

2013

# Guatemalan Criminal Justice System Performance Study, 2008-2012

Indicators of Practice, Process and Resolution  
within cases of Child Sexual Assault

International Justice Mission  
08/14/2013



**Guatemalan Criminal Justice System  
Performance Study, 2008-2012**  
Indicators of Practice, Process and Resolution within Cases of  
Child Sexual Assault

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*Guatemalan Justice System Performance Study, 2008-2012: Indicators of Practice, Process, and Resolution within Cases of Child Sexual Assault*  
Guatemala, July 2013

Contents: 1.Introduction and background; 2. Methodology; 3. Key findings: SICOMP data analysis, 2008-2012, Study of cases of Child Sexual Assault in three provinces; 4. Conclusions; 5. Recommendations; 6. Annexes.

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*This study and its publication was carried out with funding from International Justice Mission, Washington D.C.*

**To be cited as:** *Guatemalan Criminal Justice System Performance Study, 2008-2012: Indicators of Practice, Process and Resolution within Cases of Child Sexual Assault (2013)*

## Acknowledgements

Thousands of children are victims of sexual violence in Guatemala today. IJM Guatemala has been able to expose this reality through the help of people who have walked many extra miles to support the completion of this study.

IJM Guatemala thanks the Judicial Branch (OJ) and the Public Ministry (MP) for opening the doors of government institutions to us. We are also grateful to be able to provide a voice for the voiceless, as this information reveals the truth of children's experience within the criminal justice system (CJS). We thank the officials, secretaries and judges from the courts of Guatemala, Quetzaltenango and Alta Verapaz for supporting IJM staff and consultants during the process of locating the case files analyzed in this study.

IJM Guatemala thanks the Information System Control from the Public Ministry (SICOMP) personnel and the Center for National Analysis and Judicial Documentation (CENADOJ) for their contribution to this study.

IJM Guatemala also thanks the participants of the Council of Experts, for reflecting on and validating the information, and for being willing to share their knowledge and ideals for a nation that administers justice.

We dedicate this report to the many young heroes who have had the courage to face giants. With the help of altruistic professionals, these brave children have defeated the culture of silence and are now seeking hope and justice. This report is also dedicated — with both sadness and hope— to all those children who have suffered sexual violence. Their stories have created both the awareness needed to understand this problem and the motivation needed to fight for justice and peace in Guatemala.

“And the effect of righteousness will be peace,  
and the result of righteousness, quietness and trust forever.” (Isaiah 32:17).

## PRESENTATION

International Justice Mission (IJM) Guatemala presents the main findings obtained in the Guatemalan Criminal Justice System Performance Study, 2008-2012 to the criminal justice system (CJS) institutions, to non-governmental organizations that focus on children, to investigators, universities and interested individuals in the issue of child sexual assault (CSA) in Guatemala.

Data and legal files present a horrific picture of the reality of violence perpetrated against children in Guatemala. The files examined in this study correspond to real cases, lived by children and adolescent victims, who have suffered sexual assault and been traumatized. The children were then left to face a judicial system that was not designed to accommodate them. This investigation attempts to support the existing efforts of the CJS to treat child victims with dignity.

The report is organized as follows: Section 1 provides an introduction to the social context of the study: the normative and institutional, focusing on violence suffered by children and adolescents caused by sexual crimes and the intervention of the penal system; Section 2 focuses on the analysis of the situational state of the penal process while giving attention to these cases. The study determines tendencies or approximations based on available data and indicators from the processes and resolution, as well as the interpretation and the baseline generation.

The report's analysis of legal regulations and their application reveals the levels of bureaucracy present within the CJS, as well as the lack of knowledge of the issues involved in cases where minors are victims. Example of this are: the low number of complaints that result in a verdict; the considerable delay in the investigation; and the number of professionals who approach the child during the criminal process.

To support the main findings, the methodology also includes additional analysis by experts and officials from the public prosecutor's office, the Public Ministry (MP) and the Judicial Branch (OJ). This exercise ensured transparency and validated the process of analysis and interpretation of the data.

These conclusions and recommendations are focused on promoting the development of public policies to prevent children from becoming victims of sexual crimes. Moreover, they promote the implementation of policies in the criminal justice institutions to encourage proper treatment of minor victims of sexual crimes. Finally, these conclusions aim to apply international tools, which have been ratified by the State of Guatemala and which guarantee the rights of children.

In spite of the limitations and obstacles that are a national reality, this study makes it possible to appreciate that there are NGOs and justice system officials that are making significant efforts to improve the service provided to the population. We hope that the results of this study allow everyone, wherever they are, to join in, to prevent, to protect and to assist children who are victims of these crimes.

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## i. Acronyms

ART	Article
CSA	Child Sexual Assault
CC	Court of the Constitution
CENADOJ	National Center for Analysis and Judicial Documentation
CONAPREVI	National Coordinator for the Domestic Violence and Violence Against Women
CJS	Criminal Justice System
DEIC	Specialized Criminal Investigation Department
DEMI	Defender for Indigenous Women
ENCOVI	Life Conditions Survey
ENSMI	National Maternal and Child Health Survey
GT	Guatemala
ICEFI	Central American Institute for Public Prosecutor Study
IJM	International Justice Mission
INE	National Statistics Institute
INACIF	National Institute for Forensic Science
JPI	Court which hears the preliminary hearings of the case
LPINA	Law of Integral Protection for Children and Adolescents
LVIF	Law to prevent sanctioning and promote domestic violence
MAI	Model of Holistic Attention
MP	Public Ministry (public prosecutor's office)
OEA	Organization of American States
OJ	Judicial Branch of the government
OAV	Office for Attention to the Victim
OSAR	Department for Sexual and Reproductive Health
PGN	National organization that represents the interests of Guatemala as a nation
PNC	National Civil Police
SICOMP	Case file database of the MP
ST	Structural Transformation
SVET	Department against sexual assault, exploitation, and human trafficking
UDI	Early Decision Unit in the MP
UL	Litigation Unit in the MP
UDT	Investigation Unit in the MP
UNICAP	Training Unit in the MP
UNICEF	United Nations Children's Fund

## ii. Glossary

<b>Acceptance of initial charge</b>	The resolution sent by the judge, immediately following the accused's testimony and the parties' arguments, that starts the penal process. This process ensures that the necessary assumptions according to Article 13 of the Constitution of the Republic of Guatemala are met.
<b>Acquittal</b>	A resolution that terminates the legal process without commenting on the merits of the case. In the criminal process, it is the legal resolution that produces the closure or suspension of the process, due to a lack sufficient evidence to prosecute the crime. As a result, there is no reason to enter the trial phase.
<b>Alleged Perpetrator</b>	The person accused of committing a crime.
<b>Alternative Resolutions for Criminal Proceedings</b>	<p>Resolutions that conclude less serious cases in order to ensure that only the cases that have merit go before a judge. This is a way of prioritizing cases in the courts based on the seriousness of the crime.</p> <p>These alternative types of court resolutions include:</p> <ul style="list-style-type: none"><li>- First Offense Judgment</li><li>- Conditional Suspension of Criminal Prosecution</li><li>- Summary Judgment</li><li>- Stay of Proceedings</li><li>- Archiving of the case</li></ul>
<b>Appeal</b>	The act of contradicting or refuting a court order, whatever its type, through a process that seeks revocation, nullification or modification of the crime.
<b>Arrest</b>	The action through which a free person is held for the possible committing a crime. The PNC receives the arrest warrant from the judge and executes the arrest.
<b>Charges</b>	The MP's firm conviction that the suspect is guilty of committing a criminal action, with the objective of applying an appropriate sanction as prescribed by the law. Charges are included in the document that the prosecutor presents at the end of the preparatory stage, during the criminal public proceedings. At the end of the preparatory stage, the prosecutor presents his decision before a judge – an 'alternative resolution' as above, an acquittal, or an indictment.
<b>Child</b>	A human being between the ages of 0 and 18.
<b>Complaint</b>	A procedural action through which any person, whether verbally or in written, informs the proper authority, MP, PNC or appropriate court, of actions that could constitute a crime or could be liable to prosecution.
<b>Court Order</b>	A resolution that starts the criminal process against the alleged perpetrator.

<b>Criminal Action</b>	Action that penalizes the aggressor through the imposition of a penalty established by the criminal code, as well as by any legal disposition, for which it is necessary to prove the guilt of the alleged perpetrator.
<b>Criminal Justice System</b>	The system that administers justice, conformed by several elements (normative instruments, agents, procedures) whose interaction will be used to apply a correct legal decision, guaranteeing the rights of due process, both for the alleged perpetrator and for the victims.
<b>Defendant</b>	An individual accused of committing of a crime, based on the evidence presented by the prosecutor.
<b>Sentence Execution</b>	The procedural phase after the final judgment or sentencing, which controls and supervises the penalty imposed on the person who has been declared guilty.
<b>Expert Testimony</b>	The evaluation and study by an expert on a relevant topic related to the trial process. The expert submits a report, subject to what the law establishes, and the judge will use it to best resolve an aspect of the case that requires special scientific or technical knowledge.
<b>Final Verdict</b>	The verdict that has highest authority among the involved parties. Ordinary or special appeal following the Final Verdict is not permitted because the deadline established by the law is due and the verdict must be carried out.
<b>Indictment</b>	The prosecutor's firm conviction that the alleged perpetrator is guilty of committing a criminal action, with the objective of applying appropriate the penalty as prescribed by the law. This charge is included in the document that the prosecutor presents at the end of the preparatory stage, during the criminal public proceedings.
<b>Intermediate Phase</b>	The intermediate hearing phase takes place between the preparatory hearing phase and the formal trial. In this phase the judge determines if the requisite elements of the crime exist. It also definitively determines the objective of the trial: to carry out the criminal action or to determine if there is a basis for dismissal or resolution.
<b>Introductory Action</b>	Any action by which the competent authority is informed of the possible occurrence of a crime, pointing out a person as a suspect. The types of introductory actions include: a) Complaint; b) Lawsuit; c) Police Prevention and; d) Ex officio knowledge.
<b>Investigation Phase</b>	The initial stage of the criminal process in which the MP begins the investigation of the case. The MP starts to collect evidentiary exhibits to determine if an action was committed, whether it is a crime and, if relevant, who took part in the crime.
<b>Joint Plaintiff</b>	The victim who joins the process as the accusing party, initiating criminal prosecution or joining the one started by the MP.

<b>Penal Action</b>	The authority that puts in motion the judicial process, asking the state judge to determine the alleged perpetrator's level of responsibility in the crime.
<b>Perpetrator</b>	The individual who attacks with violence and causes physical damage. For the purposes of this study, a sexual perpetrator is an individual who attacks or assaults children in order to dominate them sexually, whether as a sexual assault or rape.
<b>Pre-Trial Testimony</b>	Evidence that, due to its nature and characteristics, should be considered definitive and absolute (recognition, reconstruction, expertise or inspection, declaration). This type of evidence must be collected before the trial because it will not be permitted to be done during the hearing. Art. 317 CPP.
<b>Preparatory Stage</b>	The initial stage of the criminal process in which the MP must collect the pertinent evidentiary exhibits to establish the charge of a crime and, when applicable, who took part in it.
<b>Rape</b>	A crime against the sexual integrity of an individual. According to the Law Against Sexual Exploitation and Human Trade, rape is defined as: Using physical or psychological violence against another person to have carnal access via the vagina, anus or the mouth, or to introduce to any part of the body or objects by any of those orifices, or to force another person to introduce them into himself. It is a crime penalized with eight to twelve years in prison. When the individual is under fourteen years of age, or when it is a person with a volitional or cognitive disability, any sexual act is considered rape, even when there is no physical or psychological violence. The penalty will be imposed separately from the penalties corresponding for commission of other crimes. (Art. 28 that reforms Art. 173 of the Criminal code)
<b>Restitutionary Damages</b>	An award given to a victim that attempts to compensate him or her for the crime committed and also punishes the perpetrator. The restoration is carried out through restitution, compensation and rehabilitation, as humanely as possible, so the victim might live a life free of trauma or negative effects. Damages can include material, immaterial, and symbolic compensation, going beyond the simple delivery of money for the crime suffered. <sup>1</sup>
<b>Sentence Execution</b>	The procedural phase after the final judgment or sentencing, which controls and supervises the penalty imposed on the person who has been declared guilty.
<b>Sexual Assault</b>	Any type of sexual activity that forces a person to take part in unwanted sexual contact. The Law Against Sexual Assault, Exploitation and

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<sup>1</sup> Juárez Elías, Erick. Fundamentos de las reformas al CPP, contenidas en el Decreto Legislativo 07-2011

Human Trafficking defines sexual aggression in Article 29, which adds Article 173 as: “When a perpetrator forces another, using physical or psychological violence, to perform sexual or erotic actions with to the perpetrator or on themselves, as long as it does not constitute criminal rape, the perpetrator will be sanctioned with prison from five to eight years. This is always a crime when the victim is a person under fourteen years of age, or when it is a person with a volitional or cognitive disability, even when there has not been physical or psychological violence. The penalty will be imposed separately from the penalties that can correspond for the commission of other crimes.”

**Sexual crimes**

Sexual actions committed against a person of any age or sex, without consent, and that cause physical and emotional damage.

**Trial**

The first stage in the penal process which, through oral arguments, produces the evidence and findings of the investigation. This stage considers the crimes in question and, at the end, the judges hand down a ruling; the legal process through which an action is presented to a judge or court for the issue to be legally resolved.

**Verdict**

The ruling issued by a judge or magistrate that finishes the trial process or to certain charges of the action; it can be a conviction or an acquittal.

**Victim**

The individual who suffered physical and/or emotional harm as consequence of actions committed against him or her, which is classified as a crime and is sanctioned by the criminal legislation.

In terms of the Law Against Sexual Assault, Exploitation and Human Trafficking, “a victim is a person that has suffered harm, physical or mental pain, emotional suffering, financial loss, or substantial loss of his or her human rights as a result of the actions or omissions that violate criminal legislation. Also, family members or guardians of the victim, as individuals who have direct relation with the victim, suffer harm upon intervening to assist the victim in danger or in preventing victimization.”

**Witness**

The individual who gives testimony under oath in court, concerning what they have seen, heard, or otherwise observed.

### iii. Executive Summary

This study analyzes the performance of Guatemala's criminal justice system (CJS) in cases of sexual assault. The main goal of this study is to contribute to the efforts of the CJS in improving the response of the system to cases of child sexual assault (CSA).

This study uses database reports from the Public Ministry's (MP) Information Control System (SICOMP) from 2008 to 2012. These reports included information about complaints filed, accusations, sentences, pre-trial testimonies, victims, and the status of cases at the national level. Moreover, reports from the Judicial System's National Center of Analysis and Documentation (CENADOJ) of terminated processes during the years 2008-2010 were also used. The CENADOJ reports consisted of data pertaining to child sexual abuse crimes in the departments of Quezaltenango, Guatemala, and Alta Verapaz. These departments have the highest rates of child sexual abuse complaints in all of Guatemala. From this data, 182 records<sup>2</sup> were selected and this information provided first-hand accounts of judicial practices.

In addition to the quantitative data provided by SICOMP, such as the data collected from the judicial records with a final sentence between 2008 and 2010, 75 officials from the CJS who intervene in CSA cases and 22 officials from social agencies were interviewed. These interviews captured their perspective on the development of the Guatemalan CJS. 60 prosecutors and assistant prosecutors from the MP were also interviewed to capture their experience with procedural outcomes in the cases of sexual crimes committed against children.

The methodology also was validated before a panel of experts and criminal law scholars. The majority of their contributions are included in this study's analysis. The data was discussed with MP officials from SICOMP, with whom the numbers and interpretation of data were clarified. Lastly, the report was presented to high-level officials from the MP and the Judicial Branch (OJ). All these activities allowed for a wide validation of, and transparency in this study.

One of the main findings of the study was that Guatemala has adapted the internal regulations to international standards (2009), but the main problem lies in the effective implementation of the regulatory framework. However, the system has made significant progress as new best practices for the protection and holistic attention of children begin to be applied in cases of CSA.

Despite changes in the law and the introduction of Decree 9-2009, the Law Against Sexual Violence, Exploitation, and Trafficking of Persons,<sup>3</sup> Guatemala continues to have high numbers of complaints of sexual assault. In the last five years, 36,166 cases were reported, making it the seventh most-reported crime within the Public Ministry in 2014<sup>4</sup>. Of these complaints, 44% of victims were minors and the majority, female. Based on the analysis of the sample, nearly 90% of the perpetrators were individuals known to the child.

