as of March 2024. Lincy Rodríguez, *La historia del caso de María Isabel Véliz Franco y cómo la lucha de su madre logró avances en contra de la impunidad [The story of the case of María Isabel Véliz Franco and how her mother’s struggle achieved advances against impunity]*, AGENCIA GUATEMALTECA DE NOTICIAS (Mar. 26, 2024), <https://agn.gt/la-historia-del-caso-de-maria-isabel-veliz-franco-y-como-la-lucha-de-su-madre-logro-avances-en-contra-de-la-impunidad/> [<https://perma.cc/WP3S-VVRP>].

In addition, as the State has acknowledged, the lack of diligence in the case was linked to the inexistence of norms and protocols for investigating this type of incident. *Id.* ¶¶ 223, 225. Ms. Veliz Franco’s mother’s advocacy and the court’s judgment led to important reforms, including the implementation of specialized judicial offices, in accordance with the 2008 femicide law, to handle gender-based claims, and of policies and programs to combat official stereotypes against women and gender-based claims. *Id.* ¶¶ 264–77. However, as this Part and the sources it cites demonstrate, sexism and impunity for gender-based crimes continue to persist in Guatemala.

1. Symbolic Violence: Devalued and Blamed

Guatemalan sociologist Ana Silvia Monzón argues that this “false idea of superiority and inferiority” between men and women permeates Guatemalan society.¹³⁶ These societal attitudes not only fuel gender-based violence, but also devalue women in the eyes of the state. As Guatemalan congressman Andrea Villagrán explained, “[h]istorically, women do not exist to the State. We are not recognized by the *machista* Guatemalan state that prefers to protect, for example, rapists before guaranteeing access to justice to women.”¹³⁷ This apathetic, and even hostile, government offers very little opportunity for survivors of gender-based violence to seek redress—especially for women who face further marginalization because of their race, disability, sexual orientation, and/or gender identity.¹³⁸

Because of abuse and societal discrimination against women, many survivors of gender-based violence also suffer from internalized misogyny and believe that they do not have a right to report abuse—or perhaps even that they deserve it. From a young age, Guatemalan girls experience strong societal pressure to act within very strict and limited gender roles such as homemaking and caregiving.¹³⁹ They often learn these “patterns of submission” from their homes and religious communities.¹⁴⁰ As Monzón argues, it “seems that girls are molded not to decide.”¹⁴¹ Similarly, while society teaches boys that violence against women and girls is acceptable, it instructs girls “to be complacent and not to express their emotions.”¹⁴²

In the context of gender-based violence, this pressure may convince a woman that she should not report the crime of violence, but rather accept it quietly.¹⁴³ Indeed, because of internalized misogyny, some domestic violence survivors in Guatemala believe

136. Ola, *supra* note 131 (quoting Guatemalan sociologist Ana Silvia Monzón).

137. *Violencia de género: ‘La realidad es que nos siguen matando’* [Gender violence: ‘The reality is that they keep killing us’], AP NEWS (Nov. 25, 2022), <https://apnews.com/article/f5805bbf8c0b1eb9a97d5c55be2253a2> [<https://perma.cc/WL5F-EU7H>].

138. *See infra* Section III.A.3.

139. Ola, *supra* note 131 (citing Monzón).

140. *Id.*

141. *Id.* (quoting Monzón).

142. *Id.*

143. CENTRO DE INVESTIGACIONES ECONÓMICAS NACIONALES, *supra* note 128, at 8.

that they deserve the abuse.¹⁴⁴ The associated harm to a victim's self-esteem can further hamper a victim's ability to report. According to Nancy Campos of the Guatemalan domestic violence support group CAIMUS, this internalization may lead to depression, anguish, fear, uncertainty, and even suicidality.¹⁴⁵ Women may feel especially unwilling to report sexual violence—in part because sexuality, and gender-based violence as a whole, is a largely taboo topic in Guatemala.¹⁴⁶ Rather than feeling able, supported, and empowered to leave a violent situation, some women may feel forced to suffer and endure—even for years.

Reporting is also often futile in Guatemala due to chronically insufficient agency resources that often lack a gender focus. Many offices that take reports have limited hours and staffing.¹⁴⁷ Due to societal misogynistic attitudes, they may also minimize the experiences of women and refuse to take valid reports. One Guatemalan advocate reported that some women attempting to report psychological abuse have faced critical or incredulous officers who believe that “if there are no blows, there is no violence.”¹⁴⁸ While the government has opened offices with a gender focus, they are often overburdened and not accessible in all parts of the country.¹⁴⁹ Also, although these offices have raised certain barriers in reporting for

144. *Id.* According to a 2014–2015 survey conducted by the Guatemalan research center CIEN (Centro de Investigaciones Económicas), just over 11% of women surveyed believed that a physical abuse from a male partner would be justified in at least one of the scenarios that the survey presented: having an argument with him, leaving the home without telling him, refusing his sexual advances, failing to adequately care for a child/children, and/or burning food. *Id.*

145. Ola, *supra* note 131 (citing Campos).

146. CENTRO DE INVESTIGACIONES ECONÓMICAS NACIONALES, *supra* note 128, at 9–10. This shame is deeply-rooted in history (and certainly extends far beyond Guatemala). Historian David Carey Jr. and cultural anthropologist M. Gabriela Torres note that even in the early twentieth century, some Guatemalan women did not report gender-based crimes “for reasons of propriety, modesty, or honor.” Carey Jr. & Torres, *supra* note 129, at 147. The taboo nature of sexuality in Guatemala only compounds the feelings of social stigma, shame, and low self-esteem that survivors of sexual violence may experience. See CENTRO DE INVESTIGACIONES ECONÓMICAS NACIONALES, *supra* note 128, at 9–10 (discussing this history further).

147. Silva Trujillo, *Violencia contra las mujeres: cambian las cifras, persiste el problema* [Violence against women: the numbers change, the problem persists], DIALOGOS (Mar. 8, 2021), <https://dialogos.org.gt/violencia-contra-las-mujeres-cambian-las-cifras-persiste-el-problema/> [https://perma.cc/MWD8-HJU7].

148. Ola, *supra* note 131 (quoting Monzón).

149. Trujillo, *supra* note 147.

some people, still, “the vast majority of [reported] cases” do not result in conviction for various reasons.¹⁵⁰

The handling of femicide cases in Guatemala highlights how the state’s failure to adequately resource the bureaucracies that receive, investigate, prosecute, and adjudicate reports contributes to official impunity and the futility of reporting. It also represents symbolic violence, as the state’s minimization and acceptance of misogyny manifests as a failing to adequately fund, train, supervise, and otherwise support state officials charged with investigating, prosecuting, and preventing gender-based violence. While Guatemala does have prosecutors’ offices and courts that specialize in prosecuting and adjudicating femicides, they are “more saturated” and cannot adequately handle the needs of the entire country.¹⁵¹

On the other hand, non-specialized offices and courts are not only under-resourced, but also often lack the gender focus necessary to adequately prosecute gender-based murders.¹⁵² According to prosecutor Edgar Gómez, prosecutors may decide to prosecute a femicide as a homicide, even when it would otherwise meet the elements for femicide.¹⁵³ For one, prosecuting a murder as a femicide may delay justice by transferring the case to the more burdened specialized tribunal.¹⁵⁴ Additionally, some non-specialist prosecutors are unaware that femicides may include murders committed in public places and by a person without a direct relation to the victim.¹⁵⁵

150. CENTRO DE INVESTIGACIONES ECONÓMICAS NACIONALES, *supra* note 128, at 36. As multiple Guatemalan NGOs and advocates have noted, it is difficult to discern the extent of even *reported* gender-based violence in the country due to the state’s repeated failure to provide a centralized national database of gender-based crimes in accordance with the Ley contra el Femicidio y otras Formas de Violencia contra la Mujer [Law against Femicide and other Forms of Violence against the Woman]. See, e.g., Trujillo, *supra* note 147; Carmen Quintela Babío, *Guatemala: Los crímenes que no se nombran en el país de la impunidad* [Guatemala: The crimes that are not named in the country of impunity], AGENCIA OCOTE (July 20, 2020), <https://www.agenciaocote.com/blog/2020/07/21/guatemala-los-crimenes-que-no-se-nombran-en-el-pais-de-la-impunidad> [https://perma.cc/MQ2K-Z4Y2] (providing further analysis). This failure, too, may suggest the futility of reporting, as it demonstrates the state’s unwillingness and/or inability to prioritize gender-based violence (and potentially attempts to obfuscate it) and comply with its own laws on the issue.

151. Babío, *supra* note 150.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

Prosecuting femicides also requires greater resources than homicides, as they are more complicated to prove and may not result in a substantially lengthier sentence.¹⁵⁶ However, advocates have argued that prosecuting femicides as general homicides may only fuel impunity.¹⁵⁷ Non-specialize offices, too, have remained “overflowing” and because they have not necessarily applied a gender-based focus, they have not “prioritize[d] femicides.”¹⁵⁸ In addition, categorizing femicides as homicides for ease of prosecution masks the extent of gender-based violence and the misogyny inherent in the crime. As attorney Esteban Celada argues, “We cannot modify sociocultural patterns if we do not show they exist.”¹⁵⁹

Along with having a low probability of resulting in protection and justice, reporting may also expose the survivor to greater danger. Given the high rates of impunity for gender-based violence discussed *supra*, rather than providing protection and justice, reporting may instead provoke the ire of the accused and/or their family members, friends, or other associates.¹⁶⁰ Especially where the abuser is well-connected, the state may also actively work to protect the abuser due to widespread misogyny and corruption. For women suffering cartel and/or gang violence, the U.S. Department of State reported that in 2023, “corrupt police were involved with violent criminal organizations responsible for killings.”¹⁶¹ The Guatemalan state has also forcefully muzzled legal actors who work to uncover the state’s protection of violent actors. In 2022, the Inter-American Commission on Human Rights expressed concern over “information regarding the criminalization, harassment, and judicial persecution of judges, prosecutors, former prosecutors, and magistrates due to their work investigating or prosecuting criminal structures with ties to those holding political and economic power,” among other issues.¹⁶²

156. *Id.* At the time of the writing of the article, the punishments for homicide ranged from fifteen to forty years, while femicide was between twenty-five and fifty years. *Id.* It is also possible for a person to be charged with femicide but convicted of homicide (and vice versa). *Id.*

157. *Id.*

158. *Id.* (quoting Edgar Gómez).

159. *Id.* (quoting Esteban Celada).

160. Rabanales & Mazariegos, *supra* note 134.

161. 2023 Country Reports on Human Rights Practice: Guatemala, U.S. DEP’T OF STATE (2024), <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/guatemala/> [https://perma.cc/5CHN-8UHX].

162. Press Release, Inter-Am. Comm’n on Hum. Rts., IACHR Expresses Concern over New Violations of Judicial Independence in Guatemala (Feb. 22, 2022),

2. Political Violence: State Terror and Echoes of *La Violencia*

The Guatemalan state is also an unreliable safe haven given its repeated use of political violence to target and oppress women. Throughout Guatemalan history, women have suffered “invasions, plundering, dictatorships, massacres and genocide” that often have very gendered manifestations.¹⁶³ In the twentieth century, this violence against women surged during the Cold War, from the 1954 U.S.-backed coup d’état—that deposed the democratically elected Guatemalan president, Jacobo Árbenz and installed the military dictatorship of Carlos Castillo Armas¹⁶⁴—through the subsequent thirty-six-year civil war, also known as *La Violencia*.¹⁶⁵ While the Peace Accords formally ended *La Violencia* in 1996, many painful scars of the state’s terror during and before that period remain.¹⁶⁶ In recent years, the state has continued its legacy of frequent gendered violence through increased militarization and “clandestine security forces,” collaborations with criminal organizations, and repression of Indigenous leaders and community members who protest extractivism in Indigenous lands, among other methods.¹⁶⁷ Therefore,

https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/037.asp [<https://perma.cc/SJT2-T479>].

163. La Cuerda, *Sexualidades de activistas en Iximulew: La vida entre violencias, transgresiones y placeres* [*Sexualities of activists in Iximulew: Life between violence, transgressions and pleasures*], in CLACSO, ANTOLOGÍA DEL PENSAMIENTO CRÍTICO GUATEMALTECO CONTEMPORÁNEO 733, 745 (Ana Silvia Monzón ed., 2019).

164. Carey Jr. & Torres, *supra* note 129, at 161; *The CIA and Guatemala*, DIGITAL HIST. (1994), https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=1119 [<https://perma.cc/86JD-FQ78>].

165. COMM’N FOR HIST. CLARIFICATION, GUATEMALA MEMORY OF SILENCE / TZ’INIL NA’TAB’AL: REPORT OF THE COMMISSION FOR HISTORICAL CLARIFICATION CONCLUSIONS & RECOMMENDATIONS 17 (1999), <https://hrdag.org/wp-content/uploads/2013/01/CEHreport-english.pdf> [<https://perma.cc/VXX5-9B4V>].

166. LUZ MÉNDEZ & WALDA BARRIOS, CAMINOS RECORRIDOS: LUCHAS Y SITUACIÓN DE LAS MUJERES A TRECE AÑOS DE LOS ACUERDOS DE PAZ [PATHS TRAVELED: STRUGGLES AND SITUATION OF WOMEN THIRTEEN YEARS AFTER THE PEACE AGREEMENTS] 754–55 (Brisna Caxaj et al. eds., 2010); Carey Jr. & Torres, *supra* note 129, at 144.

167. Méndez & Barrios, *supra* note 166, at 754–55; Carey Jr. & Torres, *supra* note 129, at 144; Saria Acevedo, *Los derechos de las mujeres en el movimiento indígena latinoamericano* [*The rights of women in the Latin American indigenous movement*], in CLACSO, ANTOLOGÍA DEL PENSAMIENTO CRÍTICO GUATEMALTECO CONTEMPORÁNEO 371, 395 (Ana Silvia Monzón ed., 2019). According to Ecuadorian economist Alberto Acosta, extractivism refers to “activities that remove great volumes of natural resources that are not processed (or that are in a

for many survivors of gender-based violence, the Guatemalan state is a danger rather than a defender.