Nationally, the Public Prosecutor's Office reported 9.4% complaints of assault between 2008 and 2012. Of these complaints, only 5.86% ended in a verdict. Of these verdicts (182 cases), 80% resulted in a conviction and 20% ended in an acquittal. The study also found that child victims were required to recount their story to approximately eight different professionals, each from a different criminal justice system institution.

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<sup>2</sup> There were a total of 232 of these types of cases in the three departments from 2008 to 2010.

<sup>3</sup> See section 6.2.3.2: Law Against Sexual Violence, Exploitation, and Trafficking of Persons.

<sup>4</sup> PUBLIC MINISTRY, "Memoria de Labores" 2012, page 63. The "Memoria de Labores" from 2013 has these cases ranked fifth place with 11,350 cases.

The sample showed that the mechanisms to avoid the re-traumatization of minors in the criminal process are under-utilized. Only 1.52% of CSA cases between 2008 and 2012 applied pre-trial testimony procedures. In very few instances were adequate locations used to hear the testimonies of child victims, or screens used at trial to protect the victim from the view of the perpetrator.

During the years of this study, training for CJS officials was insufficient and sporadic. Official training procedures lacked both consistency and the capacity to monitor the implementation of training content.

The study makes it possible to examine the situation of child victims in cases of sexual assault and to establish a baseline of indicators in the attention, processing and resolution of these cases.

The main recommendations of this study are:

- Public policy should be designed to strengthen deterrence, in order to prevent minors from becoming victims of sexual crimes.
- Policies that adopt mechanisms to provide proper treatment for minors who have been victims of sexual assault crimes should be implemented within the different institutions of the CJS, such as the Public Ministry's Model for Holistic Attention.
- CJS institutions should develop reliable systems that permit the interconnection and exchange of information for strategic decision making, in order to avoid sub-records or inconsistent records.
- There is an urgent need for the implementation of coordination mechanisms between the Public Ministry –as the directing unit of the investigation- and the National Civil Police, to conduct key investigations in the least amount of time possible.
- The CJS should not support the application of alternative conclusions to the criminal process in cases of rape or other crimes of sexual assault against minors.
- Inter-institutional coordination should be promoted within the CJS to avoid an excess of testimonies from the child.
- Judges, prosecutors and other officials from the CJS should be aware of the traumatic effects of the criminal process and what methods they can use to reduce them. This includes the use of the pre-trial testimony in the case of minor victims of sexual crimes. Proper locations should be sought out to create better conditions for children to give their testimonies, and the recording of these testimonies should consistently apply the attention/care protocols<sup>5</sup>.
- The training units from the different institutions of the legal sector should develop and implement a training process on the issues of protection, investigation, sanction and restitution of damages for minors who have been victims of sexual assault crimes. This process should include methodology to evaluate the incorporation of the acquired knowledge when delivering services.

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<sup>5</sup>Protocol to hear testimonies from child and adolescent victims or witnesses. Approved by the Supreme Court of Justice, by Agreement 16-2013.

# Guatemalan Criminal Justice System Performance Study, 2008-2012

## *Indicators of practice, process and resolution within cases of child sexual assault*

### **I. Introduction and Background**

The Guatemalan criminal process in the 1900s underwent a transcendental change. From being an inquisitive system it transformed into an accusative one. This change included the ratification of several regulations such as the Code of Criminal Procedure, the MP's Organic Law, the Law of the Judicial Career, the Law of the Public Criminal Defense Institute, as well as the creation of basic institutions such as the MP, the Public Criminal Defense Institute, the National Civil Police and, recently, the National Institute of Forensic Sciences (INACIF).

While the CJS was being reformed in Guatemala, the Convention on the Rights of the Child was also ratified. Such a change altered the perspective on this demographic of the population(children), which represents nearly the 48% of the population, recognizing them as individuals who have rights and, therefore, are active participants in every legal and administrative process. The ratification of this international convention favored the modification of internal regulations to meet international standards. As a result, the Law for Integral Protection of Childhood and Adolescence (2003) was approved, and recently the Law against Sexual Assault, Exploitation and Human Trade (2009), which regulates the comprehensive protection of victims, is now considered an acceptable approach to the legal system.

In spite of the advances in the legislation and the efforts of each institution of the CJS to implement the established requirements in the Code of Criminal Procedure, there still exist structural weaknesses, reflected in the high levels of impunity in the country.

#### **I.1. Condition of Children in Guatemala**

The Republic of Guatemala, located in Central America, is divided in 22 administrative provinces and had an estimated population of 15.1 million people in 2012, from which 7.2 million, that is, 47.7% of the population, are children.<sup>6</sup> The indigenous population, according to the census carried out in 2000, makes up 41%<sup>7</sup> of the inhabitants, while the demographic called *ladino* or mestizo (which is widely diverse) was calculated to be the 59%. The official language is Spanish, though 22 Mayan languages are spoken<sup>8</sup>, besides *xinca* and *garífuna*, which characterize Guatemala sociologically as a multiethnic, multicultural and multilingual country.

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<sup>6</sup>According to estimates and projections from the National Institute of Statistics.

<sup>7</sup>However, Mayan independent organizations rise the indigenous population percentage to a 60%. The Bureau for the Protection of Women – DEMI, United Nations Children's Fund – UNICEF, "Mírame, situación de la niña indígena en Guatemala", Guatemala, 2007, page 16.

<sup>8</sup>Academia de Lenguas Mayas (Mayan Language School), <http://www.almg.org.gt/comunidades-ling%C3%BC%C3%ADsticas.html> (consulted may 1, 2013).



The latest information about Guatemalan's social context, provided by the 2011 Life Conditions Survey (Encovi 2011), reveals that the 53.7% of the population live in poverty conditions, while 13.3% live in extreme poverty conditions. This places Guatemala as seventh in Latin America and the Caribbean and the fourteenth worldwide for the greatest socioeconomic inequality. This was measured by the Gini coefficient <sup>9</sup>(53.7), placing Guatemala above the Latin American mean (52). The concentration of wealth is extremely high – 77.3% of Guatemala's wealth is concentrated in the two highest socioeconomic quintiles, while the two poorest quintiles barely accumulate the 10.6% of the wealth.<sup>10</sup>

This inequality has had numerous consequences. In Central America, Guatemala leads in fertility rates with 3.6 children per woman, while Costa Rica is in the last place with 2.14 children per woman. Though this trend has decreased, the five Mother and Child Health surveys (ENSMI) demonstrate that the variations between the urban and rural areas are still apparent: women who live in rural areas will have an average of 4.2 children by the end of their lives, and in the city they will have 2.9 children.<sup>11</sup>

In terms of health, 2008/2009 ENSMI concludes that in a day, around 1,200 children are born in Guatemala, and that one child dies every 30 minutes due to, in most cases, preventable or hunger related causes. Most of the children who die are indigenous, live in rural areas and come from poor homes. Additionally, three mothers die during or just after childbirth every two days because of hemorrhage or infections that could be prevented with proper attention via accessible and available health services.<sup>12</sup>

Approximately 1.3 million children under five years of age, nearly 50% of the population, have chronic malnutrition. Guatemala has the highest rate of childhood malnutrition in Latin America and the Caribbean and the sixth highest rate worldwide: 1,000,305 children under age five – 49.8% – go hungry every day. These numbers nationwide conceal an even greater disparity – 65.9% of indigenous children are malnourished. This percentage exceeds Afghanistan's, the country with the highest rate of malnourishment in the world.<sup>13</sup>

In terms of education, in 2011 the literacy rate among the population older than 15 years of age reached 76%. However, the general enrollment rate, that is, the average enrollment at the different levels of the school system, is only the 52%.

A study on the coverage of the education system based on age showed that in 2009 three out of five children between three and six years of age, approximately 995,000 children, were not enrolled in pre-school. For adolescents between thirteen and eighteen years of age, nearly 775,000, or 40% of this age group, are not enrolled in the school system.<sup>14</sup>

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<sup>9</sup> <http://datos.bancomundial.org/indicador/SI.POV.GINI>. The Gini index measures how much income distribution (or, in some cases, consumer costs) between individuals or homes within an economy are distanced from a perfectly equitable distribution.

<sup>10</sup> United Nations Children's Fund – UNICEF, "Rezago Municipal, Guatemala más allá de los promedios nacionales. Resume Executive", Guatemala, November 2011, page 2.

<sup>11</sup> Quiché is the province where the fertility rate is highest, with 5.2 per woman, while Jutiapa's is 2.6. It is important to mention that the ENSMI survey women between 15 and 49 years old as target people, so it does not take into account children and teenage girls under 15 years of age who have given birth.

<sup>12</sup> Instituto Centroamericano de Estudios Fiscales –ICEFI–, United Nations Children's Fund – UNICEF, "Análisis del Presupuesto General de Ingresos y Egresos del Estado de Guatemala aprobado para el año 2012 enfocado en niñez y la adolescencia", Guatemala, December 2011, page 14.

<sup>13</sup> United Nations Children's Fund – UNICEF, Op. Cit., p 3.

<sup>14</sup> Instituto Centroamericano de Estudios Fiscales –ICEFI–, United Nations Children's Fund – UNICEF, "¿Cuánto estamos invirtiendo en la niñez y adolescencia guatemalteca? Análisis del presupuesto del gobierno central, 2009-2011. Serie" ¡Contamos! 3. June.

In terms of employment, in 2011, approximately nine million people, or 61% of the total population, were individuals of working age. From this group, 62% were individuals who were working or seeking a job. These labor market indicators are misleading because while the employment rate is higher than 95%, the 56% are underemployed.<sup>15</sup>

There are 291,467 children between the ages of 10 and 15 who take part in the labor market. Two thirds are indigenous and work on farms; 26% are girls. The average salary for child laborers is a 22% of the minimum wage, and it is even lower in the business and industrial sector.<sup>16</sup>

According to the Nation's Income and Expenses Budget for 2012, Q 12,534 million (3.1% of GDP) was necessary to meet the Guatemalan children's basic needs out of a total Q59,547.4 million (15.2% of GDP) approved as budget ceiling. The average daily expense per child and adolescent was only Q 4.55 (US\$0.57). Although it is higher this amount has increased since 2011 when it was Q 4.03 (US\$0.50), it still is not sufficient to provide quality public services like education, health or food safety.<sup>17</sup>

With respect to the social indicators, the United Nations High Commissioner for Human Rights in her annual report on socioeconomic equality in Guatemala in 2005 points out:

*The socioeconomic indicators show backwardness in the enjoyment of economic, social and cultural rights. In education, the primary schooling rate is 92,3%, though only 65% of students finish sixth grade. Thirty-one percent of the population over 15 years of age is illiterate. The mortality rate among children under 5 years of age is 59 per each 1,000 who were born alive. The chronic malnutrition rate is the 49,3%. The maternal mortality rate is 153 per each 100.000 born alive. 75.4% of the working population works in the blue collar demographic. When these indicators are disaggregated, great gaps affect particularly vulnerable groups, like the rural populations, the indigenous people, and women. For example, among the indigenous population, 71.9% are poor, 48% are illiterate, chronic malnutrition affects the 69.5% and maternal mortality is 211 per 100.000.”<sup>18</sup>*

The same representative, in her annual report on socioeconomic equality in Guatemala in 2007, points out:

*At the mid-term of the Millennium Development Goals, Guatemala is far from reaching them, particularly the ones related to the decrease of extreme poverty, maternal mortality and childhood malnourishment. The progress to reach the goals has not been equal for all the groups, and the more backward groups are the rural and indigenous populations, particularly women and children.”<sup>19</sup>*

In her 2013 annual report concerning her office's activities in Guatemala, she continues:

*“The inequality gap persists throughout the country. According to the Rural Poverty Map, the majority of the 55 municipalities with poverty levels ranging between 85 and 97 per cent are indigenous. These municipalities also account for more than 60 per cent of chronic malnutrition among children under age 5.”<sup>20</sup>*

As children represent approximately 48% of the total population of Guatemala, the development of a nationwide policy for the establishment of public services that will ensure this population receives at least the minimum conditions for their overall development is of significance.

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<sup>15</sup>Instituto Centroamericano de Estudios Fiscales –ICEFI-, United Nations Children's Fund – UNICEF, Op. Cit., p 13.

<sup>16</sup>Ibid. p 13.

<sup>17</sup>Ibid., p 63.

<sup>18</sup>E/CN.4/2006/10/Add.1 1º de febrero de 2006

<sup>19</sup>A/HRC/7/38/Add.1 29 de enero de 2008

<sup>20</sup>ACDHNU. Report of the United Nations High Commissioner for Human rights, on her office's activities in Guatemala. 2013, page 5.

## 1.2. The Criminal Justice System in Guatemala

In 1992, the Code of Criminal Procedure was approved and was implemented in 1994. This criminal procedure reform facilitated the substitution of former criminal procedure. The criminal process was mainly written and secret process. It concentrated on the investigation and judging functions via the instruction judge. The criminal procedure reform changed the process to an adversarial system, with oral arguments in the procedure and the trial's publicity, as well as division in functions. The MP manages the investigation and the OJ is in charge of judging.

In the CJS, five main institutions intervene: the OJ, the MP, the Institute of Criminal Public Defense, the National Civil Police (PNC), the National Institute of Forensic Sciences (INACIF) and the Attorney General's Office.

The Political Constitution establishes the MP as the institution in charge of criminal prosecution. The MP's Chief is the General Prosecutor who is appointed by the President of the Republic from a list of six candidates proposed by a nomination commission.

One of the MP's weaknesses is the instability of the prosecutor's career, though with the system of performance evaluation it has been possible to gradually contribute to the design and execution of policies to benefit MP personnel and to their professionalization through training.

In the context of the MP, the lack of institutional training, both for assistant prosecutors (when they prepare their investigation requirements) and for investigators (when they carry out their investigations and present their reports), has generated delays in the investigation task and deficiencies in the content and effectiveness of the evidences provided in the criminal processes.<sup>21</sup>

The PNC is organically integrated to the Ministry of Interior and is an auxiliary entity to the MP in the criminal investigation phase in different cases. In 2011, the PNC consisted of 24,255 active agents, which is a ratio of 1.68 police officers per 1,000 inhabitants, much lower than the international standard of 4 per 1,000 inhabitants.<sup>22</sup> According to information from the PNC's Head of Strategic Planning and Institutional Development (JEPEDI), the number of agents had increased to 27,984 by December 31<sup>st</sup> of 2013.

In the PNC, the training of investigators lasts only from one to three months, an insufficient amount of time. "In 2008, 49% of the personnel assigned to criminal investigation had not received the basic investigation course."<sup>23</sup> With a too-heavy workload, training of investigators continues to be limited and the absence of manuals and procedure protocols is persistent.<sup>24</sup>

The lack of police officers and the limited number of higher authorities highly affects the PNC, mainly in its territorial coverage. In terms of criminal investigation, there are some advances at the Unit of Crimes against Life and Integrity of People, which has a research methodology, protocols for action and a constant communication with the Unit of Crimes against Life in the metropolitan area. The Unit for Sexual Crimes, Human Trade, Childhood and Adolescence was created in 2013.

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<sup>21</sup> Asociación de Investigación y Estudios Sociales, ASIES. Fifth study of the process of strengthening the justice system: Progress and weaknesses, July 2006-2008/ Cited again in the ASIES study, 2011

<sup>22</sup> Report of the United Nations High Commissioner for Human rights, on her office's activities in Guatemala. 2011, page 6

<sup>23</sup> Monterroso, J. (2009) Impunidad e investigación criminal en Guatemala. Seguridad y Justicia: Pilares de la democracia

<sup>24</sup> Report of the United Nations High Commissioner for Human rights, on the activities of her office in Guatemala. 2010

The National Institute of Forensic Sciences is one of the youngest institutions of the justice system and is in charge of the scientific studies of the investigation methods required by the prosecutors and judges in the different processes. Its main weakness is the limited number of specialized human resources to cover the expertise needs throughout the country.

The OJ is in charge of the jurisdictional function, that is, of judging and executing what has been ruled. In the criminal area, it is formed by courts and criminal tribunals, as well as criminal courts specifically for crimes like femicide and other forms of violence against women.