As emphasized by historian David Carey Jr. and cultural anthropologist M. Gabriela Torres, the patriarchy is at the heart of the Guatemalan state's violent targeting of women. They argue that the Guatemalan state has committed symbolic violence against women—especially those who have “transgressed gender norms”—through not only the legal system, but also “combined patriarchy with the use of violence as a tool for governance.”¹⁶⁸ The aftermath of the 1954 coup, for example, brought escalating state violence against women, as state forces increasingly raped women as a means of control and punishment.¹⁶⁹

The state's targeting of women—especially Indigenous women—surged during *La Violencia*. From 1960 to 1996, the Guatemalan state—supported by the United States—violently targeted hundreds of thousands of people as “internal enemies” under the auspices of the anti-communist National Security Doctrine.¹⁷⁰ The Commission for Historical Clarification (CEH) estimated that over 200,000 people were killed or disappeared during *La Violencia*.¹⁷¹ The CEH also estimated that state forces were responsible for 93% of the violence and that 83% of victims were Maya.¹⁷²

During this period, Carey Jr. and Torres argue that “military regimes made gender-based violence a critical part of the exercise and reproduction of power in Guatemala. The military state became an active participant in the promotion of violence against women as it used women's bodies to legitimize its role as patriarch.”¹⁷³ Government forces raped women in an attempt “to control and humiliate communities and families”—often under the guise of anti-Communist propaganda—to demonstrate “dominat[ion],” “contempt and victory,” and to “destroy the social fabric of the communities”

limited fashion), above all for export.” *Las consecuencias del extractivismo en Santa Bárbara* [*The consequences of extractivism in Santa Bárbara*], CENTRO DE DERECHOS DE MUJERES (CDM) 1–2 (Apr. 2023), <https://derechosdelamujer.org/wp-content/uploads/2024/01/Boletin-consecuencias-del-extractivismo-WEB.pdf> [<https://perma.cc/NQZ6-2R8X>] (Hond.).

168. Carey Jr. & Torres, *supra* note 129, at 161. This repression may also extend to people who do not have a heterosexual sexual identity. La Cuerda, *supra* note 163, at 746.

169. Carey Jr. & Torres, *supra* note 129, at 161.

170. COMM'N FOR HIST. CLARIFICATION, *supra* note 165, at 19–20.

171. *Id.* at 17.

172. *Id.* at 17, 33–34.

173. Carey Jr. & Torres, *supra* note 129, at 161.

they attacked.¹⁷⁴ Maya-Xinca territorial-community feminist Lorena Cabnal highlights how the government forces' specific targeting of Maya women subjected them to sexual violence and other forms of torture, massacres, and forced displacement.¹⁷⁵

Guatemalan women demonstrated heroic resistance to the government's abuses. Guatemalan anthropologist and feminist therapist Yolanda Aguilar explains that among other things, Guatemalan women collaborated to search for the missing and to hold the state accountable.¹⁷⁶ Women and women's organizations played a critical role in the peace process, as Luz Méndez—Guatemalan researcher and participant in the Guatemalan peace negotiations—and Walda Barrios—Guatemalan sociologist and feminist activist—recount.¹⁷⁷ Among other things, the Peace Accords implemented important democratic reforms, including greater political inclusion of historically excluded groups, such as women and Indigenous people.¹⁷⁸

While the Peace Accords initially succeeded in ushering in democratic reforms and curbing the state's widespread use of violence,¹⁷⁹ the Guatemalan state's repeated refusal to carry out these reforms severely undermined its reliability in providing protection from gender-based violence. Méndez and Barrios note that within just a few years after the end of *La Violencia*, the state launched a "deliberate process" of remilitarizing itself and undermining civil society groups—in direct violation of the Peace Accords.¹⁸⁰ Greater numbers of security forces—including clandestine ones¹⁸¹—"have

174. Yolanda Aguilar, *De la violencia a la afirmación de las mujeres [From violence to the affirmation of women]*, in CLACSO, ANTOLOGÍA DEL PENSAMIENTO CRÍTICO GUATEMALTECO CONTEMPORÁNEO 633, 635–37 (Ana Silvia Monzón ed., 2019); COMM'N FOR HIST. CLARIFICATION, *supra* note 165, at 19–20.

175. Claudia Korol, *Guatemala: feminismo comunitario y recuperación de saberes ancestrales [Guatemala: community feminism and recovery of ancestral knowledge]*, NOTICIAS DE AMERICA LATINA Y EL CARIBE (NODAL) (Jan. 17, 2020), <https://www.nodal.am/2020/01/guatemala-feminismo-comunitario-y-recuperacion-de-saberes-ancestrales> [<https://perma.cc/DND2-LN6F>]; J. Giménez & E. Bravo Sánchez, *La indígena desterrada por feminista [The Indigenous woman banished for being a feminist]*, EL PAÍS (June 9, 2017), https://elpais.com/elpais/2017/06/06/planeta_futuro/1496756692_101038.html [<https://perma.cc/8ZXA-4C9H>] (Spain).

176. Aguilar, *supra* note 174, at 642.

177. Méndez & Barrios, *supra* note 166, at 752–54.

178. *Id.*

179. *Id.* at 754.

180. *Id.* at 755.

181. *Id.* at 754–55.

expanded acceptable levels of violence.”¹⁸² This militarization has not only resulted in increased troops, but also a “system of domination that goes beyond the military presence” to include “militarized hierarchies [conceptualized] for obedience and not deliberation, the institutions, policies, laws and even the way of facing national problems.”¹⁸³ At the same time, private violence has flourished in post-war Guatemala, fueled by an expansion of neoliberal policies, unresolved wounds of the peace process, and impunity.¹⁸⁴ These dual processes have created a post-war era that has blended the boundaries between state and private violence.¹⁸⁵

The state, moreover, has continued to target Indigenous women through increased militarization, prosecution, and sexual assault—particularly against those who have protested the construction of mines¹⁸⁶ and hydroelectric dams in Indigenous areas of the country.¹⁸⁷ While the state justifies this increased military presence as merely combatting crime, feminist scholars expose the state’s racist and sexist motivations. The Guatemalan feminist journal *La Cuerda* writes that even after the Peace Accords, the Guatemalan state has continued to treat Indigenous Guatemalans as an “internal enemy.”¹⁸⁸ Activist Lolita Chávez observes that:

[The Guatemalan government] accuse[s] us of being terrorists, usurpers, opponents of development
[I]n Quiché, now that we are saying no to hydroelectric plants and mining, we have this persecution. Now they say that we are manipulated

182. Carey Jr. & Torres, *supra* note 129, at 160.

183. *La Cuerda*, *supra* note 163, at 745 (internal quotations omitted).

184. Carey Jr. & Torres, *supra* note 129, at 144; Méndez & Barrios, *supra* note 166, at 754–55.

185. Carey Jr. & Torres, *supra* note 129, at 161.

186. As with Honduras, the Guatemalan state’s focus on mining stems from broader policies of extractivism. See *infra* Section III.B.3. According to Ecuadorian economist Alberto Acosta, extractivism refers to “activities that remove great volumes of natural resources that are not processed (or that are in a limited fashion), above all for export.” *Las consecuencias del extractivismo en Santa Bárbara* [*The consequences of extractivism in Santa Bárbara*], CENTRO DE DERECHOS DE MUJERES (CDM) 1–2 (Apr. 2023), <https://derechosdelamujer.org/wp-content/uploads/2024/01/Boletin-consecuencias-del-extractivismo-WEB.pdf> [<https://perma.cc/NQZ6-2R8X>] (Hond.) (quoting Alberto Acosta, *Extractivismo y Neoextractivismo: Dos Caras de la Misma Malidición* [*Extractivism and Neoextractivism: Two Faces of the Same Curse*], in *MÁS ALLÁ DEL DESARROLLO* [BEYOND DEVELOPMENT] 85 (Grupo Permanente de Trabajo sobre Alternativas al Desarrollo ed., 2012)).

187. Korol, *supra* note 175.

188. *La Cuerda*, *supra* note 163, at 746.

by international organizations. They believe that we do not have the capacity to think.¹⁸⁹

These experiences do not occur in a vacuum, but rather reflect centuries of state oppression. In addition to physical wounds, they have also created profound individual and collective emotional traumas that may make Guatemalan survivors less likely to report. As Lorena Cabnal explains:

For this territorial community feminism, memories are a collection of moments, situations, and historical temporalities that will be recorded in the different memories of bodies. This all has threads that have been reinforced by pain, by oppression. . . . For us, it has been very important to heal ancestral memories, very old forms of subordination on the bodies of indigenous women from before colonization. . . . We need to heal the remote memories, and also heal a more recent memory like the counterinsurgent war and the effects of criminalization, judicialization, persecution, the risks, attacks, and threats against defenders of life.¹⁹⁰

By forcing women to seek protection from the very state that has long persecuted them, courts that impose reporting requirements force them into greater trauma and harm.

3. Structural Violence: Exclusion of Women and Anti-Indigenous Racism

Many women also face significant barriers to reporting in Guatemala due to pervasive gender inequality and exclusion, which denies them equal economic opportunities and full citizenship rights—including access to justice. Silvia Trujillo of *Diálogos* in Guatemala estimates “a high percentage of women that have not reported because they did not have services at their reach.”¹⁹¹ Guatemala’s large Indigenous population faces exacerbated exclusion

189. Acevedo, *supra* note 167, at 398 (quoting *Lolita Chávez: Nos acusan de terroristas y usurpadores* [*Lolita Chávez: They accused us of being terrorists and usurpers*], SIGLO 21 (July 17, 2012), <https://guateprensa.wordpress.com/2012/07/17/lolita-chavez-nos-acusan-de-terroristas-y-usurpadores/> [<https://perma.cc/JMY5-SNC5>]).

190. Korol, *supra* note 175 (quoting Lorena Cabnal).

191. Trujillo, *supra* note 147.

from the state's protection,¹⁹² as do women with disabilities; lesbian, bisexual, and trans women; and others.¹⁹³

Guatemalan activists and scholars have long and forcefully challenged these barriers, highlighting the particularly significant barriers to accessing justice that Indigenous Guatemalan women face.¹⁹⁴ According to the 2018 Guatemalan census, 43.75% of the country's population self-identify as Indigenous, which includes Maya, Xinka (Xinca), Garífuna, and Creole peoples, with the latter two groups being of mixed Indigenous and African descent.¹⁹⁵ Racism and discrimination against Indigenous people have been "a deep-rooted reality in Guatemala."¹⁹⁶ Maya Kaqchikel scholar Aura Estela Cumes notes that colonialism attempted to destroy the self-governance of Indigenous groups to impose "a form of authority based on violence, religion and law, as legitimate methods to order the Indians and their relationship with their Spanish rulers."¹⁹⁷ The Guatemalan state has continued to impose these racist structures throughout its existence, according to Guatemalan social anthropologist and journalist Irma Alicia Velásquez Nimatuj, who argues that the state and its institutions have been "the main generators of racism" in the country by actively "legitimiz[ing] or deny[ing] its existence."¹⁹⁸ As a result, Indigenous women have faced

192. Georgina Navarro Miranda, *Mujeres indígenas, política pública y el reto de la descolonización del pensamiento y la acción* [Indigenous women, public policy and the challenge of decolonization of thought and action], 241 REVISTA ANÁLISIS DE LA REALIDAD NACIONAL - MANERA DE VER 136, 138–153 (2023), <https://ipn.usac.edu.gt/wp-content/uploads/2023/03/Mujeres-indigenas-politica-publica-y-el-reto-de-la-descolonizacion-del-pensamiento-y-la-accion.pdf> [https://perma.cc/5CGF-YH5A] (Guat.) (analyzing structural violence that Indigenous women in Guatemala face).

193. U.S. DEPT OF STATE, *supra* note 161, at 16–17, 24.

194. For discussions of the various forms of discrimination and violence against Indigenous women in Guatemala, see Miranda, *supra* note 192, at 141–54; Nazaret Castro Buzon, *Gladys Tzul Tzul: 'Las mujeres indígenas reivindicamos una larga memoria de lucha por la tierra'* [Gladys Tzul Tzul: 'Indigenous women claim a long memory of fighting for the land'], REVISTA AMAZONAS (Apr. 3, 2020), <https://www.revistaamazonas.com/2020/04/03/gladys-tzul-tzul-las-mujeres-indigenas-reivindicamos-una-larga-memoria-de-lucha-por-la-tierra> [https://perma.cc/UKA8-ZQWQ]; Korol, *supra* note 175; Acevedo, *supra* note 167, at 374–75, 395; La Cuerda, *supra* note 163, at 743.

195. Silvel Elías, *Indigenous World 2020: Guatemala*, INT'L WORK GRP. FOR INDIGENOUS AFFS. (May 11, 2020), <https://www.iwgia.org/en/guatemala/3622-iw-2020-guatemala.html> [https://perma.cc/RL8Q-DQ9Y].

196. Miranda, *supra* note 192, at 141–42.

197. La Cuerda, *supra* note 163, at 737.

198. Miranda, *supra* note 192, at 142 (internal citation omitted).

broad exclusion and marginalization in many aspects of life, including “access to work, to land, to education, to health, to justice, and to political participation among others.”¹⁹⁹

While Guatemala’s Peace Accords included important advances to promote greater equality and inclusion for women and Indigenous people in Guatemala, the Guatemalan state and economic elite have largely resisted its most significant reforms.²⁰⁰ Rather than implement important social and economic reforms in compliance with the Peace Accords, the state adopted neoliberal policies that stymied the Accords’ goals.²⁰¹ The increased emphasis on extractivism (including mining and hydropower) particularly exacerbated structural violence, rights violations, and instability for Guatemalan women by destroying natural resources in communities, forcing more people into poverty, and displacing thousands.²⁰² These policies have resulted in “discrimination in development opportunities for the majority of the population, especially indigenous, poor, and rural women.”²⁰³ Therefore, rather than increase support and inclusion for Guatemalan women, this ongoing structural violence continues to exclude women from economic opportunities and full citizenship.

As a result, the Guatemalan state denies women full access to state participation and protection. This structural violence presents barriers to reporting in many ways. For example, Lucrecia de Cáceres, Secretary of the Office of Women’s Affairs in Guatemala’s Ministerio Público (Public Prosecutor’s Office), and Dorotea Gómez, an attorney in Guatemala’s Procuraduría de los Derechos Humanos (Attorney General’s Office of Human Rights), observed that many women may lack transportation to file a report in person.²⁰⁴ Transportation may be especially complex for women who generally

199. *Id.*

200. Méndez & Barrios, *supra* note 166, at 754, 758.

201. *Id.* at 754; Miranda, *supra* note 192, at 145.

202. ANA SILVIA MONZÓN, FLASCO GUAT., LAS MUJERES, LOS FEMINISMOS, Y LOS MOVIMIENTOS SOCIALES EN GUATEMALA: RELACIONES, ARTICULACIONES, Y DESENCUENTROS [WOMEN, FEMINISMS, AND SOCIAL MOVEMENTS IN GUATEMALA: RELATIONS, ARTICULATIONS, AND DISAGREEMENTS] 22 (2015), https://www.puees.unam.mx/curso2021/materiales/Sesion13/Monzon_LasMujeresLosFeminismosYLosMovimientosSociales.pdf (on file with the *Columbia Human Rights Law Review*).

203. Miranda, *supra* note 192, at 141. For further discussion of some of the harms that these neoliberal policies have had on Indigenous communities, and the robust activism from Indigenous communities in response, see La Cuerda, *supra* note 163, at 743; Acevedo, *supra* note 167, at 374.

204. Rabanales & Mazariegos, *supra* note 134.

rely on their abusers for it.²⁰⁵ Some women do not have access to telephones to call emergency numbers.²⁰⁶ Rather than receive meaningful support, protection, and justice, many Guatemalan adolescent rape victims in particular face greater exclusion from educational and economic opportunities.²⁰⁷

Due to this systemic racism, moreover, reporting may be particularly burdensome, futile, and even dangerous for Indigenous women. As part of its larger efforts to bar Indigenous women from accessing justice (and the political process more broadly), the Guatemalan government has repeatedly failed to provide comprehensive reporting mechanisms in Indigenous languages. The government recently added support for four Indigenous languages to its emergency line in addition to Spanish;²⁰⁸ yet, Guatemala has twenty-four government-recognized Indigenous languages—twenty-two Mayan languages, plus Garífuna, and Xinka.²⁰⁹ Moreover, the government does not keep data to gauge the efficacy of the program.²¹⁰ Similarly, while the Guatemalan government has implemented a “panic button” application that may facilitate reporting for some women with transportation barriers, they exclude reporters who do not read and/or write in Spanish.²¹¹ Therefore, women who do not speak, write, and/or understand Spanish may face insurmountable barriers in reporting.²¹²

Guatemala’s painful history is far from the past. The government’s minimization of gender-based violence, state terror (including state violence against women), and deep-seated racism and violence against the country’s Indigenous majority have long plagued

205. Trujillo, *supra* note 147.

206. Rabanales & Mazariegos, *supra* note 134.

207. *Id.* According to reports alone, an estimated ten adolescents suffered rape every day in Guatemala in 2021. These numbers, however, do not represent the large “grey figure” of unreported cases. *Id.*

208. Rabanales & Mazariegos, *supra* note 134.

209. *Comunicación Social [Social Communication]*, CONSEJO NACIONAL DE AREAS PROTEGIDAS (CONAP) (Feb. 22, 2022), <https://conap.gob.gt/comunicacion-en-la-diversidad> [<https://perma.cc/9ZCH-KZ3J>].

210. Rabanales & Mazariegos, *supra* note 134.

211. Trujillo, *supra* note 147. According to the United Nations, 22% of all women in Guatemala—and 33.3% of Indigenous women—cannot read and write. Maria-Noel Vaeza, *Las mujeres indígenas de Guatemala no piden la palabra, la toman [Indigenous women in Guatemala don't ask for permission, and they speak up]*, EL PAÍS (Aug. 8, 2022), <https://elpais.com/planeta-futuro/red-de-expertos/2022-08-08/las-mujeres-indigenas-de-guatemala-no-piden-la-palabra-la-toman.html> [<https://perma.cc/VGM2-CHJA>].

212. Rabanales & Mazariegos, *supra* note 134; Trujillo, *supra* note 147.

the Guatemalan state. For many survivors of gender-based violence, therefore, the Guatemalan government is often not a safe or reasonable place to turn.

B. Honduras

The patriarchal justice system puts the rights of men before those of women; it is also racist and classist. We women do not have the right to fight. We have no right to anything other than being at home taking care of our husbands or children. And if you don't do it, you're blamed because [the abuser] beat you, or the police beat you, because you should be locked inside.

Miriam Miranda, Garífuna human and environmental rights defender and representative of the Organización Fraternal Negra Hondureña (Ofraneh) [Black Honduran Fraternal Organization].²¹³

Honduras has the highest rate of femicide in Latin America and the Caribbean, according to the United Nations.²¹⁴ According to the Honduran monitoring group, Observatorio de Derechos Humanos de las Mujeres, organized criminal groups committed 26% of feminicides in 2022, intimate partners 22%, and family members 9%.²¹⁵ However, official data did not reflect the perpetrator in 33% of

213. *8 de marzo: La lucha de las hondureñas contra la violencia e impunidad* [March 8: The Honduran women's fight against violence and impunity], EXPEDIENTE PÚBLICO (Mar. 8, 2022), <https://www.expedientepublico.org/8-de-marzo-la-lucha-de-las-hondurenas-contra-la-violencia-e-impunidad> [https://perma.cc/868B-X3K5] (Hond. & Nicar.) (quoting Miriam Miranda).

214. *Femicide or Femicide*, U.N. GENDER EQUALITY OBSERVATORY FOR LATIN AM. & THE CARIBBEAN (2022), <https://oig.cepal.org/en/indicators/femicide-or-femicide> [https://perma.cc/6N7J-ZC3U].

215. *Violencia contra las mujeres en Honduras 2022* [Violence against women in Honduras 2022], CENTRO DE DERECHOS DE MUJERES (CDM) 6–7 (Mar. 2023), <https://derechosdelamujer.org/wp-content/uploads/2023/04/Boletin-violencia-2022->

feminicides.²¹⁶ Rates of known domestic violence and sexual violence are also high. Based on reports alone, the Sistema Nacional de Emergencia (National Emergency System)—the Honduran police line—received over 97,400 calls concerning domestic violence and family abuse in 2022, while the Ministerio Público (Public Prosecutor’s Office) received 10,370 such reports.²¹⁷ The Ministerio Público also received nearly four thousand reports of sexual violence during that year.²¹⁸ Of these reports, 64% of known sexual violence survivors were minors between ten and fourteen years old.²¹⁹

These figures, however, represent only known cases. Many women and girls do not report gender-based violence, given multiple barriers, including dangers, that reflect a society and legal system that repeatedly devalues their lives. In a UNHCR study of Central American women seeking asylum in the United States, 40% of interviewed Honduran women believed that reporting would have been useless.²²⁰ Social organizations report a 95% rate of impunity in feminicides and 93% in cases of intra-family violence.²²¹ Of the women who do report domestic violence, over half do not pursue their cases in part because of these factors.²²² Oscar Ortiz of Voz de América concludes that these high levels of violence and state impunity “reflect[] a national emergency without a response from the authorities.”²²³

ODHM.pdf [https://perma.cc/828V-5LE7] (Hond.); Noor Mahtani, *El país que solo acumula las cifras de muertas* [The country that only accumulates death tolls], EL PAÍS (Jan. 15, 2023), <https://elpais.com/opinion/2023-01-15/el-pais-que-solo-acumula-las-cifras-de-muertas.html> (on file with the *Columbia Human Rights Law Review*).

216. CENTRO DE DERECHOS DE MUJERES, *supra* note 215, at 6–7.

217. *Id.* at 11.

218. *Id.* at 14.

219. *Id.* at 15.

220. Menjívar & Walsh, *supra* note 103, at 228, 232.

221. 2022, *un año violento para las mujeres en Honduras con casi 300 muertes* [2022, a violent year for women in Honduras with nearly 300 deaths], LA TRIBUNA (Dec. 26, 2022), <https://www.latribuna.hn/2022/12/26/2022-un-ano-violento-para-las-mujeres-en-honduras-con-casi-300-muertes> (on file with the *Columbia Human Rights Law Review*) (Hond.); CENTRO DE DERECHOS DE MUJERES, *supra* note 215, at 13. The Centro de Derechos de Mujeres notes that 46% of violent deaths of women in Honduras in 2022 were classified as femicides. *Id.* at 6. The organization adds, however, that this figure may not capture all femicides, noting imprecisions in data. *Id.*

222. CENTRO DE DERECHOS DE MUJERES, *supra* note 215, at 13.

223. Oscar Ortiz, *Honduras: ¿Existe impunidad en la violencia contra la mujer?* [Honduras: Does impunity exist in violence against women?], VOZ DE AMÉRICA (Aug. 5, 2021), https://www.vozdeamerica.com/a/centroamerica_

Feminist scholars and activists argue that the same deeply entrenched misogyny that encourages gender-based violence also fuels the Honduran state's inability and unwillingness to provide meaningful protection and its own violence against women.²²⁴ Like abusive persecutors, the Honduran state itself exerts symbolic, political, and structural violence against women. By defunding support programs for survivors of gender-based violence, normalizing violence, and refusing and failing to investigate and prosecute gender-based crimes,²²⁵ the government remains complicit in non-state violence against women. Indeed, these acts of omission encourage violence against women, as they both fuel official impunity as well as the societal normalization of violence.²²⁶ Through these "direct and indirect mechanisms" of targeting women with symbolic violence, structural violence, state violence and terror, the state repeatedly and actively undermines the very laws, policies, and systems designed to protect against gender-based violence.²²⁷ Therefore, the Honduran state is often an unreliable—and even dangerous—place for women to turn for safety and justice.

1. Symbolic Violence: "[S]low, [R]evictimizing, and [I]nadequate" Legal Institutions

Pervasive symbolic violence—including the normalization of gender-based violence—permeates Honduran society and institutions and prevents many from reporting gender-based violence in the country. Many survivors fear social marginalization and victim-blaming from loved ones if they were to report.²²⁸ Because this normalization also permeates legal institutions, reporters must face the "weight of judicial processes that are slow, revictimizing, and inadequate" and the danger of their abuser's retaliation without

[honduras-gran-impunidad-violencia-contra-mujeres/6075711.html](https://perma.cc/2AB9-F9ES)
[<https://perma.cc/2AB9-F9ES>].

224. As Maritza Gallardo, Vice-Minister of the Honduran Secretary of State's Office of Women's Affairs (Despacho de Asuntos de la Mujer (Semujer), observed, "[t]he patriarchy is structural in society; it is a phenomenon that does not disappear with the ease that we want." Mahtani, *supra* note 215 (quoting Maritza Gallardo).

225. *Id.*

226. *Id.*

227. Menjívar & Walsh, *supra* note 103, at 223–25, 228.

228. CENTRO DE DERECHOS DE MUJERES, *supra* note 215, at 16.

effective government protection.²²⁹ Therefore, reporting gender-based violence is frequently futile and may even be deadly.

Strong patriarchal norms in Honduran society normalize both strict gender roles and gender-based violence from childhood.²³⁰ Honduran feminist leader Helen Ocampo notes that this normalization and control manifests itself in both hidden and overt ways.²³¹ It includes, for example, societal expectations for women's appearance and roles in the home and society, as well as laws and policies controlling the body.²³² It also includes verbal insults and physical violence with heavily gendered manifestations, including rape.²³³ The Inter-American Commission on Human Rights has noted that as with other countries in the region, feminicides in Honduras "are disproportionately committed by intimate partners and have become increasingly brutal and sexualized."²³⁴ Those who challenge these norms, moreover, may face steep barriers. Natalie Roque, of the Honduras' Despacho de Derecho Humanos (Office of Human Rights), observes that, especially since the increased militarization and societal destabilization post-coup,²³⁵ "discussions of hate and misogyny have risen exponentially" and discussing misogyny in school is "scandalous."²³⁶

Because of the normalization of gender-based violence in Honduras, survivors generally do not report it—in part because they fear the stigma, shame, and continued violence that may follow, according to a representative from the Centro de Derechos de Mujeres (Center for Women's Rights) in Honduras.²³⁷ The Centro notes that women who do report "usually withdraw their complaint" in part for similar reasons—"because they lack financial resources, fear

229. *Id.*

230. *La violencia: de los principales desafíos que enfrenta la mujer hondureña* [Violence: the main challenges faced by Honduran women], EXPEDIENTE PÚBLICO (Dec. 14, 2021) [hereinafter *La violencia: de los principales desafíos*], <https://www.expedientepublico.org/la-violencia-uno-de-los-principales-desafios-que-enfrenta-la-mujer-hondurena> [https://perma.cc/2YFE-X839] (Hond. & Nicar.).

231. *Id.*

232. *Id.*

233. *Id.*

234. Menjívar & Walsh, *supra* note 103, at 229 (citing the Inter-Am. Comm'n on Hum. Rts., *Annual Report of the Inter-American Commission on Human Rights 2012*, at 208 (2013), <https://www.oas.org/en/iachr/docs/annual/2012/TOC.asp> [https://perma.cc/EK5J-R6D4]).

235. *Id.* at 221–23; *see infra* Section III.B.2.