The Criminal Chamber of the Supreme Court of Justice and the MP defined and implemented, in the framework of their strategic plans, actions to promote the institutional attention. The Code of Criminal Procedure is among these and it is found in: a) Decree No. 18-2010 from the Congress of the Republic, which regulates aspects of the process of the hearings of the trial, the rights of the victim, the evidence offered, the recording of interventions in audio or video forms, procedure of the events, among others; and b) Decree No. 7-2011 from the Congress of the Republic, which establishes, among other dispositions, a special procedure for the judgment of crimes sanctioned in the Criminal Code with a maximum penalty of five years of imprisonment, under the competence of the justices of the peace. However, the budgetary resources have not been enough to carry out these reforms.<sup>25</sup>

It is also important to highlight that the OJ has a jurisdiction, formed by approximately 21 judges, specialized for children who have been victims of threats or violations to their rights. It expanded in 2013 to three additional regions with five more judges.

However, the efforts of each of the institutions in the justice sector<sup>26</sup> still have structural weaknesses. These weaknesses are due not only to the budgetary issue which does not meet the sector's needs, but also due the following factors: inefficient criminal investigations by the institutions in charge of investigations and criminal prosecutions, institutional bureaucratic procedures, the lack of abilities and efficient management of the human resources at the legal and security institutions and inefficient or nonexistent inter-institutional coordination.

Nevertheless, the system's effectiveness has improved, particularly in crimes against life, which have seen a reduction in impunity levels from 95% to 72%<sup>27</sup>. However, institutions within the justice sector still need to be strengthened and there must be a reduction in the high levels of impunity<sup>28</sup>, which compromise the effectiveness of the state's investigation, prosecution, judgments, and sanctions.

Another important aspect to note is Guatemala's linguistic and cultural diversity. However, the justice sector does not take into account such diversity and, consequently, access to justice without discrimination and with linguistic and cultural belonging, still is a pending task.

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<sup>25</sup>ASIES 2011. Op. Cit., p 16

<sup>26</sup> Labor report from the International Commission against Impunity in Guatemala (CICIG), September 2012-August 2013

<sup>27</sup> Ibid

<sup>28</sup> OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS, "Informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre las actividades de su oficina en Guatemala", From January 1<sup>st</sup> to December 31<sup>st</sup>, 2008, p 12.

### **I.3. Sexual assault and other forms of violence against minors in Guatemala**

Guatemala is one of the most violent countries worldwide and has a low level of effectiveness in its institutions, including the justice sector. Children are not exempt from this level of violence: in 2012, there were 1,299 violent deaths of minors recorded.<sup>29</sup>

As an additional manifestation of violence against children, according to information presented in the Human Rights Ombudsman report, sexual assault in female children represented the great majority of cases attended by the National Civil Police. In 2008 it was the 59.6%, in 2009 the 61.75%, in 2010 the 60.83% and in 2011 the 64.17%.

This report that was presented before the Inter-American Commission of Human Rights by the Human Rights Ombudsman in October 2012 indicates that the number of sexual aggressions against women has increased in Guatemala. Children are affected the most with these kinds of crimes.<sup>30</sup> Evidence of this is that in 2010, 48,050 childbirths were reported from women between 10 and 19 years of age. Of these, 5,300 were from girls under 14 years of age. From January to August 2011, 10 childbirths were reported from 10-year-old girls, 16 childbirths from 11-year-old girls, 40 from 12-year-old girls.<sup>31</sup> These cases are typified as rapes in the Guatemalan criminal legislation.<sup>32</sup>

In the face of this calamity, the international organizations have made clear at least two phenomena, which deserve attention. The first one has to do with victims of crimes who have been set aside traditionally by the legal system, limiting their participation to be mere complainants or witnesses in the legal processes. The second one has to do with the increasing involvement of children in activities penalized by the criminal law.

The United Nations High Commissioner for Human Rights, on the activities carried out in Guatemala in 2005 with respect to impunity, points out:

*“24. The legal system’s weaknesses are, at the same time, cause and consequence of the current impunity in all the scope of minor or major crimes. This impunity is evident in the limited ability of the public powers to fulfill their duty of legal guaranty and responsibility through an efficient investigation, trial and punishment of material and intellectual authors of illicit behavior, and allows organized and violent crime to take on international dimensions.”*

The Committee on the Rights of the Child examined Guatemala’s third and fourth regular combined reports (CRC/C/GTM/3-4) in their 1544<sup>th</sup> and 1546<sup>th</sup> meetings, held on September 14, 2010, and approved them in their 1583<sup>rd</sup> meeting, held on October 1, 2010 and observed:

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<sup>29</sup> Observatory on Children and Adolescents in Guatemala, Consulted on April 14, 2013,

[http://www.odhag.org.gt/observatorio/index.php?option=com\\_content&view=article&id=47&Itemid=58](http://www.odhag.org.gt/observatorio/index.php?option=com_content&view=article&id=47&Itemid=58)

<sup>30</sup> Human Rights Ombudsman, Report “Violencia Sexual en contra de Niñas, Adolescentes y Mujeres en Guatemala”, 146<sup>th</sup> period of sessions of the Inter American Commission for Human Rights, Guatemala, October 2012, p. 8.

<sup>31</sup> Observatory in Sexual and Reproductive Health (OSAR), Guatemala, November 2011, consulted on April 14, 2013.

<http://www.osarguatemala.org/userfiles/Boletin%20avances%20y%20retos%20en%20MS%20y%20EIS%202.pdf>

<sup>32</sup> Article 173 from the Criminal Code. Violation: The person who has carnal access with physical or psychological violence to the vagina, the anus or to the mouth, or who introduces any part of the body or objects by any of these tracts, or who forces another person to introduce them to them, will be sanctioned with imprisonment from eight to twelve years. This crime is committed as long as the victim is a person under fourteen years of age, or when a person with volitional or cognitive disability, even when there is no physical or psychological violence...

*“45. The Committee shows its concern for the extraordinary high number of children murders (510 from the 6,498 violent deaths in 2009) and for the lack of effective measures on the part of the authorities in this respect, and regrets the fact that these crimes often remain unpunished.*

*46. In light of Article 6 of the Convention, the Committee recommends the part of the State to formulate of a thorough policy to prevent children murders, to carry out a thorough investigation of all the cases, and to process and punish duly the authors of these acts. ”*

Cases of children protected by the legal system are more than 25,000, from these, 54% had precautionary measures and only the 6% had legal resolutions. More than 4,000 children are in state and private homes.<sup>33</sup>

Nevertheless, significant changes in the justice system were shown in the United Nations High Commissioner for Human Rights' report on its activities in Guatemala in 2013:

*“20. En comparación con 2010, se incrementaron en un 15% las solicitudes del MP de pruebas científicas al INACIF en la fase de investigación, con lo que las acusaciones dejaron de estar basadas principalmente en prueba testimonial. Esto ha dado como resultado un incremento del 6,47% en el número de acusaciones con respecto a 2012, así como un aumento del 9,4% en el número de personas condenadas”<sup>34</sup>*

#### **I.4. International and national normative framework for human rights of children.<sup>35</sup>**

Guatemala has developed legislation for human rights for children in three instances:

- a) Passing the international 1989 Convention on the Rights of the Child;
- b) Adaptation of Guatemalan national laws to adhere to international standards, including: the Law for Integral Protection of Childhood and Adolescence (2009); the Adoptions Law (2007), and the Law Against Sexual Assault, Exploitation and Human Trade <sup>36</sup> (2009)
- c) Development of international standards and national legislation through the elaboration of regulations, directives, guidelines, protocols, among others, which makes possible to visualize the rights framework in each of the attributions of the legal system officials.

<sup>33</sup> Observatory on Children and Adolescents in Guatemala, (Consulted on April 14, 2013), [http://www.odhag.org.gt/observatorio/index.php?option=com\\_content&view=article&id=2&Itemid=4](http://www.odhag.org.gt/observatorio/index.php?option=com_content&view=article&id=2&Itemid=4)

<sup>34</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, “Informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre las actividades de su oficina en Guatemala”, From January 1<sup>st</sup> to December 31<sup>st</sup>, 2013, p 6.

<sup>35</sup> For more information on the development of the international and national normative framework in Guatemala, see Annex 6.2.

<sup>36</sup> It modifies the denominations of Title III from Book II; Chapter II from Book II; from Chapter V, Title III from Book II; and of Chapter VI from Title III, from Book II; as well as Articles 151, 173, 174, 188, 189, 190, 191, 192, 193, 194, 197, 198, 204, 238, 239 and 240 from the 17-73 Congress Decree, which contains the Criminal Code. At the same time, it adds several articles and items. It modifies the 4th item from Article 1 and adds Article VI of Final Dispositions from the same Code. It abrogates number and name of Chapters II, III and IV from Title II, from Book II, and Article 87, ninth section, in the part where it mentions “the exercise of prostitution”, 175, 176, 177, 178, 179, 180, 181, 182 to 187, 194, 236 and 237 from the mentioned Code.



**Table I Comparison of Laws that Create Protection Measures in Favor of Minor Victims in Guatemala**

	LAW OF INTEGRAL PROTECTION FOR CHILDREN AND ADOLESCENTS	LAW AGAINST SEXUAL ASSAULT, EXPLOITATION AND HUMAN TRADE	LAW TO PREVENT, TO SANCTION AND TO ERADICATE DOMESTIC VIOLENCE	LAW AGAINST FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN
<b>OBJECT OF THE LAW</b>	Legal instrument of family integration and social promotion, which seeks the integral and sustainable development of Guatemalan children, within the democratic and historical framework and the unrestricted respect to human rights.	To prevent, suppress, sanction and eradicate sexual assault, exploitation and human trade. To attend and protect the victims and to compensate for damages and losses caused.	Application of the necessary protection measures to guarantee life, integrity, security, and dignity of victims of domestic violence, as well as to provide special protection to women, children, young people, senior citizens and disabled persons.	To guarantee the life, freedom, integrity, dignity, protection and equality of all women before the law.
<b>SECURITY OR PROTECTION MEASURES</b>	Establishes protection measures. Arts. 112 and 115.	Does not contain specific protection measures, though in Article 15, second paragraph, it establishes the immediate communication of the MP with Children's Courts when the victim is a minor.	It contains a series of security measures that can be applied for the protection of the victims of domestic violence, especially the ones regulated in Article 7.	Refers to the Law to Prevent, to Sanction, and to Eradicate Domestic Violence, for the execution of protection measures for the victims, which have to be granted imperatively, when the violence happens in the private scope. Article 9.
<b>SUBJECTS OF THE LAW</b>	All the children from conception to before the age of 18.	In relation to Article 15. All the children from conception to before the age of 18.	Considers as victims the subjects who form the family group, women and men, children; disabled people and senior citizens.	Considers as victims only women of any age
<b>INSTITUTION IN CHARGE OF THE INVESTIGATION</b>	Attorney General's Office (PGN).	Public Prosecutor's Office (MP) and PGN.	MP	MP
<b>JURISDICTIONAL ENTITY THAT HEARD THE PROCESS</b>	Children's Court	Criminal Court and Children's Court	Criminal Court, Family Court, Peace Court	Criminal Court  Femicide Court.

Source: IJM Guatemala

For the application of the security and protection measures in cases involving children, officials are required to make a series of interpretations in the application of relevant laws. For example, for a boy who has physical wounds from his father, security measures (domestic violence) or protection measures<sup>37</sup> included in the Law of Integral Protection of Children and Adolescents could be granted. However if in the same case the victim was a girl, the security measures described in the Law against Femicide and Other Forms of Violence should be used. For each crime classification, there are different judges: Childhood Judge, Criminal Judge, Family Judge, and Femicide Judge (See the Comparative Table).

## **1.5. The Criminal Procedure in Guatemala**

The Guatemalan criminal system is based on an accusatory system, which was introduced by the Code of Criminal Procedure's legislative decree 51-92. There is therefore a separation from the entity in charge of prosecution and the jurisdictional entity that pronounces a verdict.

The MP is responsible for overseeing the investigation, as well as formulating the indictment and the burden of proof in trial. The judge's main function is to pronounce resolutions based on the requirements of the parties, according to the evidence supplied.

To guarantee the impartiality and independence of the court, a new system of specialized judges has been introduced. One judge oversees the preparatory and intermediate stage and is responsible for guaranteeing the citizens' constitutional rights during the investigation phase. This first judge authorizes the investigation process and decrees the opening of a trial. A separate judge oversees the sentencing court, where the trial takes place and a verdict is pronounced.

In Guatemala's adversarial system, the alleged perpetrator has the right of defense from the initial charges onwards, and is entitled to the examination of the evidence presented by the MP, and can present their own evidence. In the same way, according to decree 7-2011, the value of the victim is recognized, as well as their right to intervene during any phase of the process. In this system, both the defendant and the victim are guaranteed the same rights and opportunities.

In that context, the victims' rights seem to be in a condition of disadvantage before the alleged perpetrator's rights. However, the State should have the necessary resources to be able to carry out the investigation of the crime in a balanced way.

The rights of the victim were included in the Code of Criminal Procedure's reforms, contained in Agreements 18-2010 and 7-2011 from the Congress of the Republic of Guatemala. The process therefore has to respond to the legal claims of both the defendant and the victim.<sup>38</sup>

The victim has the right to be informed about their rights in the criminal process. The victim's opinion must also be taken into account in legal decisions. Victims are also guaranteed participation in the hearings where they can give their opinion. They are also entitled to receive compensation.<sup>39</sup>

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<sup>37</sup> Article 75 Law of Integral Protection of Children and Adolescents "For the purposes of this Act, the rights of children and adolescents are threatened or violated by: a) act or omission of any member of society or the state, b) failure, omission or abuse of parents, guardians or custodians. c) acts or omissions against themselves".

<sup>38</sup> Article 5 Code of Criminal Procedure.

<sup>39</sup> Article 117 Code of Criminal Procedure.



A significant reform has been the right to restitutionary damages, which comprise the restoration of the right that was affected by the crime. This starts when the victim is recognized as a person with rights and leads to the alternatives available for their social re-entry, in order to start enjoying and using their affected right, to the extent that the compensation is possible. Compensation for damages and losses derived from the crimes given once the conviction is pronounced, through a compensation hearing.<sup>40</sup>

In this context, minors actively participate in the criminal process, not only through their testimonies, but also through the recognition of their rights. Consequently, they need to be informed of the objectives of the process and of each one of the proceedings, as well as of the resolution. To this end, there are now proper spaces to allow minors to give their testimonies like CCTV and the Gesell chamber, among others. Also, new protocols that reduce the re-traumatization effects in the criminal processes have been implemented<sup>41</sup>.

## **1.6. Institutional framework of CJS entities**

### **1.6.1. The Public Ministry (MP)**

The MP is the public prosecutor's office, an auxiliary entity of the administration of justice that promotes criminal prosecution, leads the investigation of public action crimes, and oversees the strict fulfilling of the country's laws. This entity is not subordinated to the powers of the State and enjoys autonomy in its financial and budgetary oversight.<sup>42</sup> The chief of the MP is the Republic's Attorney General.

To fulfill its mission, the MP includes the following entities:<sup>43</sup> a) The Republic's Attorney General, b) the MP's Council, c) the District and Section Prosecutors, d) Public Prosecutors, e) Assistant Prosecutors, whose specific attributions are pointed out in its Organic Law, Art. 2:

- a. To investigate the public action crimes and to promote the criminal prosecution before the courts, according to the powers granted by the Constitution, the Republic's laws, and the International Treaties and Agreements.
- b. To apply the civil action to the cases contemplated in the law and to advise the individuals who want to file suit for crimes of private action, according to what the Code of Criminal Procedure establishes.
- c. To lead the police and other security entities of the State in the investigation of criminal acts.
- d. To preserve the State of Law and the respect of human rights, making everything necessary before the courts of justice.

Prosecutors therefore represent the victim, on behalf of the State, throughout the criminal process, seeking the right application of the law, and therefore preventing impunity. It also seeks the restitution of damages to the victim and the right punishment for the perpetrator. The prosecutors lead the investigation of the criminal causes: formulate indictments or the requirement of dismissal, the provisional closure and archiving of the case before the competent jurisdictional entity.<sup>44</sup> Additionally, they take action before the different jurisdictional entities.<sup>45</sup>

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<sup>40</sup> Art. 124 Code of Criminal Procedure.

<sup>41</sup> For more information on the child victims or witnesses in the Guatemalan criminal process, see Annex 6.3.

<sup>42</sup> Art. 3, MP's Organic Law.

<sup>43</sup> Art. 9, MP's Organic Law

<sup>44</sup> Jurisdictional Entities: Sentence Courts, Room of the Appeals Court, Supreme Court, and Constitutional Court.