236. Mahtani, *supra* note 215.

237. Menjívar & Walsh, *supra* note 103, at 229.

reprisals, feel ashamed or are afraid of what their family, friends and the general public will say.”²³⁸

The Honduran justice system has largely encouraged and institutionalized these patriarchal norms.²³⁹ Menjívar and Walsh argue that “[i]nstead of being a reliable state institution for women to turn to for protection, police have reinforced the generalized and entrenched views of gender inequality that make women vulnerable to abuse and undermine their rights.”²⁴⁰ Rather, reporting gender-based violence in Honduras can often be a revictimizing, fruitless, and even dangerous process—with no meaningful benefit.²⁴¹

For one, these misogynistic norms and practices infuse the Honduran justice system and embolden the common belief among police, prosecutors, and courts that gender-based violence is merely “part of ‘the order of things.’”²⁴² As a result, one Honduran activist—unnamed in a report of the Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM) (Latin American and Caribbean Committee for the Defense of Women’s Rights)—argues that the Honduran authorities are responsible for “the worst revictimization that women and girls suffer” in the country.²⁴³ Police, prosecutors, and the courts frequently minimize gender-based violence and even blame survivors who report for not being “obedient and submissive.”²⁴⁴ According to Honduran attorney and women’s rights expert Claudia Herrmannsdörfer:

Women who seek help from the police are often told that the issue is a matter for her husband to decide, and that she should go home, be intimate with him, and he will forgive her. Other times, police simply tell the women to stop disobeying their husbands. . . .

238. *Id.*

239. *Id.* at 223, 231.

240. *Id.* at 232.

241. *Id.* at 232; COMITÉ DE AMÉRICA LATINA Y EL CARIBE PARA LA DEFENSA DE LOS DERECHOS DE LAS MUJERES (CLADEM), INVESTIGACIÓN SOBRE LA INTERRELACIÓN Y LOS VÍNCULOS ENTRE LA VIOLENCIA SEXUAL Y LA MUERTE DE NIÑAS Y ADOLESCENTES EN LA REGIÓN DE AMÉRICA LATINA Y EL CARIBE (2010 – 2019) [INVESTIGATION OF THE RELATIONSHIP AND LINKS BETWEEN SEXUAL VIOLENCE AND THE DEATH OF GIRLS AND YOUNG PEOPLE IN THE LATIN AMERICAN AND CARIBBEAN REGION (2010 – 2019)] 112–13 (2021) [hereinafter CLADEM Report], <https://cladem.org/archivos/investigacion/Investigacion-completa-.pdf> [https://perma.cc/B7U8-GXFS] (Peru).

242. Menjívar & Walsh, *supra* note 103, at 231.

243. CLADEM Report, *supra* note 241, at 104.

244. Menjívar & Walsh, *supra* note 103, at 229, 231–32; EXPEDIENTE PÚBLICO, *supra* note 213.

Honduran police ignore threats made against women, treating them as nothing more than the product of over-excited emotions.²⁴⁵

Herrmannsdörfer argues that these practices also infect prosecutors' offices and the courts, noting cases, judges, and even prosecutors' offices that minimize or outright dismiss feminicides as "crimes of passion," or even "assum[e] that the woman may have instigated the murder."²⁴⁶ Authorities may also misclassify feminicides as suicides.²⁴⁷ In one tragic example, Noemí Dubon, Coordinator of Foro de Mujeres por la Vida (Women's Forum for Life) in Honduras, reported on the death of a woman who had previously reported her ex-partner's abuse to no avail.²⁴⁸ Despite signs at the crime scene and prior reports suggesting her ex-partner murdered her, the authorities classified her death as a suicide.²⁴⁹

State minimization of violence not only revictimizes reporting survivors but can also subject them to retaliation and greater physical danger. The UNHCR notes that in Honduras, "in the rare cases where police arrested the perpetrators of abuse, the perpetrators were generally released within a few days."²⁵⁰ As one interviewee with whom the UNHCR spoke explained: "I reported my husband to the police once. They detained him, but only for 24 hours, and then he was released and was even more angry."²⁵¹ Another woman said that when she reported her mother's abusers, "[t]hey put them in jail for 24 hours and then they are out."²⁵² Similarly, survivors who report gang violence face the retaliation of criminal organizations that not only "kill, disappear, rape, or displace those

245. Menjívar & Walsh, *supra* note 103, at 231 (quoting Claudia Herrmannsdörfer, *Declaration of Claudia Herrmannsdorfer, Expert on Women's Rights in Honduras*, UNIV. OF CAL. HASTINGS COLLEGE OF L. 11 (2012)).

246. *Id.* at 232–33. Honduran labor and women's rights activist, Blanca Rivera, shared a similar chilling example following the murder of her niece, who had been working to combat violence against women. When her niece's father reported the murder, the director of Honduras' National Bureau of Criminal Investigation (DNIC) "started blaming the [niece who was the] victim of the assassination" and had also commented that "women walk in places where they should not go." *Id.* at 232.

247. EXPEDIENTE PÚBLICO, *supra* note 213.

248. *Id.*

249. *Id.*

250. Menjívar & Walsh, *supra* note 103, at 232 (quoting U.N. High Comm'r for Refugees, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*, 27 (Oct. 2015)).

251. *Id.*

252. *Id.*

who resist,” but also may collude with law enforcement.²⁵³ Thus, many women do not report out of fear of retaliation.²⁵⁴

Reporting is also often futile because the Honduran state repeatedly fails to adequately fund institutions and programs to support survivors of gender-based violence.²⁵⁵ Especially following the 2009 coup, the Honduran government has increasingly diverted funding from enforcing laws addressing gender-based violence to the military and other efforts to combat drug trafficking.²⁵⁶ This underfunding leads to greater understaffing, judicial delays, and inadequate investigations for survivors who do report, denying women justice and exposing them to greater danger.²⁵⁷ It normalizes gender-based violence and “sends a message to women (and society) that their lives are unimportant.”²⁵⁸ Finally, it supports an increasingly militarized society, which often makes the state a dangerous place for survivors to turn, as discussed below.²⁵⁹

In large part, because of the symbolic violence of this institutionalized misogyny, impunity for gender-based violence in Honduras is high and “remains the norm.”²⁶⁰ As a result of these realities, many survivors of gender-based violence in Honduras do not trust the state for protection and do not report, or prematurely abandon the process if they do.²⁶¹ Despite the existence of meaningful laws to combat gender-based violence, they are often meaningless in practice, given the government’s repeated failure—and, at times, outright refusal—to implement them.²⁶² The Universidad Nacional Autónoma de Honduras (National Autonomous University of

253. *Honduras: World Report 2022*, HUM. RTS. WATCH (2023), https://www.hrw.org/world-report/2022/country-chapters/honduras?gad_source=1&gclid=EAIaIQobChMI9rud2bmmhAMV8kt_AB0iDQenEAAYASAAEgLdgfD_BwE [https://perma.cc/6WSA-TBCP].

254. Menjívar & Walsh, *supra* note 103, at 232.

255. *Id.* at 231.

256. *Id.* at 231, 234.

257. *Id.* at 230–31; CENTRO DE DERECHOS DE MUJERES, *supra* note 215, at 13; EXPEDIENTE PÚBLICO, *supra* note 213.

258. Menjívar & Walsh, *supra* note 103, at 231 (internal citation omitted).

259. *See infra* Section III.B.2.

260. EXPEDIENTE PÚBLICO, *supra* note 213; HUM. RTS. WATCH, *supra* note 253.

261. Menjívar & Walsh, *supra* note 103, at 229 (internal citation omitted); CLADEM Report, *supra* note 241, at 146–48. According to a UNHCR study, 40% of asylum seekers interviewed who fled violence in Honduras “did not report abuses to the police because they thought it would be useless.” Menjívar & Walsh, *supra* note 103, at 229.

262. Menjívar & Walsh, *supra* note 103, at 229.

Honduras) notes that even the limited data available on gender-based violence in Honduras indicates that “prevalence is high, reporting rates are low, state responses are weak, and impunity is rampant.”²⁶³ As with the other factors above, the Honduran state’s high rates of impunity for gender-based violence emboldens perpetrators and “sends a powerful message that women’s lives are expendable and unimportant.”²⁶⁴

2. Political Violence: Post-Coup State Violence

While the patriarchy has long threatened women and girls in Honduras, the 2009 Honduran constitutional crisis and coup d’état ushered in additional barriers to survivors of gender-based violence seeking justice and safety in the country.²⁶⁵ Menjívar and Walsh argue that the ousting of democratically-elected president Manuel Zelaya “accelerated and exacerbated a security crisis” in Honduras and neighboring countries by undermining stability in families, communities, and the country as a whole.²⁶⁶ Among other things, the rise of political repression and the deterioration of the rule of law in the wake of the coup heightened gender inequalities, further undermined women’s citizenship rights, and put women in greater danger of violence.²⁶⁷ This violence, too, is gendered—exposing women and girls to a greater danger of “qualitatively different and more extreme forms of brutality” than men.²⁶⁸ These political conditions have also marginalized feminist groups and broader civil society, which have played a vital leadership role in advocating for policies and laws to combat gender-based violence.²⁶⁹

Following the coup, the Honduran government emerged as a “key player in perpetuating and reinforcing unequal access to justice and rights.”²⁷⁰ Menjívar and Walsh observe that “[t]he coup took what was already a dangerous place for women and escalated the danger further, creating a context where women credibly fear violence not only in their homes and on the streets but also from the very institutions and state agents charged with protecting them.”²⁷¹

263. *Id.*

264. *Id.* at 228; Ortiz, *supra* note 223.

265. Menjívar & Walsh, *supra* note 103, at 223.

266. *Id.* at 221.

267. *Id.* at 221–23; EXPEDIENTE PÚBLICO, *supra* note 213.

268. Menjívar & Walsh, *supra* note 103, at 222.

269. *Id.* at 223, 227.

270. *Id.* at 222.

271. *Id.* at 235.

Honduras' Tribunal de Mujeres (Women's Tribune) notes that since the coup, not only has the Honduran state abdicated its duty to respond to women's reports, but also the "police themselves actually became agents of repression and violators of women's rights."²⁷² Ten percent of Honduran women included in the 2015 UNHCR study of Central American asylum seekers in the United States specifically reported that the police or other state authorities were directly involved in the harms they fled.²⁷³ This state repression includes sexual and physical abuse against women and violently targeting, including murdering, women human rights leaders.²⁷⁴ Therefore, many survivors of gender-based violence not only fear their non-state persecutor in reporting, but also the state itself.²⁷⁵

This state terror and repression against women has deep roots, combining institutional misogyny²⁷⁶ with an increasingly militarized state fueled by U.S. support. During the 1980s, the United States used Honduras as a staging area to support the Contreras in Nicaragua and Salvadoran military against the Frente Farabundo Martí para la Liberación Nacional (FMLN) (Farabundo Martí National Liberation Front)—a coalition of leftist guerilla groups backed by Cuba and the Soviet Union.²⁷⁷ The U.S. government's financial support of the Honduran military also "increased dramatically" during this time.²⁷⁸ This late-Cold War era in Honduras ushered in greater political violence and undermined the country's democracy, facilitating Honduras' transformation into a *democradura*, or "a nominally democratic government that is really under military rule."²⁷⁹ Foro de Mujeres por la Vida (Women's Forum for Life) documented at least 179 forced disappearances—primarily committed by the police and military forces—from 1980 to 1993.²⁸⁰ During the following decade, expanded neoliberal policies and the

272. *Id.* (internal citation omitted).

273. *Id.* at 233 (citing U.N. High Comm'r for Refugees, *supra* note 250, at 5).

274. *Id.* at 231.

275. *Id.* at 232.

276. *See supra* Section III.B.1.

277. Menjívar & Walsh, *supra* note 103, at 228; John M. Broder, *U.S. Uses Honduras as Staging Area to Aid Contras, Salvador*, L.A. TIMES (Mar. 17, 1988), <https://www.latimes.com/archives/la-xpm-1988-03-17-mn-2018-story.html> [<https://perma.cc/25AM-ZLAL>].

278. Menjívar & Walsh, *supra* note 103, at 228.

279. *Id.* (quoting Joanna Mateo, *Street Gangs of Honduras*, in MARAS: GANG VIOLENCE AND SECURITY IN CENTRAL AMERICA 90 (Thomas Bruneau, Lucía Dammert, & Elizabeth Skinner eds., 2011)).

280. *Id.* at 234.

widespread destruction of Hurricane Mitch exacerbated structural inequalities—fueling an increase in crimes in the private sphere often perpetrated by gangs.²⁸¹

The Honduran government has responded to the escalation in crime with further militarization—including of the police²⁸²—and violent repression.²⁸³ For example, in 2018, the Honduran government combined personnel from the military, police, and Attorney General’s office to create the Fuerza Nacional Anti Maras y Pandillas (National Anti-Gang Force).²⁸⁴ While this unit—and the state’s increased militarization more generally—has nominally focused on gangs and other criminal organizations, it has also targeted broader society. Generally, it has undermined public safety and trust by heightening structural inequalities,²⁸⁵ normalizing state violence and repression, and “deepen[ing] divisions between an increasingly militarized state and [the] civil society that had been mobilizing to resist it.”²⁸⁶

Through this increased militarization, the state has also actively targeted women with rape and other forms of violent, and often gendered, control.²⁸⁷ Because state impunity for its own gender-based violence is high,²⁸⁸ activists have played a vital role in both documenting this violence and demanding state accountability and reform. After the coup, feminist groups noted the connections between the state’s actions and gender-based violence through the popular rallying cry, “Ni golpes de estado, ni golpes a mujeres” (“No coups, and no abuse of women”).²⁸⁹ Their investigations also uncovered the state’s horrific and widespread abuses against women, including:

hundreds of women’s testimonies relating to numerous forms of post-coup related sexual assaults that included groping and beatings of breasts and vaginas, threats of sexual violence, intimidation tactics with explicit sexist insults, as well as gang

281. *Id.* at 228.

282. *Id.* at 234.

283. *Id.* at 224.

284. HUM. RTS. WATCH, *supra* note 253.

285. Menjívar & Walsh, *supra* note 103, at 224.

286. *Id.* at 228.

287. *Id.* at 234.

288. *Id.* at 224.

289. *Id.* at 234.

rapes by soldiers and police during post-protest detentions, curfew sweeps and night raids.²⁹⁰

Rochelle Jones of the Association for Women's Rights in Development (AWID) also documented "numerous cases of sexual violence . . . during forced evictions, which are rarely reported for fear of retaliation and due to the rampant impunity in situations of violence against women throughout the country."²⁹¹

The state has similarly violently targeted women leaders, activists, and others who speak out against violence and corruption and who do not conform to traditional gender roles. Many of these violent state acts—such as disappearances—echo the political violence and intolerance of the Cold War era but have escalated following the coup.²⁹² Alicia Reyes, a journalist with Radio Progreso in Honduras, noted that immediately following the coup, the military state threatened potential dissidents: "From the first day the police and army sent a clear warning: 'You'll see what happens when you go to the streets.'"²⁹³ Women human rights defenders confronted increasing "public accusations" of "going against traditional roles assigned to women," as well as arrests and threats of sexual violence and death.²⁹⁴ Menjivar and Walsh report that following the coup, the Honduran state's militarized acts involved "sexualized and chauvinistic forms of violence against women."²⁹⁵ The Inter-American Commission on Human Rights found that during protests, Honduran security forces called women demonstrators "whores," claimed that "[w]hat they want is for us to rape them," and told the demonstrators to "[g]o take care of your children."²⁹⁶ The Commission also received reports that some security agents "raped women with their police

290. *Id.* at 235 (quoting Christine Gervais & Betsy Estevez, *Security through Solidarity: Honduran Women's Post-Coup Strategies of Support and Survival*, 12 J. INT'L WOMEN'S STUD. 1, 10 (2011)).

291. *Id.* at 233 (quoting Rochelle Jones, *Human Rights Abuses in Honduras Pose an Ongoing Threat to Women's Human Rights Defenders (WHRDs)*, AWID (Dec. 21, 2012), <https://www.awid.org/news-and-analysis/human-rights-abuses-honduras-pose-ongoing-threat-womens-human-rights-defenders> [<https://perma.cc/R662-8KBC>]).

292. *Id.* at 233–34.

293. *Id.* at 233 (quoting Alicia Reyes, *Resistance with the Scent of a Woman*, 338 ENVIO 1, 2 (2009)).

294. *Id.* at 234.

295. *Id.* at 235.

296. *Id.* (citing Inter-Am. Comm'n on Hum. Rts., *Honduras: Derechos Humanos y Golpe de Estado [Honduras: Human Rights and Coup D'état]*, ¶ 525 (2009)).

batons” and “raped women after they were detained for participating in protests.”²⁹⁷

State agents have gone as far as abducting and killing women who criticize the government. Disappearances of women—an eerie echo of the political intolerance of the Cold War era—increased by 281% between 2008 and 2015 alone, according to the Foro de Mujeres por la Vida (Women’s Forum for Life).²⁹⁸ In 2014, a death squad kidnapped, tortured, and murdered Margarita Murillo, a Honduran human rights activist.²⁹⁹ Two years later, Indigenous leader and environmental activist Berta Cáceres was murdered after vigorously opposing the construction of a hydroelectric dam.³⁰⁰ Her murder came after she had received multiple threats.³⁰¹ Police claim robbers killed her.³⁰²

The state has also openly supported non-state persecutors such as gang members, increasing the unreasonableness—and even deadliness—of reporting. Menjívar and Walsh note links between the state and criminal groups—particularly in committing violence against women.³⁰³ As one Honduran asylum seeker explained in an interview with the UNHCR:

We cannot go back to Honduras. . . . They will kill us. With gangs it is very difficult. . . . The gang members wear the same vests and use the same guns that the police do. How do they get hold of these guns and vests? From the police.³⁰⁴

While some officers may be willing to help, these conditions can have a chilling effect on all reporting. Requiring survivors to report in all circumstances forces them to take a risk that may jeopardize their safety and life.

These conditions drive impunity,³⁰⁵ and as a result, accountability for state-perpetrated gender-based violence is rare.³⁰⁶

297. *Id.*

298. *Id.* at 234.

299. *Id.* at 235.

300. *Id.* at 223.

301. *Id.*

302. *Id.*

303. *Id.* at 233–234 (citing and quoting U.N. High Comm’r for Refugees, *supra* note 250); *see also* HUM. RTS. WATCH, *supra* note 253 (“There have been repeated allegations of collusion between security forces and criminal organizations.”).

304. Menjívar & Walsh, *supra* note 103, at 221 (quoting U.N. High Comm’r for Refugees, *supra* note 250, at 24).

305. *Id.* at 234.

But even where officials may desire to help survivors achieve justice and safety, “[j]udges face interference—including political pressure, threats, and harassment—from the executive branch, private actors with connections to government, and gangs. Prosecutors and whistleblowers have received death threats.”³⁰⁷

The 2021 election of Xiomara Castro as Honduras’ first female president gave many feminist activists hope for positive change.³⁰⁸ But during Castro’s term, many advocates began to lose hope. For one, advocacy organizations proposed a Comprehensive Law Against Violence Against Women to address the femicide epidemic.³⁰⁹ However, the government stalled to implement the plan as it sought to identify its funding.³¹⁰ Maritza Gallardo, Vice-Minister of the Honduran Secretary of State’s Despacho de Asuntos a la Mujer (Semujer) (Office of Women’s Affairs) observed that the failure to fund the implementation of these laws renders the protections largely “inapplicable.”³¹¹ Herrmannsdörfer lamented the “gap between [the Castro administration’s] discourse and reality” and concluded that “[w]e cannot say that the new Government has really committed itself” to combatting gender-based violence.³¹²

The Castro government has implemented some police and security reforms, including the institution of a Community Police force that aims to achieve security through an approach that is “participatory and respectful of human rights.”³¹³ Yet in practice, the Honduran Centro de Derecho de Mujeres (CDM) (Women’s Law Center) notes that this approach continues to “reinforc[e] the same *mano dura* [heavy-handed] policies” as before.³¹⁴ These reforms largely maintained the same structures and personnel.³¹⁵ It has also *increased* militarization in some cases—for example, by reviving the heavily-armed Military Police of Public Order and calling a partial state of exception suspending certain constitutional rights in marginalized communities.³¹⁶ Menjívar and Walsh observe that the

306. *Id.* at 224.

307. HUM. RTS. WATCH, *supra* note 253.

308. Mahtani, *supra* note 215.

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. CENTRO DE DERECHOS DE MUJERES, *supra* note 215, at 3.

314. *Id.*

315. *Id.*

316. *Id.*; Breidy Hernández, *Dos años de estado de excepción en Honduras: pérdida de derechos humanos y menor seguridad* [Two years of a state of

state's increased militarization represents an increased and multifaceted danger to women, as it "signal[s] an absence of a gender perspective regarding the problem of public security and swells the number of armed men on the streets. Increasing armaments is a direct threat to women, as firearms have been the principal instrument for their killings."³¹⁷

3. Structural Violence: Denial of Economic and Citizenship Rights

The Honduran state also "plays a fundamental direct and indirect role" in promoting structural violence against women, which marginalizes women in Honduran society.³¹⁸ Through this violence, the Honduran government fosters not only economic inequalities based on gender, but also disparities in citizenship rights.³¹⁹ As a result, women in Honduras suffer "unequal access to justice and rights,"³²⁰ and thus often cannot rely on the state for safety and accountability.

Women in Honduras experience greater poverty and suffer from more limited economic opportunities compared to men.³²¹ These conditions have only worsened since the coup.³²² Noemí Dubón, Coordinator of the Foro de Mujeres por la Vida (Women's Forum for Life) in Honduras, argues that this disparity begins at an early age, when society may send the message that "girls serve more by making tortillas or helping at home and not in schools."³²³ Scholars argue that the Honduran government affirmatively furthers these disparities, including through its policies promoting neoliberal economic reforms,³²⁴ denying women's bodily autonomy and reproductive

emergency in Honduras: loss of human rights and reduced security], CRITERIO.HN (Aug. 14, 2025); *La violencia: de los principales desafíos que enfrenta la mujer hondureña* [Violence: the main challenges faced by Honduran women], EXPEDIENTE PÚBLICO (Dec. 14, 2021), <https://criterio.hn/dos-anos-de-estado-de-excepcion-en-honduras-perdida-de-derechos-humanos-y-menor-seguridad/> [<https://perma.cc/9XP4-DTFN>] (Hond.).

317. Menjívar & Walsh, *supra* note 103, at 234.

318. *Id.* at 224, 222.

319. *Id.* at 222.

320. *Id.*

321. *Id.* at 228.

322. *Id.*

323. EXPEDIENTE PÚBLICO, *supra* note 213.

324. Menjívar & Walsh, *supra* note 103, at 224, 228.

rights,³²⁵ and cutting specialized services for women despite strong opposition from advocacy groups.³²⁶

Like Guatemala, these economic reforms—and the Honduran government’s emphasis on extractivism in particular—has pushed women into even greater poverty, marginalization, and physical danger.³²⁷ Extractivism has a deep history in Honduras and is perhaps most notably associated with the United Fruit Company’s massive banana plantations in the country and region.³²⁸ Following the coup, the Honduran government retrenched many of these practices, leading to greater gender inequality and, ultimately, physical violence.³²⁹

According to the CDM, extractivism inflicts heightened harms on women in several ways. First, these projects destroy and harm communities by allowing international companies to aggressively exploit the natural resources in an area—with “little to no” consultation with those communities.³³⁰ Apart from promoting dangerous environmental degradation,³³¹ the projects themselves reinforce harmful gender norms and marginalization, as companies generally employ men for extraction, for example, while women must often settle for lower-paying supportive jobs.³³²

The ripple effects of these projects undermine women’s citizenship rights. The Honduran government has violently attacked community members—many of whom are women and/or Indigenous—who have criticized extractivism.³³³ The CDM also notes cases of gender-based violence—including sexual exploitation—tied to these projects, as well as the projects’ negative effects on women’s

325. *La violencia: de los principales desafíos*, *supra* note 230; EXPEDIENTE PÚBLICO, *supra* note 213.

326. Menjívar & Walsh, *supra* note 103, at 224.

327. UNIDAD DE INVESTIGACIÓN FEMINISTA, OBSERVATORIO DE DERECHOS DE LAS MUJERES, CENTRO DE DERECHOS DE MUJERES (CDM), LAS CONSECUENCIAS DEL EXTRACTIVISMO EN SANTA BÁRBARA, [THE CONSEQUENCES OF EXTRACTIVISM IN SANTA BÁRBARA] 6–7 (2023), <https://derechosdelamujer.org/wp-content/uploads/2024/01/Boletin-consecuencias-del-extractivismo-WEB.pdf> [<https://perma.cc/F8K9-QWJ4>] (Hond.).

328. *Id.* at 2.

329. *Id.* at 1–3.

330. *Id.* at 1.

331. *Id.* at 7.

332. *Id.*

333. The CDM reports more than 1,200 violent acts against environmental rights defenders by the government and/or private companies in Honduras between 2016 and 2017 alone. *Id.* at 7.

health.³³⁴ Women in Honduras may additionally face barriers in citizenship rights and reporting due to their race, sexual orientation, disability, or other factors. For example, Black and Indigenous women in Honduras face systemic racism that not only results in greater economic inequality and reduced opportunities, but also more limited access to resources, justice, and protection from harm.³³⁵

Government policies such as extractivism also exacerbate gender-based economic disparities in Honduras, which further marginalizes women from accessing protection and power.³³⁶ Economic marginalization may trap women further into abusive situations and prevent them from reporting (or continuing with legal processes) for several reasons. Many survivors cannot and do not report because of their economic dependence on abusers.³³⁷ Some women who do report must abandon the process due to insufficient financial resources to continue the process, which may require missing work and/or finding childcare for interviews with law enforcement, hearings, and other legal proceedings.³³⁸

The Honduran justice system also “greatly justifies” anti-LGBTQIA+ violence, particularly against trans women, as detailed by Nahil Zerón of the Central Monitoring Observatory of Cattrachas, a Honduras LGBTQIA+ advocacy group.³³⁹ As a result, LGBTQIA+ Hondurans not only also face additional risks of discrimination and direct violence by the greater community, but also by the very justice system responsible for providing protection.³⁴⁰ Honduran law and

334. *Id.*

335. Menjívar & Walsh, *supra* note 103, at 228; EXPEDIENTE PÚBLICO, *supra* note 213.

336. Menjívar & Walsh, *supra* note 103, at 224; LA TRIBUNA, *supra* note 221.

337. *La violencia: de los principales desafíos*, *supra* note 230 (citing Helen Ocampo).

338. CENTRO DE DERECHOS DE MUJERES, *supra* note 215, at 13; Menjívar & Walsh, *supra* note 103, at 229.

339. EXPEDIENTE PÚBLICO, *supra* note 213; *see also* Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 422 (Mar. 26, 2021) (chronicling the Honduran state’s participation in and impunity for violence against LGBTQIA+ Hondurans and finding that Honduras violated several articles of the American Convention as well as the Bélem do Pará Convention surrounding the murder of transgender woman and activist Vicky Hernández).

340. EXPEDIENTE PÚBLICO, *supra* note 213; *see also* Vicky Hernández et al. v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 422 (Mar. 26, 2021) at 11–13 (detailing acts of violence by the police); *see also* Mahtani, *supra* note 215 (noting the state’s reluctance to recognize LGBTQIA+ targeted violence as human rights violations).

policies against gender-based violence also fail to meaningfully include women with disabilities.³⁴¹

Honduras' staggering impunity rate for gender-based crimes reflects a state that is actively hostile against women and girls—particularly following the increase in political instability and oppression after the 2009 coup. Women and girls who do report face a bureaucracy that frequently minimizes and dismisses their experiences while revictimizing them. The state—including the police—have also become more militarized since the coup, increasingly representing a violent force against women rather than a source of safety. Finally, structural inequalities have widened following post-coup instability and economic reforms, further reducing women's citizenship rights. These realities—which have deep, misogynistic roots—demonstrate that survivors of gender-based violence cannot reliably turn to the Honduran state.

C. El Salvador

"Don't report; why are you going to get into trouble?"

"Wait patiently that one day he will change."

"Ask God."

"It happens to all of us."