<sup>45</sup> Art. 42, MP's Foundational Law

The Council is within the MP's structure, which is an entity not contemplated in the hierarchical order. It provides legal advice, and controls the instructions and sanctions imparted by the Attorney General. It is formed by representatives elected by the Congress of the Republic and attorneys elected in assembly.<sup>46</sup>

At the time of the study, the MP was led by Dr. Claudia Paz y Paz who, as Attorney General and chief of the Public Ministry, promoted a series of initiatives, which included: the strengthening of the Office for Women's Affairs; and the geographical expansion of government centers that provide multi-disciplinary attention to victims of sexual assault and human trafficking. In 2010, the Model for Holistic Attention was implemented solely in the Guatemala City Prosecutor's Office, and by 2013 it had expanded to 8 other offices. To date, 9 exist: Guatemala City, Villa Nueva, Escuintla, Cobán, Huehuetenango, Mixco, Chiquimula, Chimaltenango and Quetzaltenango<sup>47</sup>. In the same sense, the Prosecutor's Office for Women and Child victims was fortified: as of 2013, there are 14 offices nationally, as well as a national presence of the Office for Attention to the Victim – OAV<sup>48</sup>.

## **Respect for the victim as a principle of the MP**

The MP is required to guarantee and protect the interests of victims. It should inform the victims about the result of the investigations and will notify them about the resolutions that put an end to the case, even when they have not been plaintiffs. These requirements are specified in Article 8 of the MP's Organic Law and Article 177 of the Code of Criminal Procedure.

The victim's interest means to listen the victims' opinion and to act according to what they have expressed. The assistance will consist of providing them with all the information about their legal possibilities and about the case, even if they are not plaintiffs.<sup>49</sup>

Article 37 of the MP's Organic Law created the Office for Women's Affairs. Its objective is the MP's intervention in the processes where one or several women are involved. Article 14 from the law against femicide and other forms of violence against women grants powers to the MP to hear the crimes contemplated in this legal entity. In addition, it hears the sexual crimes and the crimes committed against minors.

In Agreement 101-2011 from October 4, 2011, the Attorney General approved the Organization and Functions Regulations for the Office for Women's Affairs; and organized it in specialized units<sup>50</sup>. These specialized units ensure that victims are provided timely assistance throughout the legal process. Those units have to work hand in hand with the Center for Holistic Attention to victims of sexual assault and violence against women (MAI – see footnote 36).

MAI focuses in optimizing the initial phase of attention to the victim, as well as the management of the investigation and criminal prosecution. This center operates 24 hours a day<sup>51</sup>, and was created to provide an immediate response for victims of sexual crimes.<sup>52</sup>

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<sup>46</sup>MP, the Prosecutor's Manual, Guatemala, 1996, p. 42.

<sup>47</sup> Public Ministry Labor Report, page 43.

<sup>48</sup> Public Ministry, presentation of third labor report, December 2012 to December 2013.

<sup>49</sup> MP, Op. Cit., p 50.

<sup>50</sup>Prosecutor's Headquarters, Early Decisions Unit (UDT), Investigation Direction Unit (UDI), Litigation Unit (UL), integrated by the area of previous hearings to the trial, the area of trial hearings and the area of proof for the trial.

<sup>51</sup> There are 14 Prosecutor's Offices for Women and Child Victims. The offices in Guatemala City, Villa Nueva, Chiquimula, Quetzaltenango, Mixco, and Coatepeque existed in 2011. The offices in Alta Verapaz, Huehuetenango, Escuintla, the municipal of Santa Catarina Pinula, and Chimaltenango opened in 2012, and offices opened in Jalapa, Jutiapa, and Peten in 2013. As of 2013, there are 9

This new framework emphasizes the central role of the prosecutor, as the person responsible for leading the investigation and prosecution.

The concept of integral service, inspired by MAI, includes the provision of urgent medical services; and preparation and support to the victim to provide an account of the event, through the joint presence of personnel from the Office for Women's Affairs and the Office for Attention to the Victim (OAV). The presence of psychologists provides an atmosphere for filing the complaint and allows the extraction of detailed information on important contextual aspects of the crime.

The new procedures promote an uninterrupted system of justice, since they allow the requests for protective measures to be directed to the Courts on call. In this sense, the MP fulfills its obligation of requesting immediate protective measures, and provides the Judicial System's resolution to grant them.

The MAI also provides information to the victims, on the legal process and their rights. Victims are also referred to aftercare services.

### **I.6.2. The Judicial Branch**

The central function of the Judicial Branch to administer justice through a system of law courts, and to ensure verdicts are carried out.<sup>53</sup> It is independent from other branches of the government, and is granted financial independence by the Constitution.

Judges are also independent from one another, and have control over their jurisdiction. The Supreme Court of Justice or the Rooms of the Court of Appeals cannot pronounce any instruction to the judges on how the law should be interpreted, or how a concrete case should be resolved.<sup>54</sup>

The organization of the judges in the criminal process, to attend mainly the cases of child victims of sexual crimes, is as follows:

#### **a) Justice of the Peace**

Guatemala has at least one Justice of the Peace in each of the 335 local municipalities. Their mandate is as follows:

- To adjudicate the procedure for less serious crimes, with a maximum sentence of five years. One example of this is ill-treatment against minors, as per Art. 150b of the Criminal Code.
- To adjudicate cases in the absence of a first instance judge, in cases sanctioned with sentences of more than five years of imprisonment, which include crimes of sexual assault against minors.
- In the cases of minor victims, they will grant the protective preventive measures, regulated by the Integral Protection Law for Children and Adolescents, and the security measures regulated in the Law to Prevent, to Sanction and to Eradicate Domestic Violence

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Models of Holistic Attention. In 2011, there were offices in Guatemala City and Villa Nueva; in 2012, they expanded to Huehuetenango, Alta Verapaz, and Escuintla; and in 2013, to Mixco, Chiquimula, Chimaltenango, and Quetzaltenango.

<sup>52</sup> Only in the Metropolitan Prosecutor's Headquarters and in Villa Nueva it works uninterruptedly, every hour and every day of the year.

<sup>53</sup> Artículo 203 Constitución Política de la República de Guatemala

<sup>54</sup> MINISTERIO PÚBLICO, Op. Cit., p. 63

#### **b) First Instance Judges**

Trial Court judges are in charge of the jurisdictional control of the investigation carried out by the MP, for crimes whose minimum sentence is more than five years of imprisonment. They are responsible for the intermediate phase.

#### **c) Sentencing Courts**

The Sentencing Courts, formed by three judges (from the same judicial head office) hear the trial and pronounce verdicts for crimes that have a penalty of over 15 years of prison and all crimes against humanity<sup>55</sup>.

The judges who form the Sentencing Court address all CSA cases.

In 2003 specialized courts were created under the

It is important to mention that besides the judges and ordinary criminal courts, from 2003 the specialized justice was created under 2009 Comprehensive Protection of Children Law and the Law against Femicide and Violence against Women<sup>56</sup>.

### **I.6.3. Other relevant institutions in the CJS**

#### **a) The National Civil Police (PNC)**

The Guatemalan National Civil Police (PNC) is the institution in charge of protecting the life, physical protection, security and goods of people. It also protects the free exercise of rights and freedom, and prevents, investigates and combats crime, preserving the public order and security.

To fulfill its mission, the PNC, by its own initiative, according to a complaint or an MP order:

- Investigates punishable acts;
- Gathers the investigation elements that are useful to give base to the indictment in the criminal process.

The PNC carries out investigation tasks in the criminal process, under the direction of the MP. Arrest warrants are ordered by a judge, and carried out by the PNC.

The PNC houses the Specialized Division for Criminal Investigation (DEIC). Within DEIC there are further specialized units that focus on sexual crimes, human trafficking and illegal adoption. These were created by the PNC's general order no.12-2009. The function of the Sexual Crimes Unit is to investigate sexual assault against minors.

The PNC also has a Specialized Department for Children (DENA), which carries out what Article 96 from the Law of Integral Protection for Children and Adolescents stipulates. Its main objective is to be the entity in charge of training police officers on the rights of children.

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<sup>55</sup>Article 3. from Decree 21-2009 from the Congress of the Republic, August 4, 2009

<sup>56</sup> For more information about specialized justice, see Annex 6.5.

## **b) National Institute of Forensic Sciences (INACIF).**

INACIF was created by Decree 32-2006 from the Congress of the Republic of Guatemala, on September 8, 2006. It is born out of the need to have an independent and objective institution,<sup>57</sup> conformed by professionals, technicians and scientists to make technical and scientific analysis in the forensic field, which are useful for the Guatemalan justice system.

INACIF was created as an “auxiliary institution for the administration of justice, with functional autonomy, legal personality and own assets” (Art. 1)<sup>58</sup>; it has “national competence” (Art. 1)<sup>59</sup>; and its main purpose is the “provision of the service of independent scientific investigation, issuing scientific and technical reports” (Art. 2)<sup>60</sup>. INACIF was established in July 2007. Its mission is “to turn circumstantial evidence into useful elements for the justice system, through technical and scientific analysis of the forensic area and medical legal studies, according to objectivity, transparency and autonomy, grounded in science and based in team work”.<sup>61</sup> It is important to indicate that INACIF’s specialty does not imply exclusivity in the provision of services. The services of independent experts or from other institutions are valid, as long as they are carried out according to the regulations contained in the criminal procedure legislation.<sup>62</sup>

INACIF has the cooperation of experts in forensic sciences who apply the technological, methodological, and scientific advances from the legal and criminal medicine, as essential elements in the criminal investigation, and of any other nature.

## **c) The Attorney General’s Office (PGN)**

The PGN is in charge of giving advice and counsel to the State’s entities. The Attorney General represents the State and is the chief of the PGN.

In the procedure for the restitution of the violated rights of minors, the PGN has two main functions. The first is related to the legal representation of minors who lack representation. The second is to lead the investigation of the cases in which a right of minors has been violated, *ex officio* or by a requirement of the judge or the party.<sup>63</sup> To this end, the Law of Integral Protection of Children and Adolescents created the Office for Children and Adolescents’ Affairs.

Besides these functions, Art. 197, Section 4 of the Criminal Code, establishes that the PGN will be *ex officio* the joint plaintiff and civil actor when the victim is a minor who does not have a legal representative in the criminal process, or when there is a conflict of interests between the victims and their legal representatives. Organically, the PGN, in terms of protection, has a representative presence of the justice system. That is, there is at least one attorney in each of the regions where there is a Children’s Court.<sup>64</sup>

Though the PGN has the obligation to investigate the cases of minors whose rights are threatened or violated, it has regulatory weaknesses that prevent it to carry out that duty. Since the specific law does

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<sup>57</sup> Formerly, the forensic service was done by the MP and the OJ, the entity responsible of the prosecution investigation, and criminal prosecution, and of judging the actions.

<sup>58</sup> Decree 32-2006 from the Congress of the Republic of Guatemala

<sup>59</sup> Idem

<sup>60</sup> Idem

<sup>61</sup> [http://www.inacif.gob.gt/index.php?option=com\\_content&view=article&id=59&Itemid=80](http://www.inacif.gob.gt/index.php?option=com_content&view=article&id=59&Itemid=80)

<sup>62</sup> Articles 125225 and 130230 from the Code of Criminal Procedure.

<sup>63</sup> Article 108 sections “a” and “b” from the Law of Integral Protection to Children and Adolescents

not demand the impulse or presence of this entity in the initial actions of the process, nor allows it to have access to investigation requests.

**d) The Social Welfare Secretariat of the Presidency (SBS)**

The role of the Social Welfare Secretariat of the Presidency focuses on the development of the services that put into effect the special protection policies, regulated by the Law of Integral Protection of Children and Adolescents, and that constitutes all the actions to guarantee the physical, psychological recovery of minors whose rights have been violated.

**e) The Office Against Sexual Assault, Exploitation and Human Trade (SVET)**

The Office against Sexual Assault, Exploitation and Human Trafficking (SVET) was created by the law of the same name, and reports to the Vice-presidency of the Republic. Among its functions, it serves as an advisor to other government entities to ensure compliance to policies to against sexual assault, exploitation and trafficking.

## **1.7. IJM's program response and study aims**

International Justice Mission established an office in Guatemala in 2005. From 2005 to May 2013 IJM provided support to more than 330 victims of CSA and their families. More than 162 individuals have been arrested and accused, contributing to the achievement of convictions against 172 individuals.<sup>65</sup> However, high numbers of victims of CSA still do not receive adequate attention. For this reason, IJM Guatemala has established indicators to identify the current performance of the CJS, to be followed by programs that strengthen its performance. The goal of these programs is to ensure that victims of CSA receive dignified treatment and are not re-traumatized, and that cases are processed in a timely and effective manner.

In order to contribute to the effectiveness of the legal system, IJM proposed the development of this study. Its main objective is to establish a situational status of the criminal process in terms of treatment of minors who have been victims of sexual assault. To this end, IJM worked with the MP to obtain data on CSA from the period 2008-2012, and collected information from a sample of 182 concluded cases from years 2008-2010 in the provinces of Guatemala, Quetzaltenango and Alta Verapaz, which constitutes the 78% of the total of these cases in that period.

It is important to emphasize the small number of judgments carried out in relation to the complaints entered, as well as the length of time taken in the investigation phase in these cases. Other important aspects in this part of the study refer to the number of professionals who deal with the child during the criminal process and the behavior of the investigation.

This investigation hopes to contribute to the existing efforts of the CJS institutions to treat minor victims of sexual assault with dignity.

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<sup>65</sup>La diferencia porcentual del 6% entre capturados y sentenciados, se debe a que en algunos casos el sindicado ya está ligado a proceso, previo la intervención de IJM.

## 1.8. Baseline study timeline

The sample used in this report is based on complaints of sexual assault against minors filed at the MP between 2008 and 2012. In addition, the data collected by IJM on closed case files correspond to the same period of time. In light of the above, it is worth clarifying the institutional changes that have taken place since then:

- In 2008 the Law against Femicide and Violence against Women came into force, incorporating the crimes of femicide, violence against women and economic violence. This law also created the Femicide Courts.
- In May 2008, the first Center for Holistic Attention (MAI) for Victims of Sexual Assault and was created. The MAI, which constitutes a breakthrough in the system of justice, avoids the re-traumatization and favors the comprehensive protection of the victim.
- In 2009, the Law against Sexual Assault, Exploitation and Human Trafficking came into force, reforming the Criminal Code in terms of crimes of sexual assault.
- In 2010, the first Femicide Courts and Tribunals were created in Guatemala, Quetzaltenango and Chiquimula.
- In 2010 and 2011, the Code of Criminal Procedure was reformed. The main reforms include: responsibility of the CJS to respond to and protect the rights of the victim; deadlines for the MP to hand in their conclusion of the investigation to a judge (the ‘conclusive act’); and the introduction of restitutionary damages. These damages are now a key stage in the victim’s rehabilitation and restoration. Another significant change was the creation of tribunals with one judge, as opposed to the previous system of a 3-judge panel.
- In October 2011, Regulations for the Organization and Functioning of the Office for Women’s Affairs was approved and divided into different units.
- In August 2012, the Femicide Tribunals and Courts were created in Alta Verapaz and Huehuetenango.
- In October 2012, Tribunals and Courts for Femicide, Violence against Women, Sexual Assault, Exploitation and Human Trafficking were created in Guatemala.
- Centers for Holistic Attention were opened in the municipal of Villa Nueva in 2011; in Huehuetenango, Alta Verapaz and Escuintla in 2012; and Mixco, Chiquimula, Chimaltenango y Quetzaltenango, in 2013, reaching a total of 9 centers.<sup>66</sup>
- As of 2013, there were 14 Prosecutor's Offices for Women and Child Victims. Offices existed in Guatemala City, Villa Nueva, Chiquimula, Quetzaltenango, Mixco, and Coatepeque in 2011; they expanded in 2012 to Alta Verapaz, Huehuetenango, Escuintla, Santa Catarina Pinula, and Chimaltenango; and in 2013 to Jalapa, Jutiapa and Petén.<sup>67</sup>

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<sup>66</sup> Third year Management Report of the Attorney General, December 2012 to December 2013, <http://www.mp.gob.gt/informes-publicos-fiscal-general/> and Public Ministry Management Report 2011-2014, <http://www.mp.gob.gt> o <https://www.youtube.com/watch?v=wgKWE0oxdkE>

<sup>67</sup> Ibid.



- By the end of 2011, Offices for Attention to the Victim existed in 51.8% of the Public Ministry's 56 offices nationwide. The OAV's prominence grew by 25% in 2012, and as of 2013 is in 100% of the Public Ministry's offices.<sup>68</sup>
- In March 2013, the Attorney General approved the General Instruction No. 2-2013 for the attention and criminal prosecution for crimes committed against childhood and adolescence.
- In May 2013 the Supreme Court of Justice published Agreement No. 16-2013, which approves the Protocol to hear testimonies from child victims or witnesses in the legal process.