Reactions survivors in El Salvador reported receiving after disclosing they suffered gender-based violence.³⁴²

Underreporting is "significant" for gender-based crimes in El Salvador, as is official impunity for these crimes.³⁴³ The Salvadoran NGO Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) (Organization of Salvadoran Women for Peace) estimates, for

341. HUM. RTS. WATCH, *supra* note 253.

342. RED FEMINISTA FRENTE A LA VIOLENCIA CONTRA LAS MUJERES (RED-FEM), EL SALVADOR: INFORME DE LA SITUACIÓN DE VIOLENCIA CONTRA LAS MUJERES [EL SALVADOR: REPORT ON THE SITUATION OF VIOLENCE AGAINST WOMEN] 55 (2022) [hereinafter RED-FEM Report], <https://ormusa.org/wp-content/uploads/2022/08/INFORME-HECHOS-DE-VIOLENCIA-REDFEM-2022-1-1.pdf> [<https://perma.cc/PW5F-KHBG>] (El Sal.) (internal citations omitted).

343. Karen Musalo, *El Salvador — A Peace Worse Than War: Violence, Gender and a Failed Legal Response*, 30 YALE J.L. & FEMINISM 3, 34 (2018).

example, that while a staggering 63% of women in El Salvador have suffered sexual violence during their lives, only 5.3% of these victims reported the violence to the authorities.³⁴⁴ In her accompaniment of women and girls who have survived sexual violence, Salvadoran feminist Morena Herrera observes that “despite the gravity of their suffering, their most frequent response is silence.”³⁴⁵ Human rights attorney Arnau Baulenas of the Instituto de Derechos Humanos de la Universidad Centroamericana (IDHUCA) (Institute of Human Rights of Central American University) in San Salvador notes a similar response in survivors of domestic violence.³⁴⁶ In fact, studies report that nearly 60% of Salvadoran women do not report male abusers to the authorities.³⁴⁷

Women in El Salvador face multiple, interrelated structural barriers to reporting. First, symbolic violence—namely, the widespread normalization of gender-based violence as natural, acceptable, and even inevitable—pervades Salvadoran society, including state institutions. Second, the Salvadoran state’s repeated use of violence to silence dissent and enforce social and political norms severely undermines the trustworthiness of the government in providing survivors of gender-based violence protection from harm. Finally, and relatedly, the country’s pervasive culture of silence—that the state both encourages and enforces—attempts to muzzle survivors and often subjects those who break the silence and do report to greater danger to preserve patriarchal norms. Together, these factors often make reporting gender-based crimes in El Salvador unreasonably difficult, futile, and even dangerous.

344. Abigail Parada, *Solo el 6% de las denuncias de violencia de género son atendidas* [Only 6% of reports of gender violence receive follow-up], NOTICIAS DE EL SAL. (Nov. 25, 2022), <https://www.elsalvador.com/noticias/nacional/marcha-violencia-de-genero-el-salvador/1019114/2022> [https://perma.cc/C7GB-HR4F] (El Sal.).

345. Morena Herrera, *Ni los fusiles ni las condenas detendrán los feminicidios* [Neither guns nor sentences will stop femicides], EL FARO (Feb. 23, 2023), <https://elfaro.net/es/202302/columnas/26734/Ni-los-fusiles-ni-las-condenas-detendr%C3%83%C2%A1n-los-feminicidios.htm> [https://perma.cc/VV24-TBAS] (Costa Rica).

346. Kristina Zanzinger et al., *Underreported and Unpunished, Femicides in El Salvador Continue*, N. AM. CONG. ON LATIN AM. (NACLA) (Mar. 5, 2021), <https://nacla.org/news/2021/03/04/femicides-el-salvador-pandemic> [https://perma.cc/A7Q8-TJXT] (quoting Arnau Baulenas).

347. Mo Hume, *The Myths of Violence: Gender, Conflict, and Community in El Salvador*, 35 LATIN AM. PERSPS. 59, 66 (2008) (internal citations omitted).

1. Symbolic Violence: Societal Acceptance of Gender-Based Violence

Widespread symbolic violence in El Salvador—particularly, the normalization of gender-based violence—impacts how society and the state perceive and respond to reporting. This societal tolerance for gender-based violence permeates the Salvadoran justice system, emboldens perpetrators by facilitating official impunity, and attempts to convince survivors that gender-based violence is an inevitable part of life. Mo Hume, a scholar of Latin American politics, argues that “[d]espite important legislative changes, normative notions of appropriate behavior for men and women still make violence ‘acceptable’ in certain contexts to the point that it is not always recognized as violence.”³⁴⁸ Within this context, a survivor may not perceive an act of gender-based violence as a harm (much less, one that merits reporting), and the state may not take such a report seriously.

At the heart of this normalization are deeply entrenched patriarchal norms in El Salvador that both devalue the rights of women and girls and accept violence against them as a normal part of life.³⁴⁹ Due to these norms, societal divisions, and inequalities based on sex and gender become “normal [and] natural, to the point of being inevitable.”³⁵⁰ As a result, “[w]omen’s position in society is structurally weaker than that of men, and their opportunities for agency are more limited.”³⁵¹

Women and girls in El Salvador experience these entrenched patriarchal norms from an early age.³⁵² For one, these norms impose strict gender roles upon women and girls, including an expectation that women bear the primary responsibility for the home, such as caring for the family, cleaning, and cooking.³⁵³ More generally, they

348. *Id.* at 63–64.

349. *Id.* at 61–62; ORGANIZACIÓN DE MUJERES SALVADOREÑAS POR LA PAZ, *supra* note 101, at 20.

350. Hume, *supra* note 347, at 62–63 (quoting PIERRE BOURDIEU, *MASCULINE DOMINATION* 8 (2001)).

351. *Id.* at 66.

352. Parada, *supra* note 344; Noemí García Cabezas, *Denunciar la violencia hacía las mujeres en El Salvador, un reto en la pandemia por COVID-19* [Reporting violence against women in El Salvador, a challenge in the COVID-19 pandemic], AYUDA EN ACCIÓN (Nov. 23, 2020), <https://ayudaenaccion.org/proyectos/articulos/violencia-mujeres-salvador> [https://perma.cc/H2P2-5KLJ] (Spain).

353. García Cabezas, *supra* note 352.

also attempt to minimize the experiences, agency, and voices of women and girls.³⁵⁴

This same structural misogyny also encourages and normalizes gender-based violence in El Salvador. Strict gender norms not only attempt to force women into the private sphere of the home, but also encourage men to commit violence against them there.³⁵⁵ It also minimizes gender-based violence in the eyes of society and the state, thereby limiting the ability of survivors to receive meaningful protection.³⁵⁶

It perpetuates the long-standing myth that gender-based violence is functional—particularly in the performance of cisgender, heterosexual masculinity.³⁵⁷ Noting the historical roots of this myth,³⁵⁸ Hume argues that it continues to persist in Salvadoran society:

Domination and its associated use of violence have ensured and reproduced male privilege, and this model has been consistently reinforced by wider social and cultural practices. A recent survey demonstrates that 61.3 percent of interviewees agree that ‘women represent love and weakness and men intelligence and strength.’ This is indicative of the endurance and pervasiveness of hegemonic gendered myths. Failure to conform to this model means that manliness is questioned, often leading to allegations of homosexuality Violence, drinking, and womanizing have become so bound up with dominant constructs of maleness that they are seen as natural This model of hegemonic masculinity denies men agency, choice, and the possibility of being different. Important to this notion of masculinity is that individual men cannot be held responsible for conforming to socially prescribed roles.³⁵⁹

Therefore, gender-based violence becomes not only tolerated but also justified and encouraged as a performance of masculinity.

Within this system, acts of gender-based violence become normalized. Given these gender dynamics, there are pervasive misconceptions in El Salvador, and globally, that domestic violence

354. Hume, *supra* note 347, at 65.

355. *Id.* at 66–68.

356. *Id.* at 62, 66.

357. *Id.* at 65–66.

358. *Id.* at 65 (internal citation omitted).

359. *Id.* at 65–66 (internal quotations and citations omitted).

“is not real violence but a ‘private’ or ‘family’ affair.”³⁶⁰ While there is widespread recognition of domestic violence in homes, Hume points to a “tacit acceptance of men’s aggression, especially within the family.”³⁶¹ Her interviews in local communities revealed attitudes that attempted to excuse and reclassify some forms of physical violence as a justifiable “thump” as opposed to “true” abuse.³⁶² Her research also revealed that most people chose to ignore and not intervene in situations of violence against women and children.³⁶³ Rather, as discussed *infra*, most survivors and witnesses alike respond with silence “as a survival strategy.”³⁶⁴ Therefore, abusers carry on with impunity. Silvia Juárez, Coordinator of the Law Program of the Salvadoran NGO, Vida Libre de Violencia para las Mujeres (Life Free of Violence for Women), said “the violent men’s ‘I’ll change,’ in reality, is a fallacy in a country that tolerates sexist violence.”³⁶⁵

These attitudes also promote a rampant rape culture. The Salvadoran NGO ORMUSA argues that “sexism, inequalities and stereotyped attitudes regarding gender and sexuality” promote a rape culture in the country by “normaliz[ing] and trivializ[ing] sexual violence.”³⁶⁶ Under this culture, ORMUSA argues that Salvadoran society often places blame not on the male perpetrator, but rather on the female survivor.³⁶⁷ Rather than receive support, many rape survivors who choose to report face embarrassment and questions of how she “provoked” it, why she “permitted” it, why she did not resist, and how she “made it easier to be attacked.”³⁶⁸ As a result, many survivors resort to silence, as analyzed *infra*, “because, besides, no one will believe her.”³⁶⁹

Even the aspects of the Salvadoran justice system that nominally attempt to address gender-based violence are often

360. *Id.* at 66.

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.* at 67; see *infra* Section III.C.3.

365. George Rodríguez Oteiza, *Femicidios persisten bajo régimen de excepción en El Salvador [Femicides persist under the state of emergency in El Salvador]*, REVISTA PETRA (Feb. 14, 2023), <https://revistapetra.com/femicidios-persisten-bajo-regimen-de-excepcion-en-el-salvador> [<https://perma.cc/XZ8U-K6J5>] (Costa Rica).

366. ORGANIZACIÓN DE MUJERES SALVADOREÑAS POR LA PAZ, *supra* note 101, at 20.

367. *Id.* at 21.

368. *Id.*

369. *Id.*; see *infra* Section III.C.3.

ineffective and do not sufficiently address structural issues that encourage gender-based violence.³⁷⁰ Baulenas notes that prosecutions for gender-based violence “are often overshadowed by personal and cultural biases against victims that color cases with patriarchal and machista assumptions. These biases contribute to impunity for gender-based crimes, and [they] can also retraumatize survivors who choose to report their abuse.”³⁷¹ Salvadoran feminist scholar Morena Herrera argues that the Salvadoran government’s recent attempts to “crack down” on feminicides by increasing military and police presence in the streets and by eliminating the statute of limitations fail to address the structural causes of feminicides and strategies for prevention.³⁷² Rina Montti of the Salvadoran human rights organization Cristosal and Mariana Moisa, a feminist anthropologist, note that the government under President Nayib Bukele has “eliminated or reduced” programs intended to support women and girls suffering gender-based violence.³⁷³ These cuts have exacerbated existing delays that survivors face in accessing justice, if they do at all.³⁷⁴

Intersectional factors raise additional barriers to reporting for some women. For example, LGBTQIA+ women face not only higher rates of violence, but also a heightened risk of discrimination and even threats from local and national police because of their identity.³⁷⁵ ORMUSA reports that many women in El Salvador—particularly women living with disabilities—“have grown up hearing that they have no value as people,” leading to feelings of low self-esteem and low self-worth.³⁷⁶ Reporting may also place a significant economic burden on survivors. Survivors may not report because of economic dependency on the abuser—who, among other things, may

370. Luis Beatón, *El Salvador: algo pasa con las mujeres [El Salvador: something is happening to women]*, PRENSA LATINA (Aug. 20, 2023), <https://www.prensa-latina.cu/2023/08/20/el-salvador-algo-pasa-con-las-mujeres> [<https://perma.cc/PTV4-TNR3>].

371. Zanzinger et al., *supra* note 346.

372. Herrera, *supra* note 345; Rodríguez Oteiza, *supra* note 365.

373. Beatón, *supra* note 370.

374. ORGANIZACIÓN DE MUJERES SALVADOREÑAS POR LA PAZ, *supra* note 101, at 15.

375. Karla Arévalo, *El Salvador: mujer trans lidera lucha en pro de la población LGBTQ+ [El Salvador: trans woman leads the fight in favor of the LGBTQ+ population]*, VOZ DE AMÉRICA (Aug. 5, 2021), <https://www.vozdeamerica.com/a/el-salvador-mujer-trans-lidera-lucha-en-pro-de-la-poblacion-lgbtq-/6473919.html> [<https://perma.cc/35F5-FTDL>].

376. RED-FEM Report, *supra* note 342, at 49.

have isolated them and prohibited them from working.³⁷⁷ While the Salvadoran Constitution guarantees access to justice, reporting and subsequent participation in investigations and judicial proceedings requires women to subject themselves to retraumatization³⁷⁸ and to incur prohibitively expensive costs for transportation, food, and childcare.³⁷⁹

2. Political Violence: Death Squads and Other State Terror

Reporting requirements also force women to seek protection from a state that has long used violence to control and oppress its own citizens—particularly those from marginalized groups.³⁸⁰ Hume argues that the Salvadoran state “has been the central protagonist in the campaign of brutality against the Salvadoran population and, in doing so, has had a key role in the production of narratives of violence, fear, and uncertainty.”³⁸¹ She argues that this historical context of violence “shapes and transforms what is considered ordinary, increasing people’s threshold for tolerating violence and dictating their responses.”³⁸² In this way, reporting requirements force Salvadoran women to seek protection from a state that has not only actively promoted violence against its own citizens, but also one that has normalized violence to the extent that people may not find it worthy of reporting, even if they did trust the authorities.

The Salvadoran police force, along with the military, have been central—and, at times, largely indistinguishable—tools of this state violence.³⁸³ Rather than protect, these forces have brutally and

377. *See id.* at 44, 49 (recounting an interview with one advocate, who stated that “[m]any come saying ‘I’m living in a violent situation that I cannot report, nor can I separate [from the abuser], since I am not working, I have never worked—my partner did not allow me and I don’t know how to live on my own with my kids’) (internal citations omitted); *see also* Musalo, *supra* note 343, at 46 n.281 (noting that a child’s mother may not report incest by the father due to economic dependency or fear).

378. ORGANIZACIÓN DE MUJERES SALVADOREÑAS POR LA PAZ, *supra* note 101, at 26, 46.

379. RED-FEM Report, *supra* note 342, at 50.

380. Hume, *supra* note 347, at 62.

381. *Id.* at 69.

382. *Id.* at 70.

383. *Id.* at 69; Jeanette Aguilar, *El rol del ejército en la seguridad interna en El Salvador: lo excepcional convertido en permanente* [The role of the army in internal security in El Salvador: the exceptional becoming permanent], in CLACSO, ANTOLOGÍA DEL PENSAMIENTO CRÍTICO SALVADOREÑO

repeatedly repressed common Salvadorans—particularly those from marginalized groups—for decades to serve the interests of the few, but powerful, elites.³⁸⁴ These historical legacies of control and brutality continue to undermine public trust in these institutions.

El Salvador's violent military dictatorships, which spanned from 1931 to 1979, are one example of the state's entrenchment of repression and violence in society.³⁸⁵ The military engaged in "strategic and calculated" violence to prove its worth to the country's economic elites, who in turn, embraced the use of force as a powerful means of exerting control over the population.³⁸⁶ As a result, Hume argues, violence itself became "functional and necessary for the national interest."³⁸⁷ In January 1932, for example, the Salvadoran military massacred thirty thousand people—or approximately 2% of the entire national population—in response to an uprising of Indigenous Pipil peasants and members of the Communist Party of El Salvador.³⁸⁸ This massacre, often known as *La Matanza*, continues to haunt the country as it has remained "indelibly etched into the nation's collective memory."³⁸⁹ James Dunkerley—Director of the Institute for the Study of the Americas and the Institute of Latin American Studies of the University of London—notes that, to Salvadorans, this massacre "both demonstrated that the state was willing to employ genocidal tactics and provided a reminder of the cost of dissent."³⁹⁰

More recently, the military and police (then part of the Armed Forces) continued to exert violent control over the Salvadoran

CONTEMPORÁNEO 519, 520 (Loida Mariela Castro & Roberto Oswaldo López Salazar eds., 2018).

384. Hume, *supra* note 347, at 69–70.

385. *Presidencia del Gral. Maximiliano Hernández Martínez [Presidency of General Maximiliano Hernández Martínez]*, SISTEMA BIBLIOTECARIO DE UNIVERSIDAD TECNOLÓGICA DE EL SALVADOR (2017), <https://biblioteca.utec.edu.sv/sitios/conflicto/index.php/1931/12/02/presidencia-del-gral-maximiliano-hernandez> (on file with the *Columbia Human Rights Law Review*); *Salvadoran Civil War (1979-1992)*, AM. ARCHIVE OF PUB. BROAD., <https://americanarchive.org/exhibits/newshour-cold-war/el-salvador> [<https://perma.cc/DYT7-3TD2>].

386. Hume, *supra* note 347, at 70.

387. *Id.*

388. *Id.* at 69.

389. *Id.* (quoting JAMES DUNKERLEY, *THE LONG WAR: DICTATORSHIP AND REVOLUTION IN EL SALVADOR* 9 (1982)).

390. *Id.* at 70 (internal citation omitted).

population during the country's civil war from 1979 to 1992.³⁹¹ Over seventy-five thousand Salvadorans died as Salvadoran government forces, supported by the United States, fought the FMLN guerilla forces.³⁹² In the name of anti-communism, the government tortured, disappeared, and/or extrajudicially executed not only members of the FMLN, but also anyone who questioned or opposed the state.³⁹³ Organized terrorist groups known as "death squads" carried out much of the state's violence. According to the El Salvador Truth Commission's report:

The death squads, in which members of State structures were actively involved or to which they turned a blind eye, gained such control that they ceased to be an isolated or marginal phenomenon and became an instrument of terror used systematically for the physical elimination of political opponents. Many of the civilian and military authorities in power during the 1980s participated in, encouraged and tolerated the activities of these groups.³⁹⁴

The Truth Commission alone received twenty-two thousand "complaints of serious acts of violence" that occurred during the civil

391. See generally U.N. Secretary-General, Letter dated Mar. 29, 1993 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/25500 (Apr. 1, 1993) (outlining and analyzing the Salvadoran government's violence and terror during the civil war); Aguilar, *supra* note 383, at 520 (explaining how despite the language in the Peace Accords and the new constitution, the President could use the military at his discretion if other means had been exhausted).

392. Diana Sierra Becerra, *Sembrando semillas de memoria en El Salvador* [*Sowing seeds of memory in El Salvador*], N. AM. CONG. ON LATIN AM. (NACLA) (June 25, 2021), <https://nacla.org/memoria-historica-el-salvador-guerra-civil> [<https://perma.cc/CHZ8-U2SD>]. For more background on U.S. support of El Salvador's state terror during this period, see Ignacio Martín-Baró, *La Guerra Civil en El Salvador* [*The Civil War in El Salvador*], 36 ESTUDIOS CENTROAMERICANOS 17 (1981). A Salvadoran military death squad murdered Martín-Baró, five of his fellow Jesuits, and two women at Central American University in San Salvador in 1989. *Masacre de la UCA: el asesinato de seis jesuitas y dos mujeres por el que EUA sancionó a exmilitares salvadoreños 30 años después* [*UCA Massacre: the assassination of six Jesuits and two women for which the U.S. sanctioned Salvadoran ex-military members 30 years later*], LA PRENSA GRÁFICA (Jan. 29, 2020), <https://www.laprensagrafica.com/internacional/Masacre-de-la-UCA-el-asesinato-de-seis-jesuitas-y-dos-mujeres-por-el-que-EE.UU.-sanciono-a-exmilitares-salvadorenos-30-anos-despues-20200129-0528.html> [<https://perma.cc/VBX8-KUKX>].

393. U.N. Secretary-General, *supra* note 391, at 36, 95, 115, 125–31.

394. *Id.* at 124.

war.³⁹⁵ Of these, nearly 85% involved violence by state agents and allied groups.³⁹⁶

These brutal historical legacies undermine the public's trust in the authorities³⁹⁷ and continue to impact reporting. By repeatedly massacring its own citizens—especially those who challenge societal norms—the Salvadoran state has sent a strong message that it does not offer a safe place to turn for help. While the war officially ended over twenty years ago, post-war reforms have had a limited impact, and the state has returned to (or continued) some of the deadly conditions that existed before and during the civil war. The 1992 Chapultepec Agreement formally concluded the country's peace process and contained significant democratic reforms, including demilitarizing the police and creating an independent judiciary;³⁹⁸ however, the Salvadoran government has largely and forcefully resisted these changes, as highlighted by Jeanette Aguilar, a violence and security researcher at the Universidad Centroamericana in San Salvador.³⁹⁹ As Aguilar notes, the post-war years have seen a resurgence of blurred lines between the military and the police.⁴⁰⁰ Francisco Rojas Aravena, Latin American political scientist and Rector of the University of Peace, writes that this “overlap of functions between defense and security generates confusion, [and] de-professionalizes both the military and the police, in addition to weakening the capacity for democratic civil leadership.”⁴⁰¹ By forcefully resisting these democratizing reforms in favor of returning to a heavily militarized security force, the Salvadoran state undermines public trust in the police and forces victims to turn to historic oppressors for protection.⁴⁰²

395. *Id.* at 35.

396. *Id.* at 36.

397. Hume, *supra* note 347, at 70.

398. Permanent Representative of El Salvador to the U.N., Letter dated Jan. 27, 1992 from the Permanent Representative of El Salvador to the U.N. addressed to the Secretary-General, U.N. Doc. S/23501 (Jan. 30, 1992), at 13–29. The Agreement also included provisions to overhaul the country's judicial system, among other areas. *Id.* at 29–30.

399. Aguilar, *supra* note 383, at 522, 546.

400. *Id.* at 547.

401. *Id.* (quoting Francisco Rojas Aravena, *El riesgo de la supervisión entre las políticas de defensa y seguridad* [The risk of oversight between defense and security policies], 213 REVISTA NUEVA SOCIEDAD 36, 46 (2008)).

402. *Id.*

As a result, survivors' trust in the state to protect them remains low.⁴⁰³ Some women continue to fear that the police will abuse them while taking a report or conducting an investigation.⁴⁰⁴ Montti noted that cases of police and soldiers abusing family members of people detained during the country's state of emergency fortified these fears.⁴⁰⁵ Additionally, some women fear collusion between their abusers and the police, which is "not uncommon" in El Salvador, according to Hume.⁴⁰⁶

3. Structural Violence: Culture of Silence

A pervasive culture of silence exacerbates this symbolic and political violence, further preventing many women from reporting. This "enforcing of silence" reflects larger patterns of patriarchal control in Salvadoran society "where silence works not only to contain violence but also to reproduce and to negate it. Women's fear of reporting violence is nourished by wider patterns of aggression."⁴⁰⁷ This culture pressures survivors and witnesses to not report gender-based violence to maintain and fortify patriarchal structures. Women who resist this culture by speaking out and reporting often face further violence and stigmatization.⁴⁰⁸ Also, because of this culture, the state often minimizes—and even denies—the existence of gender-based violence in Salvadoran society.⁴⁰⁹ Facing retribution and a hostile state, many survivors themselves turn to silence as a means of self-preservation.

As in many places around the world, Salvadoran society pressures survivors of gender-based violence to maintain silence to "keep the peace."⁴¹⁰ Despite improvements in legal protections for survivors of gender-based violence, in practice, Hume argues that Salvadoran "women are still expected to maintain a strict silence with regard to men's use of violence."⁴¹¹ Women who break this

403. INT'L CRISIS GRP., ¿MILAGRO O ESPEJISMO? PANDILLAS Y EL DESPLOME DE LA VIOLENCIA EN EL SALVADOR [MIRACLE OR MIRAGE? GANGS AND THE DECLINE IN VIOLENCE IN EL SALVADOR] 7, 9 (2020) (noting that the Salvadoran police and army were among the "least trusted" security organizations in Latin America in 2018).

404. Beatón, *supra* note 370.

405. *Id.*

406. Hume, *supra* note 347, at 67.

407. *Id.*

408. *Id.* at 66.

409. *Id.* at 61, 63, 68.

410. *Id.* at 66 (internal citation omitted).

411. *Id.* at 67.

silence, by reporting or otherwise challenging the conditions of violence, may suffer serious consequences.

According to the ORMUSA, societal prejudices in El Salvador often label reporters as “bad, disloyal, [or] selfish for not thinking of [their] family.”⁴¹² As a result, reporters may suffer victim-blaming, minimization, and ostracization from their families.⁴¹³ The reporting system may revictimize survivors for the same reasons. ORMUSA notes that for sexual assault survivors in El Salvador, filing the complaint “is the most difficult stage for victims within the penal process.”⁴¹⁴ During the reporting process, women often face official attitudes of “mistreatment, apathy, questioning, and indifference”—due to both prejudice and unawareness of the dynamics of gender-based violence.⁴¹⁵ In a survey that ORMUSA conducted of sexual assault survivors in the country, only 13% reported feeling supported through the reporting process.⁴¹⁶ On the other hand, 40% reported feelings of embarrassment, 29% guilt, and 17% judgment.⁴¹⁷ Some officials may minimize and criticize the reports of women, questioning their credibility, blaming them (including attacking their “virginity”), and interrogating them with questions like: “What took you so long to report?,” “Why did you let him attack you?,” and “What did you do to make him hit you?”⁴¹⁸ Other officials may dismiss domestic violence as a “family affair.”⁴¹⁹ In the words of one anonymous survivor, “[t]here is a cultural issue, an issue that public policies or the entire system continues to stigmatize, blaming the victim for the act and not the perpetrator.”⁴²⁰ These structural prejudices force many women into greater silence and subject those who break the code of silence to more psychological harm, rather than protection.

Persecutors may also turn to violent retribution against reporters as a means to enforce silence.⁴²¹ Many Salvadoran victims of domestic violence hold a “very realistic fear of being killed for

412. RED-FEM Report, *supra* note 342, at 48.

413. *Id.*; Hume, *supra* note 347, at 67.

414. ORGANIZACIÓN DE MUJERES SALVADOREÑAS POR LA PAZ, *supra* note 101, at 41.

415. *Id.* at 51.

416. *Id.* at 36.

417. *Id.*

418. *Id.* at 51.

419. Hume, *supra* note 347, at 66.

420. ORGANIZACIÓN DE MUJERES SALVADOREÑAS POR LA PAZ, *supra* note 101, at 42.

421. Hume, *supra* note 347, at 67.

reporting” by their aggressors.⁴²² According to a report by the Salvadoran NGO Red Feminista Frente a la Violencia Contra Las Mujeres (RED-FEM) (Feminist Network Against Violence Against Women), many abusers react to the filing of a report with escalating violence, thereby increasing the risk of femicide.⁴²³ This risk may be even greater when the aggressor belongs to—or is connected with—a gang.⁴²⁴ In these cases, an abuser may also threaten to use the gang to retaliate against a reporter.⁴²⁵ Hume interviewed one man from the El Boulevard community of Greater San Salvador, for example, who revealed that “men in his community not only intimidated women into silence with further violence but also threatened them with engaging the local gang.”⁴²⁶ Especially in areas where gangs operate as the “de facto” authorities, such a threat may mean certain death to a reporter.⁴²⁷ RED-FEM notes that in addition to fears of escalated harm against themselves, survivors in gang-controlled areas may not report, fearing that if the police do respond, increased police presence in the area would provoke the gang’s ire and aggravate community violence.⁴²⁸ These fears only compound those that survivors may have of the state itself.⁴²⁹

The state and broader society also reinforce this culture of silence by minimizing or outright ignoring the experiences of survivors of gender-based violence. Hume notes that the “particularly gendered crimes [of rape and torture] are rarely considered noteworthy or, indeed, recognized as violent.”⁴³⁰ The Salvadoran Truth Commission’s report, *From Madness to Hope*, for example, repeatedly excluded cases of sexual violence in its analysis of

422. Musalo, *supra* note 343, at 31. Witnesses may also fear reporting or testifying for the same reasons. *See, e.g., id.* at 46 n.281 (citing an interview with Nori Flores of the El Salvador Attorney General’s office that noted that some doctors and teachers in El Salvador may not report cases of incest due to fears of retribution).