The advances achieved in the regulations in the last three years, which include reforms to the Code of Criminal Procedure, will have a direct impact in the number of indictments presented, as well the number of trials and verdicts pronounced, due to the fact that only one judge hears crimes of sexual assault. These cases were previously tried by a panel of judges, which increased the amount of resources required per case. Another relevant aspect will be the hearings to request restitution of damages, which was not possible to measure in the sample of 182 cases, since it came into force after the collecting of data.

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<sup>68</sup> Ibid.



## 2. Methodology

This study responds to the need to re-evaluate the current condition of the public system of justice in dealing with cases of CSA<sup>69</sup>. The information sources used for this study are the public prosecution's case database (SICOMP) and the National Center for Analysis and Judicial Documentation (CENADOJ). In addition, this report establishes a process for studying case files, which makes it possible to establish the practices used in the proceedings and resolution of cases. Additionally, officials within the CJS, key actors, and users of the system were interviewed.

### 2.1. Analysis of SICOMP data at a national level, 2008-2012

The reports provided to IJM by SICOMP<sup>70</sup> contained information on cases of sexual assault, and included data on the following: complaints involving violent sexual crimes; alternative resolutions reached within the criminal process; the status of the legal claims and indictments; and information on the profile of the victim and the accused. All these reports are organized by type of crime, jurisdiction and province.

#### 2.1.1. Criteria for data selection

The information requested was selected according to indicators that would identify trends in cases that reached a verdict. This information corresponds to a period of five years, from 2008 to 2012.<sup>71</sup> The data establishes behavioral tendencies related to the attention these cases receive within the CJS. The study focuses mainly on cases of CSA<sup>72</sup>. The data is analyzed by town and province, from the three key provinces of the study: Guatemala, Quetzaltenango and Alta Verapaz.

#### 2.1.2. Data handling and analysis

Through the different reports generated by SICOMP, it can be established which provinces have a higher incidences in these types of crimes. Both the status of the claims and the alternative resolutions are analyzed. The obstacles preventing resolution are also studied along with these preventative factors that occur in the preparatory stage. The alternate types of resolution are dismissals, lack of legal merit, stay of proceedings (suspending the legal process), provisional closing and archiving. These resolutions are in contrast to the cases that reach the indictment stage or a judgment. We also studied the cases that opted for a summary trial and other cases in which a verdict or alternative exit was not given, but instead continue in the investigation stage to date or are pending to be assigned.

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<sup>69</sup> Other crimes that were abolished or reformed by Decree 9-2009, The Law Against Sexual Violence, Exploitation, and Trafficking of Persons, were included during the period of this study.

<sup>70</sup> It is a nationwide monitoring system which verifies the services provided by the MP (MP, 2010). Desafíos actuales de la justicia penal Proceso de fortalecimiento del sistema de justicia, avances y debilidades noviembre 2008 – octubre 2011 Séptimo estudio Nueva edición

<sup>71</sup> The reports were issued in April of 2013. The applications for anticipated evidence report 2008-2012 was issued on August 30th, 2013

<sup>72</sup> Annex 6.6. Crimes Table

Both the victim's and the suspect's profiles were analyzed. All these reports are organized by the type of crime. In relation to these reports, the personnel in charge did not give all of the information — age ranges, schooling of the victims, and gender, among others— consistently. For this reason, approximations were used. A key element to the feedback process was working with SICOMP officials to understand the data.

To verify the information analyzed in relation to the procedural resolutions, 60 officers<sup>73</sup> and assistant prosecutors from the Prosecutor's Office for Women's Affairs were interviewed<sup>74</sup>. This office is responsible for criminal prosecution in cases of CSA<sup>75</sup>. These officials came from the provinces of Alta Verapaz, Quetzaltenango and Guatemala Proper (towns of Villa Nueva, Santa Catarina Pinula, Mixco and the capital city),

### **2.1.3. Limitations**

We experienced a challenge in analyzing some of the case records, some of which missed key information such as age and sex. For more recent records, SICOMP<sup>76</sup> implemented a new system<sup>2</sup> which includes new fields and filters to make sure that the appropriate officials register this information.

## **2.2. Study of files, cases of CSA in three provinces**

### **2.2.1. Sampling strategy**

The sampling framework was developed initially from the data provided by CENADOJ, from the total of all court proceedings involving CSA that ended with a verdict between 2008 and 2010. These cases came from the provinces of Guatemala, Quetzaltenango and Alta Verapaz. Some of the criteria used to select these provinces were: (1) The high rate of sexual crimes committed against minors. (2) The province of Guatemala was considered for being the capital city of the country. It has better physical and structural conditions and a high concentration of institutions and services. (3) The province of Quetzaltenango is known for its cutting edge initiatives, including a Justice Complex that has all the courts with all the branches from the capital. (4) And finally, the province of Alta Verapaz was chosen because it is one of the provinces with the most structural weaknesses. The headquarters of the courts are scattered and the institutional framework is not sustainable. In addition, users have to go long distances from one service to another, which affects their access to justice.

In Guatemala, the sampling framework was comprised of the information supplied by CENADOJ. In the cases of Quetzaltenango and Alta Verapaz it was built initially from the CENADOJ reports and from the books of the OJ in order to ensure the whole population of the cases in the selected provinces was sampled.

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<sup>73</sup> Annex 6.8. Interview Form.

<sup>74</sup> Equivalent to the 94% of prosecutors and assistants from the Office for Women Affairs from the three provinces object of study. The 6% that was not interviewed corresponds to officials who were on vacation, officials who had started working recently and personnel who were in hearings and could not be interviewed.

<sup>75</sup> These interviews were carried out in April 2013.

<sup>76</sup> The implementation of SICOMP 2 in the Departments of Sacatepéquez, Chimaltenango, Chiquimula, Zacapa, Jalapa, El Progreso, Jutiampa, Izabal, Esquipulas, (Chiquimula), Moyuta and Agua Blanca (Jutiapa), Gualán (Zacapa), Morales (Izabal), Santa Catarina Pinula, Chinautla, Palencia (Guatemala); and in the unit on call for the initial statements in Sacatepéquez. At present, SICOMP 2 is in the implementation process. Current challenges of criminal justice. Process of strengthening the justice system, improvements and weaknesses, November 2008 – October 2011. Seventh study, new edition.

From the information supplied it was established which of these cases had a minor victim and a final verdict. To these cases, the proportion techniques formula was applied to determine a representative sample.

The proper size of the sample, using the proportions formula<sup>77</sup>:

$$n = \frac{(Z^2) (p) (q) (N)}{(E^2) (N-1) + (Z^2) (p) (q)}$$

The total number of CSA cases in the three provinces with a final verdict is 232: 149 from Guatemala, 60 from Quetzaltenango and 23 from Alta Verapaz. The size of the sample after the application of the statistical formula corresponded to 182 files: 108 in Guatemala, 52 in Quetzaltenango, and 22 in Alta Verapaz. This comprises approximately 78% of the whole population.

When the representative sample was determined, the next step was the creation of a method for procuring this information, to make the tracking down and collection of data easier. The report on processes issued by CENADOJ included each file's number, as well as its status, that is, if the verdict was a conviction or an acquittal. Each file was located according to the cases' status.

### 2.2.2. Data collection methods

To collect data in each file the "Tool for the analysis of cases"<sup>78</sup> was used. This tool collected information from each criminal file, from the complaint to the final verdict, going through the different stages of the criminal process.

Each criminal file is divided into two parts, the trial court portion and the sentencing portion, except for the processes that ended with a verdict of in which case the file is held in one place.

Initially, cases ending in a conviction were studied using law records in Guatemala City and Quetzaltenango. Here it was essential to collect the numbers of final judgments at the Execution Courts.

If there was an acquittal, the first step was to verify the location in the proper sentencing court. The ones that we could not locate in the sentencing courts were located at the General File of the Courts.

The trial court in the province of Guatemala was in the Criminal Administration Unit. In the cases of the towns of Mixco and Villa Nueva, they were located in the settlement courts of these towns. In isolated cases where the search was exhaustive or where it was not possible to locate one of the pieces, the information was verified in the MP files, using the number that is assigned to it internally.

Data from Quetzaltenango files was initially gathered in the Administrative Center for Criminal Management, where closed cases from 2010 could be found. Files from 2008 and 2009 had already been sent to archive facilities, such as the Regional Archives of Quetzaltenango Courts and the Third

<sup>77</sup>Where: n = size of the sample, Z = level of trust which in this case it is in a 95%, p = "success" probability, which in this case is 0.50, q = difference between 1 - P, the result is 0.50, N = size of the sampling framework, E = standard error of estimation which equals to 0.05

<sup>78</sup> Annex 6.8. Pre-verified Data Collection Tool developed by IJM for this study.

Court of Criminal Enforcement. Files that could not be found through these methods were reviewed in the District Office of Quetzaltenango's Public Ministry.

Regarding Alta Verapaz, the Trial Courts and the Sentencing Courts are concentrated in the municipal government that is Cobán. Here the process of collecting information was also similar. The trial court prong was in the Criminal Administration building, and the acquittals and convictions were examined at the Sentencing Courts. Of the convictions, only the duplicate copies were examined, since the original ones are at the Execution Courts of Guatemala.

The process for the collection of information was carried out by transferring information from physical documents into an electronic format. The collection was made by lawyers with knowledge on criminal law, or law students who examined the physical files and identified the required information in the corresponding pieces. This information was collected in a period of seven months, with strict legal standards.

### **2.2.3. Data handling and analysis**

The collection of data from the 182 cases had a series of variables. The study's database was developed, and answer options to the questions were codified. A data capture program was created, designed exclusively to analyze the cases of the study, which allowed for storage of the database. This database is stored as an SQL file<sup>79</sup>.

The information collected was entered and proofed to ensure quality control in data entry<sup>80</sup>. After entering all the information, it was kept in the database of the SPSS program<sup>81</sup>, and each variable was inspected. Additionally, the codebook for the database used in SPSS was developed. This would allow the development of criminal process indicators, as well as the profile of both the victims and the perpetrators of the 182 cases analyzed by province.

The triangulation of variables was done. It was necessary to obtain the indicators and these were calculated quantitatively, so that the legal advisors had reliable information to carry out the analysis of indicators.

### **2.2.4. Limitations**

- Due to the lack of an updated registry in the judiciary system, the process of finding specific archives was delayed.
- The lists created by CENADOJ had different numbers from those on the labels of the actual documents.
- The designation of a specific identification number for records starting in 2008 complicated the ability to find records created prior to this designation.
- Certain courts were transferred to a new location, delaying the process of finding the files.

## **2.3. Interviews with officials of the CJS**

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<sup>79</sup>SQL stands for *structured query language*.

<sup>80</sup> Data base prepared by a programmer and a mathematician

<sup>81</sup> IBM SPSS *Statistical Package for the Social Sciences*

### **2.3.1. Selection Criterion**

Interviews were conducted with 75 officials.<sup>39</sup> Interviews were sent to specialized prosecutors, district prosecutors, public prosecutors and assistant prosecutors from the MP who carry out sexual assault cases. 33 interviews were sent to trial court judges and sentencing court judges from the OJ, and one to a chief justice from the Prosecutor's Office for Children of the PGN in each of the provinces of Guatemala, Quetzaltenango and Alta Verapaz.

### **2.3.2. Data collecting methods**

The officers were interviewed in a personal and individual way in this study. A questionnaire comprised of 24 open-ended and multiple-choice questions, which lasted approximately 25 minutes, was used to interview each officer. The interviews were made from November 2011 to February 2012.

### **2.3.3. Data handling and analysis**

We classified the data according to general information variables, training and practice indicators in the processing and resolution of cases, as well as self-perception indicators in relation to the level of trust from the system users.

### **2.3.4. Limitations**

To carry out the interviews, a proper scheduling calendar was established. The officials' availability was considered, their schedules and already established hearings, as well as their vacation time during the time of the interview.

## **2.4. Interviews to the Office for Women's Affairs and the Office for Child Victims from the MP about alternative resolutions to criminal proceedings**

### **2.4.1. Selection criterion**

Sixty officials and assistant prosecutors from the Prosecutor's Office for Women's Affairs and the Office for Child Victims were interviewed. To determine the alternative resolution process most often used in these cases, 42 prosecutors in the department of Guatemala (which includes the municipalities of Guatemala, Mixco, Santa Catarina Pinula, and Villa Nueva) were interviewed, as well as 8 prosecutors in Quetzaltenango, and 10 in Alta Verapaz.

Officials and assistants of the Prosecutor's Office for Women's Affairs and the Office for Child Victims, who are in charge of the criminal prosecution in the cases of CSA, were interviewed. In Guatemala, this entity is divided in three units: investigation, litigation and summary judgment, which are specialized according to the types of crimes. The Investigation Unit UDI # 1, which was interviewed, specializes in sexual crimes.

In Quetzaltenango, the task of investigating CSA crimes connects to the Prosecutor's Office for women and child victims.

In Alta Verapaz, the Prosecutor's Office for Women and Child victims was created in August 2012.

### **2.4.2. Data collecting methods**

The interviews were carried out individually with officers from the provinces of Guatemala, Quetzaltenango and Alta Verapaz through a questionnaire that contained 24 questions. Each interview lasted approximately 30 minutes and these were conducted over a period of 30 days, during April of 2013.

### **2.4.3. Data handling and analysis**

To analyze the information collected, it was classified by the general information variables, workload, challenges in attending these cases, filtering mechanisms used in sexual assault cases and procedural resolutions.

### **2.4.4. Limitations**

A proper scheduling calendar for the interviews was established, requesting appointments in advance while considering the officials' hearings and programs.

## **2.5. Interviews to users of the CJS**

### **2.5.1. Criterion selection**

This interview was given to 22 key actors from the social services agencies to determine their level of confidence in the Public System of Justice, specifically with cases of CSA.

- a) The list of the representatives from the institutions was made with the records from the MP derivation network and with the data from the web page of the Ministry of Public Health and Social Assistance.
- b) These organizations are in the metropolitan area and considered subsequent mid-year and impact evaluations.
- c) Hospitals or public health centers are included in the study because they have to report the sexual assault cases, according to the law. A percentage for higher and lower level of poverty, indigenous population and illiteracy was determined.
- d) The other organizations were selected according to the nature of their occupation and their knowledge of the CJS.

### **2.5.2. Data collecting methods**

The interviews were conducted individually with key employees in social service agencies and the judicial system, using a questionnaire of 19 questions which lasted approximately 30 minutes.

### **2.5.3. Data handling and analysis**

The information collected was categorized for these employees' analysis, then classified based on each institution's general information to analyze the following variables: their reason for accessing the system, their opinions of how the cases were handled, and their level of trust in the CJS.

## **2.6. Validation of data by the expert panel and preliminary presentation to the main institutions included in the report**

### **2.6.1. Data validation by the experts panel**

After concluding the first draft of the final report, experts and academics of the criminal law and the criminal procedure law convened to validate the main findings, conclusions and recommendations of this study. The experts gave their feedback and recommendations.

### **2.6.2. Preliminary presentation to the main institutions included in the report**

The findings of the study were presented to the President of the Supreme Court and other magistrates who preside over topics involving children. They were also presented to the Attorney General and other members of her staff prior to their release to the public.

### 3. Key Findings

Baseline indicators on the performance of the CJS in cases of sexual assault against minors determined the basis for the key findings. These indicators were formulated through an analysis of breakdowns in the criminal process.

Also, SICOMP reports corresponding to complaints presented, victims, number of indictments, and the condition of complaints were utilized to establish the baseline indicators at a national level for the period of 2008-2012.

Other key findings were obtained from the analysis by IJM of 182 physical files of concluded cases of CSA from 2008 to 2010 from the provinces of Guatemala, Quetzaltenango and Alta Verapaz. These provinces had the most complaints presented during the last five years. This final section uses the case files to analyze the performance of the criminal process when the victim of sexual crimes is a minor.