423. RED-FEM Report, *supra* note 342, at 47 (internal citations omitted).

424. *Id.* at 48.

425. Hume, *supra* note 347, at 67.

426. *Id.*

427. *See, e.g.,* Musalo, *supra* note 343, at 30; RED-FEM Report, *supra* note 342, at 48. Highlighting the gangs’ authority and danger in certain areas, a representative from ORMUSA noted that police may not even respond to calls from gang-controlled areas “because police are not allowed to go into the communities.” Musalo, *supra* note 343, at 36 n.224.

428. RED-FEM Report, *supra* note 342, at 48.

429. *See supra* Section III.B.2.

430. Hume, *supra* note 347, at 63.

atrocities committed during the country's civil war.⁴³¹ More recently, in January 2023, the Salvadoran newspaper *Diario La Huella* reported El Salvador's Security Minister and Director of the National Civil Police (PNC) as celebrating "six consecutive days without murders in the country" and declaring that the country was experiencing "a true peace and liberty" in its War Against Gangs.⁴³² ORMUSA, however, reported feminicides during this period that the Bukele administration ignored.⁴³³ As Montti observed, ignoring feminicides is a deliberate act to undermine the rights of women and girls: "Bukele implemented the policy of silence—that is to say, that by denying or not talking about us, they deny our existence and everything that happens against the bodies of girls and women."⁴³⁴

In the face of such barriers, many women turn to silence, including not reporting, as a "survival strategy."⁴³⁵ Herrera argues that many survivors remain silent to avoid the potential dangers of reporting, given their strong mistrust of the government as well as fears of revictimization.⁴³⁶ A Salvadoran woman named Meche characterized this strategy:

I say to my kids that living is not just about living; you have to learn how to live. Learning how to live means only talking about good things, nothing dangerous. It is better not to talk about dangerous things because, in the first instance, you don't know who you are talking to, and another thing is that you can't do anything. If you just speak for the sake of it, you might offend the other person, and when they look for revenge, how do you defend yourself? That's how you have to know how to learn to live.⁴³⁷

Hume argues that these sentiments reflect a "degree of mistrust [that] reveals deep divisions that may be rooted in history," a feeling of impotence "against the enormity of violence" in the face of "a larger structure of impunity that still characterizes the Salvadoran state,"

431. *Id.* (citing David Tombs, *Unspeakable violence: the truth commissions in El Salvador and Guatemala*, in RECONCILIATION, NATIONS, AND CHURCHES IN LATIN AMERICA 57–84 (Iain S. Maclean ed., 2006)).

432. Rodríguez Oteiza, *supra* note 365.

433. *Id.*

434. Beatón, *supra* note 370.

435. Hume, *supra* note 347, at 67.

436. Herrera, *supra* note 345.

437. Hume, *supra* note 347, at 71–72 (quoting "Meche," a resident of El Boulevard, Greater San Salvador).

and concerns of “revenge and the perceived inevitability of violence.”⁴³⁸

Many Salvadoran women do not trust the Salvadoran state to protect them against gender-based violence—and with good reason. A widespread acceptance and normalization of gender-based violence may make reporting futile. Meanwhile, reporting is also often perilous given the government’s legacies of political violence against its citizens and the country’s culture of silencing survivors.

IV. STRATEGIES FOR CHALLENGING THE APPLICATION OF PER SE REPORTING REQUIREMENTS IN GENDER-BASED CLAIMS

As these country studies demonstrate, there are many valid reasons why survivors of gender-based violence may not report in Guatemala, Honduras, and El Salvador. But given the proliferation of per se reporting requirements, if those survivors attempt to seek protection in the United States, some U.S. adjudicators may bar relief solely due to the applicant’s non-reporting. There are several actions that advocates, administrative agencies, and federal courts can take to combat the harms that reporting requirements exert on asylum applicants seeking protection from gender-based violence—and, indeed, all applicants fleeing non-state persecutors.⁴³⁹

A. Adjudication

At the adjudication stage, advocates representing survivors of gender-based crimes in both affirmative and defensive claims should familiarize themselves with reporting requirements, anticipate the possibility that the adjudicator will consider the applicant’s non-reporting, and build a strong record addressing the applicant’s reasons for non-reporting. Adjudicators, moreover, should be aware of BIA precedent rejecting reporting requirements, as well as their duty to consider the record meaningfully,⁴⁴⁰ including all evidence of an applicant’s reasons for non-reporting.

In preparing a claim for a client fleeing non-state, gender-based violence, an advocate should carefully review whether a client reported the harm, and if not, all reasons for not doing so. Advocates should also familiarize themselves with relevant BIA precedent, such

438. *Id.*

439. For a detailed discussion of strategies for challenging and abolishing per se reporting requirements generally, see McGowan, *supra* note 23, at 682–88.

440. *Id.* at 672–81.

as *In re S-A-* and *Matter of C-G-T-*, analyzed above,⁴⁴¹ as well as applicable circuit precedent. Especially in circuits that have approved of or not taken a firm stance on reporting requirements, advocates should prepare to address them and forcefully oppose their application.⁴⁴² Even in circuits that have rejected reporting requirements, advocates should be prepared to fully explain reasons for not reporting—given that immigration courts around the country and the BIA have continued to apply reporting requirements despite precedent instructing otherwise.⁴⁴³

Where clients have not reported due to futility, danger, impossibility, or other reasons, advocates should investigate both the applicant's personal reasons for not reporting as well as the structural forces behind those reasons. As this Article argues, these reasons often do not occur in a vacuum, but rather frequently stem from the same forces that fuel gender-based violence. Linking these reasons to larger misogynistic structural forces, where applicable, may forcefully underscore the state's inability and/or unwillingness to protect victims from gender-based violence.

Advocates may make these connections in the record in several ways. The applicant's own written declaration and oral testimony should address reasons for non-reporting. Written and oral testimony from witnesses, such as family members, neighbors, and friends, may also support an applicant's reasoning. Such testimony may include examples of other failed attempts to report. To illustrate, in *In re S-A-*, where the BIA rejected a per se reporting requirement, Ms. S-A-'s aunt supported Ms. S-A-'s argument that reporting her father's abuse would have been futile.⁴⁴⁴

Advocates should also highlight the structural forces, such as those analyzed in Part III, behind a state's inability or unwillingness to protect survivors. Evidence about the conditions in the country from which the applicant is seeking protection can demonstrate these structural forces. This evidence may include reports from governmental and non-governmental organizations, academic

441. See *supra* Section I.B.

442. For legal and policy arguments to challenge per se reporting requirements generally, see McGowan, *supra* note 23, at 672–81.

443. *Id.* at 682.

444. See *supra* Section I.B.; *In re S-A-*, 22 I. & N. Dec. 1328, 1328–31 (BIA 2000).

articles, and news articles.⁴⁴⁵ In the context of non-reporting, these sources may demonstrate specific examples of the danger, futility, and unreasonableness of reporting, as well as the structural forces—such as systemic misogyny—at play.⁴⁴⁶ Experts may also testify as to the futility, danger, or otherwise unreasonableness of reporting in a particular country.⁴⁴⁷

Second, it is critical that agency adjudicators—including immigration courts and asylum offices—follow both the spirit and letter of asylum law. They must follow the BIA’s clear directive in *Matter of C-G-T* that rejects reporting requirements.⁴⁴⁸ They must consider an applicant’s evidence—including their own testimony, witness statements, country conditions evidence, etc.—to determine the “reasonableness” of their nonreporting.⁴⁴⁹ Because of their duty to consider the record fully and meaningfully,⁴⁵⁰ adjudicators should consider all evidence of conditions that may have made reporting futile, dangerous, impossible, or even deadly, including structural misogyny and other structural intersectional factors like transphobia, homophobia, racism, and ablism. Where applicants are pro se, adjudicators should work to develop the record on this issue.⁴⁵¹

445. While the U.S. government prioritizes U.S. Department of State reports, these reports present a limited view of conditions in a particular country, especially when compared with organizations, scholars, and activists on the ground in those countries. Therefore, advocates should challenge the hegemony of U.S. reports in asylum proceedings and instead emphasize the experiences and insights of experts in the applicant’s country of origin. Useful starting places include searching local news articles, searching academic articles in databases like JSTOR, and researching and contacting advocacy organizations on the ground, many of which have published reports and data.

446. For a template both for the types of sources, analyses, and arguments that can demonstrate the futility, danger, or otherwise unreasonableness of reporting, see *supra* Part III.

447. Useful methods for locating experts include searching academic articles on the particular issue in the applicant’s country of origin and consulting the Center for Gender & Refugee Studies’ Expert Witness Database. *Welcome to the CGRS Expert Witness Database*, CTR. FOR GENDER & REFUGEE STUD., <https://cgrs.uclawsf.edu/find-an-expert> [<https://perma.cc/X4W9-VBLX>].

448. *Matter of C-G-T*, 28 I. & N. Dec. 740, 743–45 (BIA 2023).

449. *Id.* at 744–45.

450. McGowan, *supra* note 23, at 672–81.

451. See Jayanth K. Krishnan, *Overstepping: U.S. Immigration Judges and the Power to Develop the Record*, 2022 WIS. L. REV. 57, 59–60 (2022) (quoting *Quintero v. Garland*, 998 F.3d 612, 626 (4th Cir. 2021)) (discussing an immigration judge’s duty to develop the record, especially in pro se immigration proceedings).

B. Appeal

Developing a strong record not only strengthens an applicant's case at the adjudication stage, but it also sets up the case for appeal. The application of a reporting requirement below may constitute legal and procedural error that advocates and their clients should consider carefully on appeal. Generally, the courts of appeals that have rejected per se reporting requirements have done so for two reasons: first, because these requirements improperly ignore BIA, and sometimes circuit precedent, and second, because they violate the adjudicator's duty to consider the record meaningfully.⁴⁵² Advocates should consider these grounds, in addition to other relevant arguments, when challenging the application of a per se reporting requirement on appeal.⁴⁵³

Where an immigration judge's opinion applies a reporting requirement and fails to mention *In re S-A*, *Matter of C-G-T*, and applicable caselaw from the courts of appeals, an advocate may argue that the immigration judge committed legal error in failing to follow precedent. The First Circuit, for example, ordered remand when the BIA "ignored the proposition in our case law that 'the failure by a petitioner to make [a police] report is not necessarily fatal to a petitioner's case [of persecution] if the petitioner can demonstrate that reporting private abuse to government authorities would have been futile.'"⁴⁵⁴ Similarly, the Third, Fourth, and Ninth Circuits have rejected per se reporting requirements on this ground.⁴⁵⁵

Courts have also rejected reporting requirements on the ground that they preclude the adjudicator's duty to meaningfully review the record, including evidence of the applicant's reasons for not reporting. For example, in *Portillo Flores v. Garland*, the Fourth Circuit, sitting en banc, rejected the application of a reporting requirement below—in part because the immigration judge improperly ignored expert testimony that reporting the gang MS-13 would have been dangerous.⁴⁵⁶ The expert testified that the

452. McGowan, *supra* note 23, at 651.

453. For a broader discussion of the legal and policy dangers of per se reporting requirements, see *id.* at 672–81.

454. *Rosales Justo v. Sessions*, 895 F.3d 154, 165 (1st Cir. 2018) (alterations in original) (citing *Morales-Morales v. Sessions*, 857 F.3d 138, 135–36 (1st Cir. 2017)).

455. McGowan, *supra* note 23, at 651–62.

456. *Portillo Flores v. Garland*, 3 F.4th 615, 622, 635–37 (4th Cir. 2021) (en banc).

Salvadoran police openly associated with the gang and that gangs like MS-13 “seek to obtain the name of the person who reported [them] via their sources within the police, government and community and take revenge to send the message that others should not report similar crimes.”⁴⁵⁷ Similarly, the Sixth Circuit rejected an immigration judge’s application of a reporting requirement because, in so doing, the immigration judge ignored critical country conditions evidence from the UNHCR and the Refugee Board of Canada documenting the dangers of reporting domestic violence in El Salvador.⁴⁵⁸ The First, Third, and Ninth Circuits have also rejected reporting requirements on these grounds.⁴⁵⁹

The BIA and remaining federal circuit courts of appeals should likewise reject the application of *per se* reporting requirements. Circuits that have cited reporting requirements with approval or not taken a firm position on reporting requirements should clearly reject them. Reporting requirements run afoul of well-established asylum law: they have no basis in the law, they violate U.S. treaty obligations, and they enable adjudicators to violate their duty to consider the record meaningfully.⁴⁶⁰

CONCLUSION

Survivors of gender-based violence face significant barriers—and even dangers—in reporting. Often, the very institutions responsible for providing safety and protection for women perpetuate their own gendered violence against survivors. Rather than provide meaningful protection, U.S. agencies and courts that impose and uphold reporting requirements contribute to this violence by minimizing survivors’ experiences and forcing them into greater danger. Justice systems have, for far too long, ignored the stories and experiences of advocates and survivors like Ms. Sánchez-Amador. It is beyond time to listen.

457. *Id.* at 624.

458. *Zometa-Orellana v. Garland*, 19 F.4th 970, 980 (6th Cir. 2021); *see supra* Section I.B.

459. McGowan, *supra* note 23, at 651–62.

460. *Id.* at 672–81.