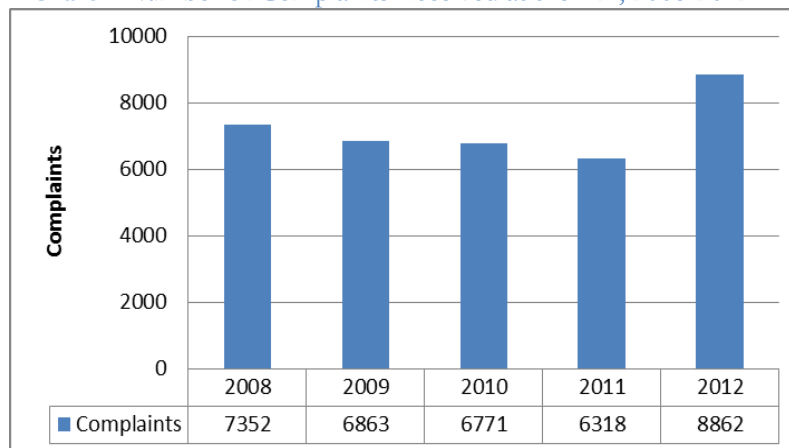
#### 3.1. Analysis of SICOMP data, 2008-2012

The World Health Organization estimates that 150 million girls and 73 million boys have experienced forced intercourse or other forms of sexual assault. According to these studies, 14-56% percent of sexual assault against girls and up to 25% against boys was inflicted by relatives or stepparents.<sup>82</sup>

In Guatemala, there are also high rates of violent sexual crimes. Violent sexual crimes the eighth most common criminal complaint in the nation.<sup>83</sup> Between 2008 and 2012, the MP received a total of 36,166 complaints of violent sexual crimes, by both adults and minors.

**KEY FINDING:** Between 2008 and 2012, 36,166 complaints of violent sexual crimes were filed in Guatemala. During 2011, the sexual crimes rate was 42 for every 100,000 inhabitants. In 2012 it increased to 58 for every 100,000 inhabitants.<sup>84</sup> The provinces with the most complaints of sexual crimes are Guatemala, Alta Verapaz and Quetzaltenango.

Chart I Number of Complaints Received at the MP, 2008-2012



Source: SICOMP nationwide data, sexual assault crimes, 2008-2012. Report April 25, 2013

<sup>82</sup>SERGIO PINHEIRO, PAULO, "Informe Mundial sobre la Violencia contra los Niños y Niñas", 2006, p.54

<sup>83</sup>MINISTERIO PÚBLICO, Memoria de Labores 2011, p.58

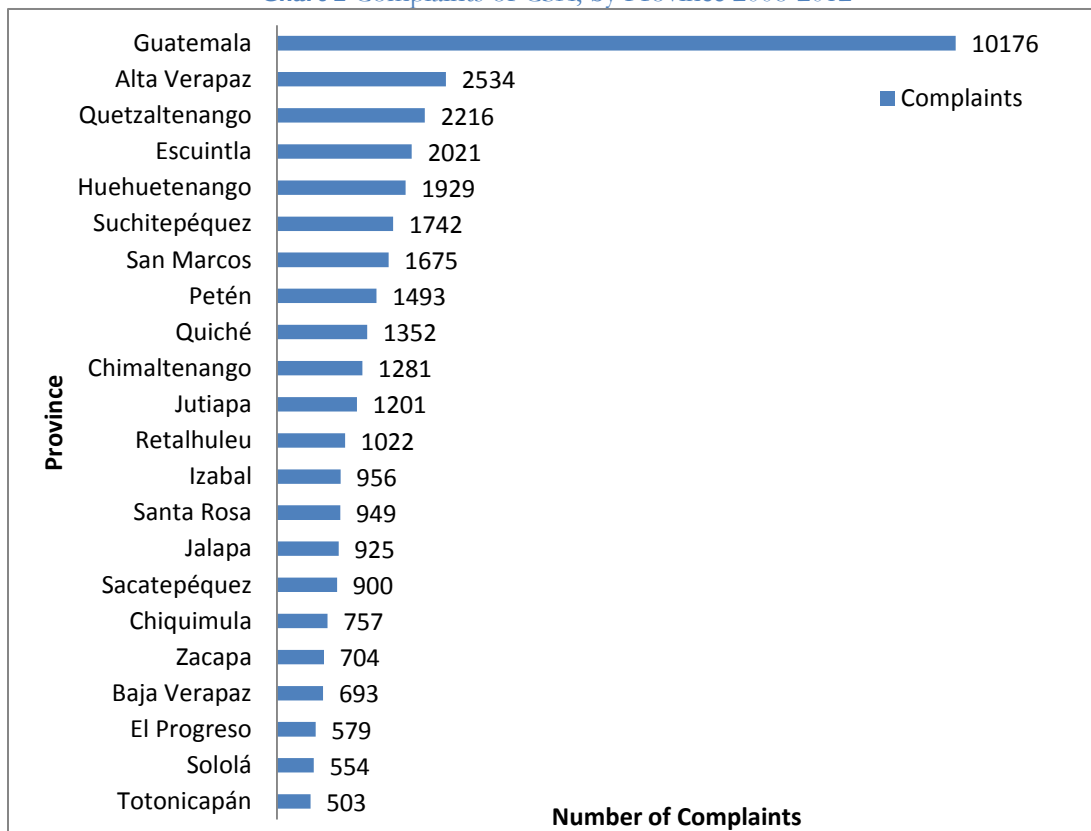
<sup>84</sup> The population estimated by INE during 2011 was 14,713,763 and for 2012 were 15,073,375 inhabitants.



The average national complaint rate in 2012 was 58 for every 100,000 people. In the province of Guatemala proper, the province with highest number, the complaints rate is 81 for every 100,000 and in Quetzaltenango the rate is 61.<sup>85</sup>

When compared to 2008, complaints have decreased in 2009, 2010, and 2011. This could be attributed in part to the validity of Decree 9-2009, The Law Against Sexual Violence, Exploitation, and Trafficking of Persons, since authorities did not yet know all of the positive elements included with this law. In regards to the significant increase of 2,534 complaints (29%) in 2012 compared to 2011, this increase could be attributed to, among other things, the amplification of the Model for Holistic Attention (MAI)<sup>86</sup> and the creation of the Prosecutor's Branch for Women and Child Victims within the Public Ministry, as well as the creation of the Sexual Crimes Unit (UDA) within the Department of Criminal Investigation (DEIC) in the National Civil Police Force. It can also be attributed to the coordinated efforts made by the Secretary against Sexual Violence, Exploitation, and Trafficking of Persons to present complaints to the Public Ministry.

**Chart 2 Complaints of CSA, by Province 2008-2012**



**Source:** SICOMP nationwide data, sexual assault crimes, 2008-2012. Report April 25, 2013

<sup>85</sup> INE DATA, Estimated population for 2012 by province. Guatemala: 3,207,587; Alta Verapaz: 1,147,593; and Quetzaltenango: 807,571. According to the Regional System of Standardized Indicators of Coexistence and Citizen Security –SES–, the rate of sexual offense complaints in 2012 per 100,000 inhabitants of some countries in the region is as follows: Honduras 41.32, Nicaragua 60.19, Costa Rica 134.34, Panamá 64.42, Chile 93.77, and Colombia 39.67.

<http://www.seguridadyregion.com/images/Indicadores/denuncias%20de%20delitos%20sexuales.pdf>

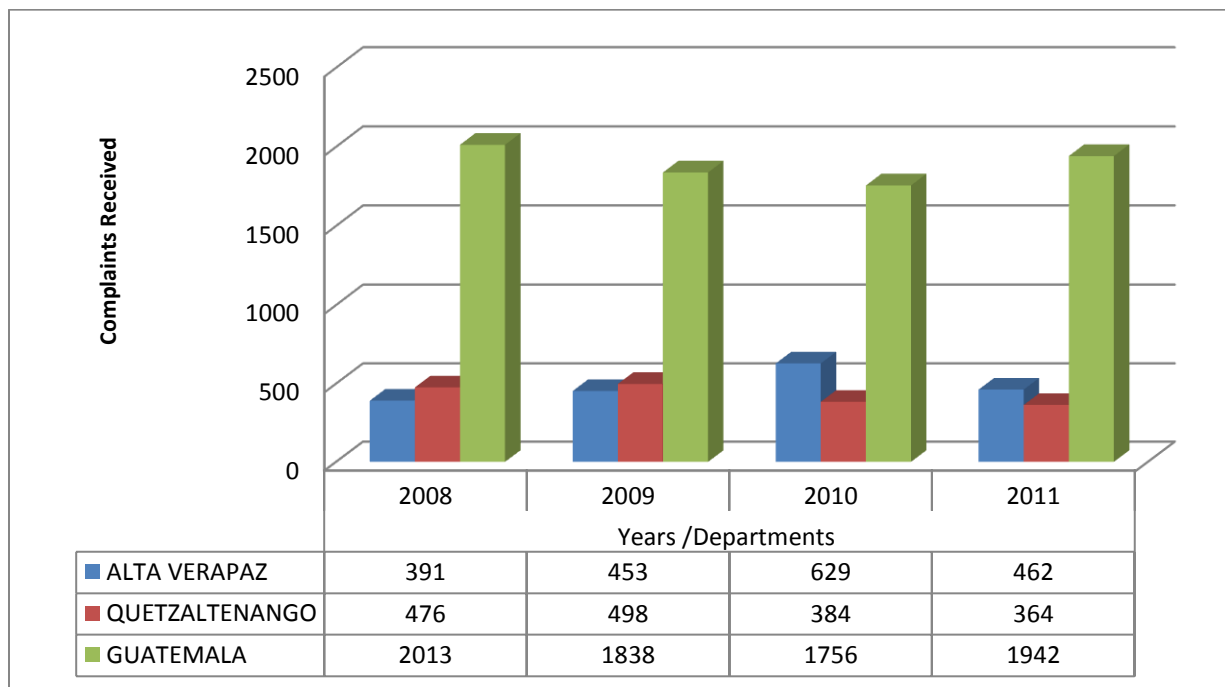
<sup>86</sup> The MAIs were inaugurated in Villa Nueva, Huehuetenango, Alta Verapaz, and Escuintla in 2012, and then in Mixco, Chiquimula, Chimaltenango, and Quetzaltenango in 2013.

According to the chart above, the five provinces with the highest number of complaints for sexual crimes filed at the MP in the years 2008-2012 are: Guatemala proper with 28% of the total (10,176), Alta Verapaz with 7% (2,534), Quetzaltenango with 6% (2,216), Escuintla and Huehuetenango both with 5.6% (2,021 and 1,929). On the other hand, the provinces with fewest complaints are Totonicapán and Sololá, with 1.5% of the total number of complaints (554 and 503).

It is important to consider that the CJS in the interior of the country is characterized by a lack of sufficient services and resources to assist users, especially children. There are fewer staff and they have a reduced working schedule. Furthermore, the population there is widely diverse. The provinces of Quetzaltenango, Alta Verapaz and Huehuetenango, for example, have a mostly indigenous population. Also, the distances and conditions of the roads in many situations inhibit access to the urban centers where justice services are concentrated.

This study prioritized the analysis of the three provinces with the most complaints of sexual crimes: Guatemala, Alta Verapaz and Quetzaltenango.

**Chart 3** Complaints Received by the MP in Alta Verapaz, Quetzaltenango and Guatemala, 2008-2012



Source: SICOMP nationwide data, sexual assault crimes, 2008-2012. Report April 25, 2013

From within Guatemala proper, the three towns that filed the most cases between 2008 and 2012 are Guatemala (4,683), Mixco (1,414), and Villa Nueva (1,111). The sexual crimes rates for every 100,000 inhabitants in 2012 in these towns were 134 in Guatemala proper, 56 in Mixco and 46 in Villa Nueva. Guatemala proper is the town with the highest rate of sexual crimes in Guatemala. Mixco and Villa Nueva are below the national average.<sup>87</sup>

<sup>87</sup> In the towns of Guatemala, Mixco y Villa Nueva, 1337-273 y246 complaints were presented respectively in 2012. Their population estimated by INE for the same year was: 992,541 inhabitants in Guatemala, 483,705 in Mixco, and 527,174 in Villa Nueva.

**Table 2 Sexual crimes reported per municipality: Department of Guatemala 2008-2012.**

Name of Town	Total Complaints Received by Town
Guatemala	4683
Mixco	1414
Villa Nueva	1111
San Juan Sacatepéquez	441
Villa Canales	441
Amatitlán	394
San Miguel Petapa	341
Chinautla	248
San Pedro Ayampuc	228
San José Pínula	187
Santa Catarina Pínula	175
Palencia	169
Fraijanes	112
San Pedro Sacatepéquez	74
San Raymundo	68
No registrado	59
San José del Golfo	23
Chuarancho	8
<b>Total general</b>	<b>10,176</b>

Fuente: Datos SICOMP a nivel nacional, delitos de violencia e indemnidad sexual 2008-2012.

With 623 reported cases, the Province of Alta Verapaz had a rate of 52 sexual crimes for every 100,000 inhabitants in 2012. The town of Cobán had a rate of 73 for every 100,000 inhabitants in 2012, above the provincial rate and the national average.<sup>88</sup> San Pedro Carchá follows next with 341 complaints received in the same period, and a rate of 34 sexual crimes for every 100,000 inhabitants.<sup>89</sup> It is of note that this town is less than fifteen minutes away from the provincial capital, making it very accessible to the location where the CJS services are concentrated.

**Table 3 Complaints of Sexual Crimes Received in the Province of Alta Verapaz, 2008-2012, divided by Town**

Name of Town	Total Complaints Received by Town
Cobán	623
San Pedro Carchá	341

<sup>88</sup> 171 complaints were presented in Cobán in 2012 according to a SICOMP source. Its population estimated for that year according to INE was 232,703 inhabitants.

<sup>89</sup> In the town of San Pedro Carchá, 77 complaints were presented for sexual crimes in 2012, according to a SICOMP source. Its population estimated by INE for that year was 221,172 inhabitants.

Panzós	169
Chisec	156
San Cristóbal Verapaz	139
Santa María Cahabón	137
Fray Bartolomé De Las Casas	135
San Juan Chamelco	118
Tactic	95
Santa Catalina La Tinta	94
Chahal	92
Senahú	91
Santa Cruz Verapaz	84
Tucurú	82
Raxruhá	62
Tamahú	46
Lanquín	41
Not Registered	29
<b>Total</b>	<b>2534</b>

Source: SICOMP nationwide data, sexual assault crimes, 2008-2012.

Within the province of Quetzaltenango, the most complaints of sexual crimes were presented in the town of Quetzaltenango because victims in the city have more access to the services of the justice system. The provincial capital of Quetzaltenango presented 831 complaints and Coatepeque presented 344 between 2008 and 2012. During 2012, the complaint rate for sexual crimes for every 100,000 inhabitants in the municipality of Quetzaltenango was 80 and in Coatepeque it was 72. Both rates were high above the national median.

**Table 4 Complaints for Sexual Crimes received in the Province of Quetzaltenango, 2008-2012, Divided by Town**

Name of Town	Total Complaints Received by Town
Quetzaltenango	831
Coatepeque	344
Ostuncalco	99
Cantel	91
Colomba	75
Flores Costa Cuca	69
La Esperanza	53
El Palmar	52
Génova	50
Cabricán	49
Olintepeque	47
Salcajá	46
San Carlos Sija	43

Palestina De Los Altos	35
San Martin Sacatepéquez	35
Concepción Chiquirichapa	31
Zunil	22
San Mateo	20
San Francisco La Unión	18
Almolonga	17
Sibilia	17
Huitán	14
San Miguel Siguilá	14
Cajolá	9
Not Registered	135
<b>Total</b>	<b>2216</b>

**Source:** SICOMP nationwide data, sexual assault crimes, 2008-2012. Report April 25, 2013

The provinces of Guatemala, Alta Verapaz and Quetzaltenango are the locations where the most sexual crimes are reported in the country. The analysis by municipality demonstrates that the higher rates of complaints in the three provincial capitals increase the national average considerably, which shows a local problem in terms of sexual assault.

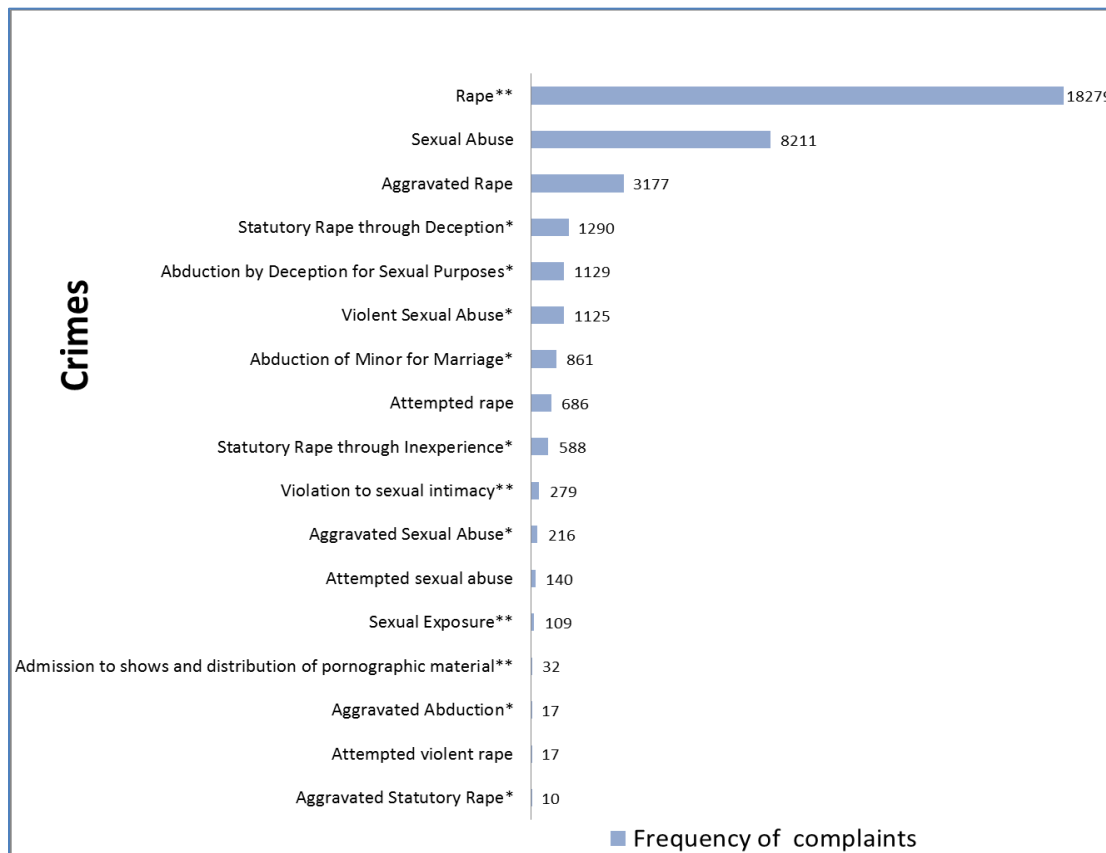
From the analysis, it can be established that one of the problems the Guatemalan CJS faces is the issue of access to justice. Services are concentrated in the urban areas; individuals who wish to utilize CJS services but live a long distance from the provincial capitals experience substantial challenges in accessing these services. This situation becomes even more complicated with minors.

*The town of Santa María Cahabón, from the Province of Alta Verapaz (137 complaints 2008-2012) is an example.<sup>90</sup> Its inhabitants are mostly Q'eqchi' and the town is 92 km from the provincial capital of Cobán, it takes around 10 hours to travel there. To reach the MP, an individual would need an average of 10 hours to travel, apart from the time it takes them to file complaint in the provincial capital of Cobán. INACIF, the Trial Courts, the Criminal Court, the Femicide Court and Tribunal, and the Children's Courts are also there, so the victim will have to travel continuously to the provincial capital to follow up the criminal and protection processes.*

This information should motivate the public justice institutions to create policies that facilitate access to justice for all, particularly in those places where sexual assault, especially against minors, is more prevalent. For example, in the last year, the Public Ministry has extended the Offices for Women's Affairs and the Model for Holistic Attention to Victims.

<sup>90</sup>The town of Santa María Cahabón, province of Alta Verapaz, in 2012 had a rate of 66 complaints for sexual crimes, for every 100,000 inhabitants; above the national average which is 58. In 2012, 40 complaints were presented, according to SICOMP, and has an estimate of 59,901 inhabitants, according to INE

**Chart 4** Complaints Received by Crime Classification, 2008-2012



Source: **SICOMP nationwide data, sexual violence crimes, 2008-2012**. Report April 25, 2013

\*Crimes derogated through Decree 9-2009. \*\* Crimes reformed through Decree 9-2009. They are included because some of the sexual crimes occurred before the passing decree and are labeled according to the older laws.

During the period 2008-2012, according to the MP's data, the most commonly reported both in violent sexual crime, by both adults and minors, was rape, with 18,279 cases or 50.5% of the cases reported nationally for sexual crimes. Sexual aggression was the second-most reported with 8,211 cases or 23% of complaints, and aggravated rape the third-most, with 3,177 cases or 9% of the complaints filed. These three crimes compose 82% of the admitted cases at the MP. In other words, the cases with the most complaints are those that represent the more violent forms sexual assault against both adults and children.

Sexual assault, mainly against children, is closely linked to historical and socio-cultural patterns that promote chauvinism, anthropocentrism, violence and the exclusion of children. The justice system in Guatemala is not excluded from the influence of these patterns. In fact, it can become a system that breeds, reaffirms and reproduces these patterns to justify violence against children, which can, in turn, affect the efficiency of the investigation of cases. In addition, the number of cases is overwhelming to the CJS which directly affects the quality of investigation when there are not enough human resources.

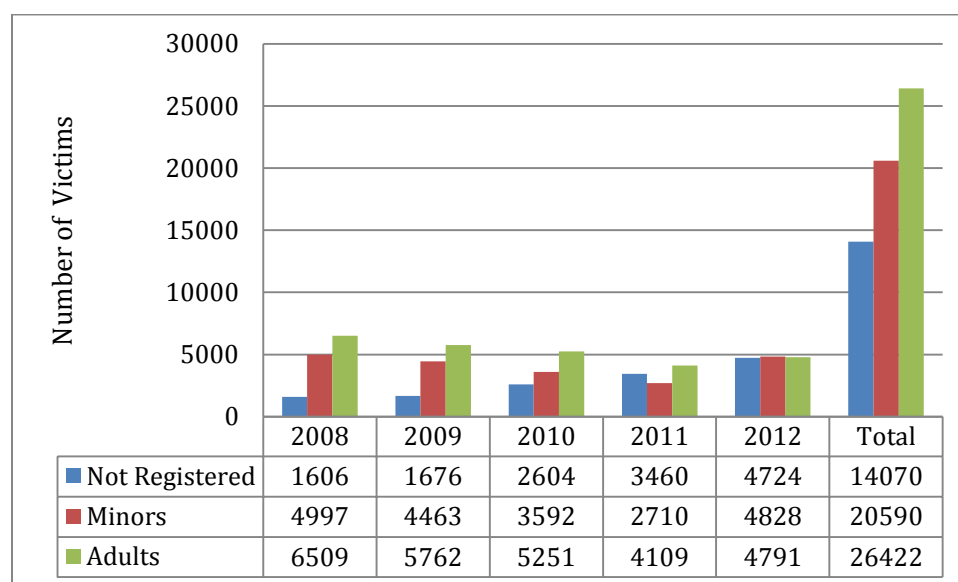
### 3.1.1. Demographic profile of the victim in cases of sexual assault

**KEY FINDING:** During 2008-2012, 61,082 victims registered complaints for sexual crimes, with the number of victims increasing in 2012 and the crimes most reported being rape and sexual assault. The age of victims is not known in a number of cases, but of those in which the age was registered, victims under 18 years of age represent a high percentage of 44 % (20,590). Among this age group, female minors are the most common victims at 88.32%.

The reports generated by SICOMP show that between 2008 and 2012 the MP knew of 61,082 victims. It is important to mention that the number of victims is higher than the number of complaints filed at the MP in the same period (36,166), since in each complaint there could have been more than one victim.

Only 47,012 of the 61,082 sexual assault victims had their ages recorded. Of those whose age is known, 44% (20,590 victims) are children and 56% (26,422 victims) are adults. It is important to note that of the 14,070 victims whose age was not recorded, many are likely children, which should directly influence political development that focuses on aiding children who are victims of sexual violence.

**Chart 5** Number of Sexual Assault Victims (child and adult), 2008-2012, SICOMP



Source: SICOMP nationwide data, sexual assault crimes, 2008-2012.

The numbers show that in 2012 there was a significant increase in minor victims (4,828) in relation to 2011 (2,710), which represented a 43.87% above the previous year. This is related to the increase of complaints for these acts committed against this group of the Guatemalan population.

According to the MP's total of victims, the rate of sexual crimes for every 100,000 inhabitants increases drastically in 2012, in relation to 2011. The rate of sexual crimes in 2011 was 69 and in 2012

it was 95 for every 100,000 inhabitants. This statistic includes both adults and minors.<sup>91</sup> Minors are more affected by sexual crimes in Guatemala as the rate for every 100,000 minors was 67 in 2012.

From 2008-2012, a total of 56,641 victims of sexual crimes were registered. 84% (47,415) of these victims were women and 16% (9,226) were men, but no distinction was made of their age.

Out of the 20,590 minor victims of sexual crimes registered at the MP during 2008-2012, 88.32% were girls, 8.39% were boys and in 3.29% of the cases the gender of the victim was not registered. The reality that the majority of minor victims are female should influence the way different institutions attend to victims of sexual crime, such as having female officials and employees to provide services to female victims.<sup>92</sup>

**Table 5** Minor Victims by Crime, 2012

Crime / Age (years)	1- 5	6-10	11-12	13-17
Rape**	126	272	214	1457
Aggravated Rape	40	68	83	829
Sexual Assault	144	323	204	772
Attempted Rape	16	32	23	103
Attempted Sexual Assault	4	6	8	28
Violation to Sexual Intimacy **	0	3	4	14
Aggravated indecent assaults *	0	0	1	6
Sexual Exposure **	4	10	8	4
Admission to show and distribute pornographic material to minors **	0	1	3	4
Abduction of Minor for Marriage*	0	0	0	3
Abduction by Deception for Sexual Purposes*	0	0	0	2
Attempted Aggravated Rape	1	1	3	2
Statutory Rape by Inexperience*	0	0	0	1
Statutory Rape by Deception*	0	0	0	1
Violent Sexual Assault *	0	0	0	0
<b>Totals</b>	<b>335</b>	<b>716</b>	<b>551</b>	<b>3226</b>
Percentages	7%	15%	11%	67%

Source: SICOMP nationwide data, sexual assault crimes, 2012. \*Crimes abrogated with Decree 9-2009. \*\* Crimes reformed through Decree 9-2009.

During 2012, the majority of minor victims were between the ages of thirteen and sixteen. It is of note that in this same year, there were 335 cases (7%) of child victims of sexual crimes between the ages of one and five.

<sup>91</sup> Population estimated by INE. There were 14,713,763 inhabitants in 2011, and 15,073,375 in 2012.

<sup>92</sup>“Child victims and witnesses of crimes should be treated with tact and sensitivity along the whole legal process, taking into account their personal condition and their immediate needs, age, sex, physical disabilities, level of maturity, and respecting completely their physical, mental and moral integrity”. United Nations Social Economic Council, “Directives on justice in cases relating to child victims and witnesses of crime”, 2005, paragraph 10.



### 3.1.2. Preparatory Procedure

**Key finding:** According to SICOMP data, it is estimated that 60% of the 36,166 complaints filed with the MP for sexual crimes from 2008-2012 had not successfully completed the investigation phase by the end of 2012.

The goal of the preparatory procedure is to determine whether there is a basis to present an indictment against a person who is accused of a crime. To this end, the prosecutor who carries out the investigation activities must decide whether to request a trial against the suspect. Apart from the indictment, the law permits the prosecutor to promote conclusive actions, which end the process.<sup>93</sup>

Of the 36,166 sexual crimes cases, with child and adult victims, brought to the MP between 2008 and 2012<sup>94</sup>, 20.6% ended in conclusive actions other than a verdict. Of these, 325 (slightly less than 1%) ended with a criteria of opportunity<sup>95</sup>, 6,682 (18.48%) were disqualified<sup>96</sup> in an early phase, and 461 (1.27%) were dismissed<sup>97</sup> (see Table 6).

The MP, according to the objectivity principle, can apply for dismissal<sup>98</sup>. However, it cannot do so without hearing from the victim or his/her representative first.<sup>99</sup> This is an extremely important step because a dismissal irrevocably closes the criminal process in relation to the alleged perpetrator, in whose favor it is pronounced. The same process happens with a disqualification, where the prosecutor has to communicate the decision to the victim. If they do not agree with the decision, they can appeal the decision with another judge. If no action is taken, the case is closed.

From interviews with 60 prosecution assistants and agents from the Office for Women's Affairs in 2013, seventeen interviewees said that at some point they have suggested disqualification. Out of these seventeen, three indicated that they had done so with minors less than fourteen years of age; in two cases a promise of marriage had been made.

**60% of the cases remain in the investigative stage in the prosecutor's office.** Of these cases, 6% are in the status of "pending," referring to cases that did not have any kind of investigation procedure underway; since 2008 there have been 290 complaints with this status. 54% of the cases are still in the investigation stage in the prosecution headquarters. The status of cases is unacceptable: April 2013 data shows that 46% of the cases received at the Public Prosecutor's Office for the year 2008 are still in the investigation stage, more than four years after the complaint was filed. The status is the same with 52% of the cases from 2009, 56% from 2010, the 55% from 2011 and 60% from 2012. As seen, most of the cases are at a standstill, mostly in this procedural stage.

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<sup>93</sup>In this study, conclusive actions refer to procedural institutions that put an end to the criminal process, such as dismissal, rejection, and criteria of opportunity.

<sup>94</sup> This information was developed by SICOMP, which is not used for finding norms and patterns in the complaints, but rather for internal management of complaints filed with the MP.

<sup>95</sup> Criteria of opportunity: A basic institutional procedure for a quick resolution of criminal conflicts different from the criminal sanctions in a verdict. The MP is authorized to refrain from exercising criminal punishment, and based on circumstances, there may be occasions in which an arrangement between both parties involved is more beneficial for society than the imposition of a penalty. The prosecutor's decision to abstain from exercising criminal action must be approved by a judge. (Explanatory Statement, Code of Criminal Procedure).

<sup>96</sup> A disqualification is an act taken by the prosecutor to filter out cases in an effort to avoid wasting time in investigations when it is clear that the case does not fall within the scope of the MP. The prosecutor must explain their decision to the person filing the complaint, to the victim or injured party, who can object to the prosecutor's decision before a judge.

<sup>97</sup> A dismissal is a resolution passed during the intermediate stage or preparation of the debate, which absolves the accused and has the same effect as an acquittal. It seeks to avoid reaching the trial when evidence gathered from the investigation shows that the end result will be an acquittal. Furthermore, producing the effect of *res judicata* prevents the accused from being permanently threatened by the existence of an open trial against them. (Public Prosecutor's Manual, pg. 281).

<sup>98</sup>Article 328 Code of Criminal Procedure.

<sup>99</sup> Article 117 c. Code of Criminal Procedure.

**In addition to this, 10% of cases never concluded the investigation stage.** 3% of the cases have been temporarily closed because the investigation has been temporarily suspended and if new elements are found, the case will be reopened. Additionally, 1,013 cases were identified as in the prosecutor's file,<sup>100</sup> 47 were conditionally suspended from the criminal prosecution<sup>101</sup>, and 91 have been adjourned. The Code of Criminal Procedure establishes the rules for the application of these simplifying mechanisms, so the crimes in which they are applicable are predetermined.<sup>102</sup> Therefore, the MP can only renounce criminal action when the law permits it. For example, if the possible crime is a crime of sexual assault, it is not possible to apply for a plea bargain or for a conditional suspension of the criminal prosecution of the defendant when the victim is a minor, since all these crimes have a maximum punishment of five years of imprisonment.<sup>103</sup>

An “associated” case status means that the same person can be the perpetrator in different cases and the prosecutor decides to unify several reported actions in a single case. These represent 3% of the cases.

4% (1,318) of cases fall under the “referred” status, which includes complaints that were sent to the Family or Peace Courts (for actions that do not constitute crime or offences against individuals), to the Courts of Adolescents in Conflict with Criminal Law or the Children's Courts (when the perpetrator is a minor), This also includes cases that fall under other circumstances (protection measures, security measures for the victim).

In conclusion, an estimated 70% of cases during the period of this study (25,203) had not advanced beyond the criminal investigation stage by the end of 2012.

**Intermediate procedure stage and Trial.** Prosecutors and their assistants have developed an intermediate procedure in 9.4% of the complaints presented during this time period. This percentage is made up of the 1,277 (3.5%) complaints in the intermediate procedure stage, the 382 (1%) cases in which a verdict has been reached, and the 1,736 (4.8%) cases in which a final verdict has been reached (meaning there is no procedural action which will modify it). See sections 3.1.3 and 3.1.4.

The statistics from these cases represent cases involving both children and adults because it is not possible to obtain the specific details on cases involving minors.

Since they reflect cases from a period of five years, the statistics in the following table are dynamic. For example, let us examine those cases which fall under the “final verdict” category. In 2008, there were a total of 7,352 complaints and 434 final verdicts. This number is not exclusive to complaints which reached a verdict in 2008, rather, 434 of the cases which were initiated in 2008 have reached a verdict, whether in 2008 or a future year. Thus, the figures in each year will vary depending on the progress of the case.

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<sup>100</sup> The file assumes a not definite closure of the process in cases where the suspect has not been individuated, or the rebellion has not been declared. The figure of the file is used to give a legal exit to those cases in which there is no possibility to identify or to arrest the suspect.

<sup>101</sup> Conditional suspension from the criminal prosecution is the suspension of criminal proceedings under a condition that ensures respect for the rule of law and criminal conflict resolution. This is used as an alternate form to a conditional suspension and is also used for economic procedural reasons, but essentially, because of a lack in need to rehabilitate the accused. (Explanatory Statement, Code of Criminal Procedure).

<sup>102</sup> Articles 25 and 27, Code of Criminal Procedure.

<sup>103</sup> It is deduced by integrating the special circumstances of aggravation contained in Art. 195 Quinquies of the Criminal Code to the fixed penalties.

Similarly, there were occasions in which the official title of the crime changed throughout the process of the trial. For example, a case which initially began with a charge involving rape may have changed during the trial; what is measured here is whether or not a verdict, regardless of the official crime, was reached.

**Table 6** Status of Complaints Received at the MP for all Sexual Crimes, 2008-2012

Complaints		Status of the Case	2008	2009	2010	2011	2012	Total by status	%
	Conclusive Acts	Disqualified	1936	1618	1158	1090	880	6682	18.48%
		Dismissed	161	107	83	68	42	461	1.27%
		Plea Bargain	107	60	48	57	53	325	0.90%
	During Investigation	In Investigation	3418	3577	3832	3491	5327	19645	54.32%
		Pending	290	226	443	370	793	2122	5.87%
		Suspended	15	8	7	11	6	47	0.13%
		File	291	165	122	53	67	698	1.93%
		Physical File	66	70	70	68	41	315	0.87%
		Concluded	42	28	8	8	5	91	0.25%
		Associated	183	231	222	204	227	1067	2.95%
		Referred	151	96	77	77	83	484	1.34%
		Other	60	25	37	104	608	834	2.31%
Intermediate Procedure Stage and Trial	Intermediate Procedure	139	190	216	270	462	1277	3.53%	
	Verdict	59	71	81	116	55	382	1.06%	
	Sentenced	434	391	367	331	213	1736	4.80%	
	Total	7352	6863	6771	6318	8862	36166	100%	

Source: SICOMP nationwide data, sexual assault crimes, 2008-2012

### Pre-trial testimony of minor victims of sexual crimes

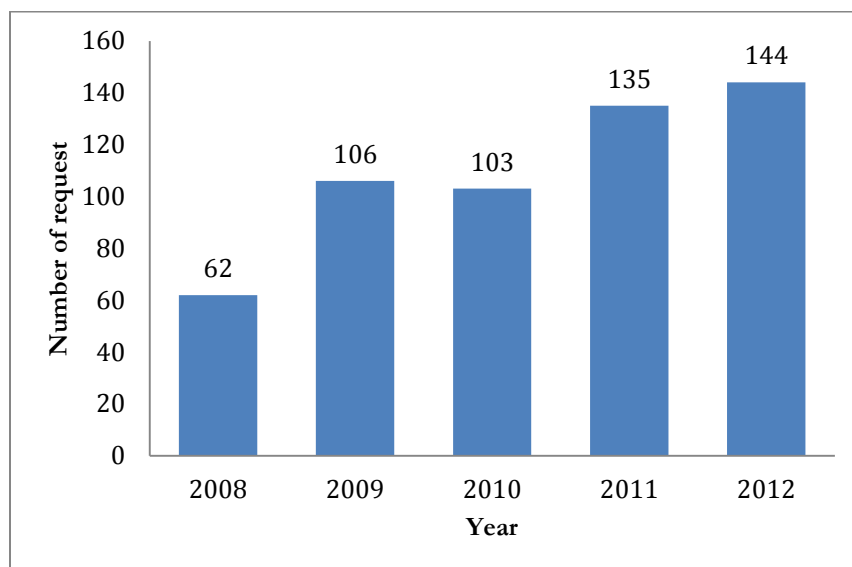
According to SICOMP, out of the 36,166 complaints received by the MP during 2008-2012 for sexual crimes committed against adults and minors, only 1.52% (550) requested pre-trial testimonies. Of that 1.52%, 288 were rape cases, 135 were aggravated rape cases, 5 were attempted rape, 85 were sexual assault cases, 20 were repealed reports of sexual abuse, and the rest (17) were categorized as other types of crimes of sexual violence. Such a small number of pre-trial testimony shows that the criminal procedure, in the vast majority of cases, does not promote the use of legal tools like pre-trial testimony, and in doing so supports the re-traumatization of minor victims.

It is important to mention that there are some regions where the pre-trial testimony is used more frequently. For example, the province of Sololá has fewer complaints of sexual crimes, but it has the third-most requests for pre-trial testimony. Of the complaints received, 8.30% (46) request pre-trial

testimony, over six percent higher than the national average. In the province of Guatemala 140 cases requested pre-trial testimony, but that number only represents 1.37% of the complaints received by the MP, which is below the national average and below the number of complaints received in Quetzaltenango (79 cases, or 3.56% of the provincial total) that request a pre-trial testimony.

This data illustrates the need to implement tools such as the Gesell Chamber, CCTV, video conferencing, and the use of a screen or cubicle when such amenities are not available. When used with pre-trial testimony, these tools greatly minimize the re-traumatization of children.

**Chart 6 Request for pre-trial testimony in cases of sexual violence**



Source: SICOMP nationwide data, sexual assault crimes, 2008-2012

### 3.1.3. Indictments

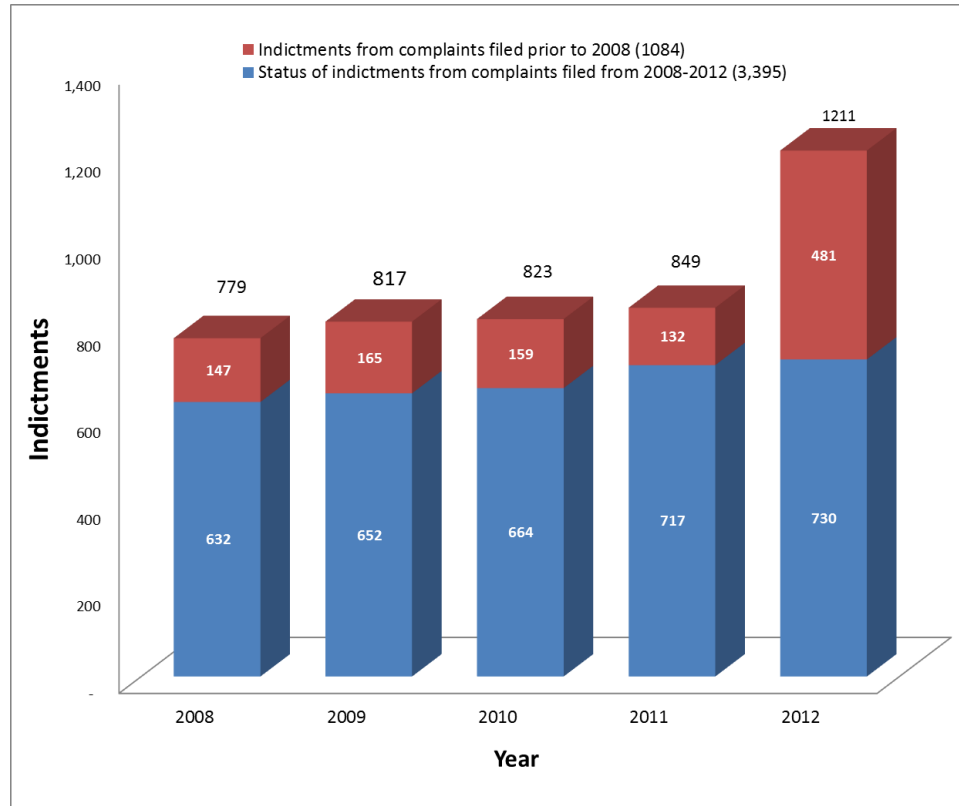
**Key finding:** Of all the cases received by the MP during 2008-2012 for sexual crimes committed against adults and minors, prosecutors filed indictments in 9.4% (3,395) of those cases.

The indictment demonstrates the prosecutor's firm conviction that the alleged perpetrator is guilty of the crime. Such conviction comes from evidence gathered during the initial proceedings.<sup>104</sup>

Of the 36,166 complaints filed between 2008 and 2012, 3,395 (9.4%) reached an indictment (see Table 6). According to SICOMP reports, 4,479 indictments were filed for sexual crimes between 2008 and 2012. This can be explained by the fact that the 3,395 complaints are those filed during those five years, but the remaining 1,084 are complaints filed in previous years. This can be seen in the following chart:

<sup>104</sup> MP, Op., Cit., p. 275.

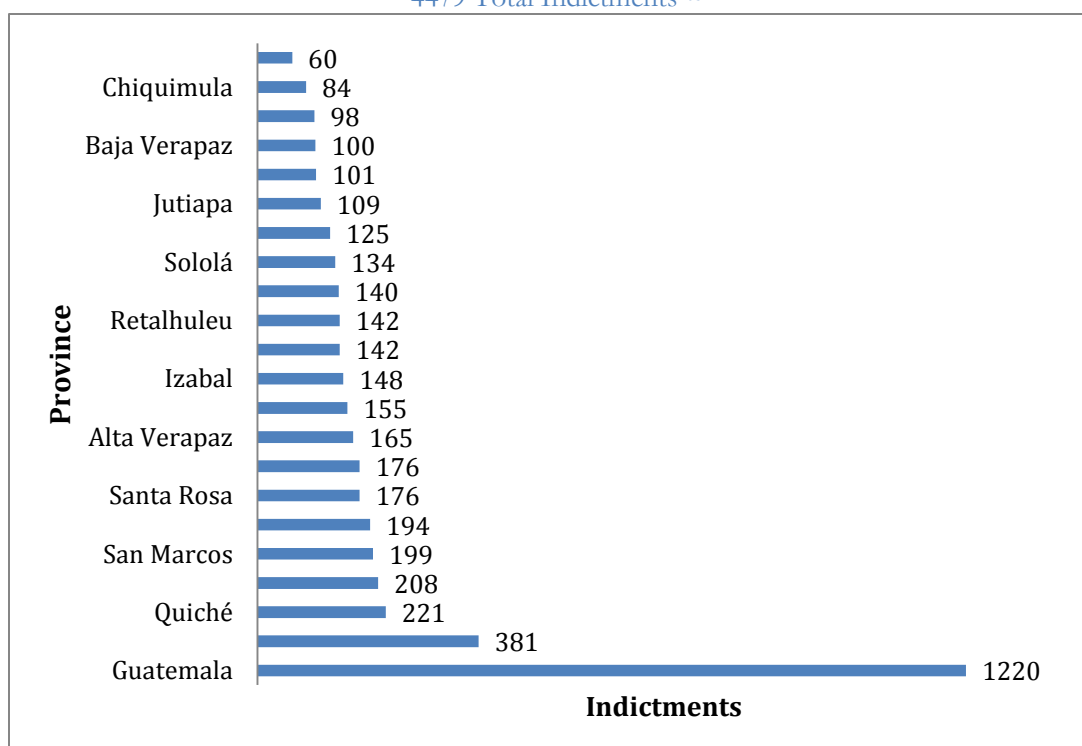
**Chart 7 Number of Indictments, 2008-2012, SICOMP**



**Source:** SICOMP nationwide data, sexual assault crimes, 2008-2012

It is important to note that in all of the complaints filed, the indictment has never been presented in the same year, primarily due to deadlines from the Code of Criminal Procedure. According to the regulations, if the person is arrested, the deadline to present the indictment is 3 months, and if the person is free, the time frame is six months. The same timeline occurs when the indictment is presented. Even with the presentation of the indictment, the case will not be resolved in the same year, due to the delays of the criminal sentencing courts.

The indictments during 2008-2012 were mainly for the crime of rape, with 49% of the indictments, followed by the crime of sexual assault, with 17%, aggravated rape with 14% and improper violent assaults with 5%. This information shows crimes differentiated according to the Law against Sexual Assault, Exploitation and Human Trafficking. For example, the crime of improper violent assaults disappeared under this division, but this type of behavior or conduct was incorporated to the crimes of rape and sexual assault. Chart 8 demonstrates the number of indictments per province.

**Chart 8 Indictments Requested by Province, 2008-2012**4479 Total Indictments<sup>105</sup>

Source: SICOMP nationwide data, sexual assault crimes, 2008-2012

The provinces where the MP requested the most indictments are: Guatemala with 27.2% (1220) of the indictments presented during 2008-2012; Quetzaltenango with 8.5% (381); and Quiché with 5.0% (221) of the indictments requested nationwide. Alta Verapaz, which is the province with the second highest number of complaints presented, ranks ninth in the number of indictments requested (165).

#### a). Indictments presented by type of process

Of all the indictments presented by the MP during 2008-2012, 93% were presented in a common procedure, that is, with a request for a trial to establish the suspect's guilt. From these indictments, 85% are from the crimes of rape, aggravated rape, sexual assault and violent, indecent assaults.

**Table 7 Request for Indictments by Process, 2008-2012**

Process	2008	2009	2010	2011	2012	Total by procedure
Indictment Request Common Process	715	751	780	788	1122	4156
Indictment Request Summary Trial	64	66	43	45	69	287
Indictment Request Simplified Process	0	0	0	16	20	36
Total	779	817	823	849	1211	4479

Source: SICOMP nationwide data, sexual assault crimes, 2008-2012

<sup>105</sup> An indictment appears as international in year 2012, so it does not appear in the provinces. The total of the Table is 4478 plus the international one, 4479:

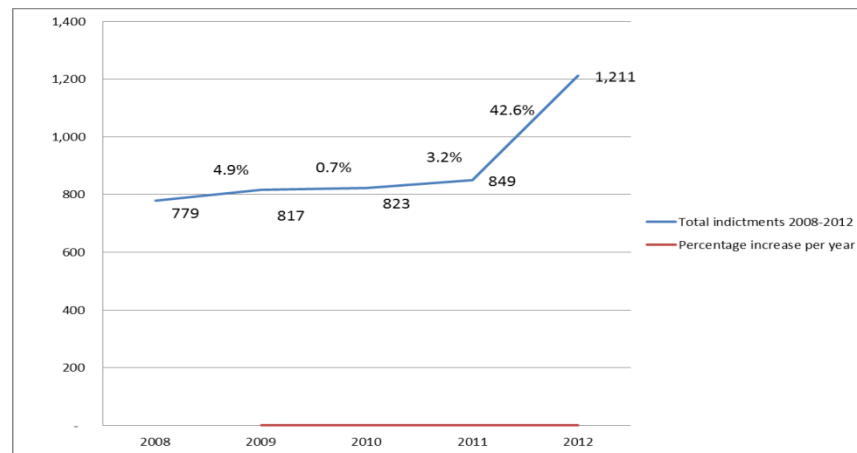
During this same period, 287 indictment requests, or 6.7% of the total indictments, were presented for summary trial. This smaller number due mainly to the limitations on prosecutors to make a request, since they can do it only when they consider that the imposition of a penalty of less than five years of imprisonment is enough, or recommend a penalty different from imprisonment<sup>106</sup>. So for the crime of rape, for example, this specific procedure cannot be used for perpetrators because the minimum penalty is eight years of imprisonment. For some sexual crimes, contained in Title III, Book II from the Criminal Code, it is difficult to apply this specific procedure, since Article 195 Quinquies from the Criminal Code increases in two thirds and it doubles the penalty when the victims are minors. Therefore, it is difficult to apply it to perpetrators of a crime when the victims are minors, since the minimum penalty in some crimes adds up to more than five years.

In the same line, the MP presented 36 indictment requests by the simplified procedure, which was introduced to the Guatemalan legal system with the reform to the Code of Criminal Procedure, through Decree 7-2011. It is applied in cases which started as a crime in *flagrante*, subpoena, or arrest warrant where a subsequent or complementary investigation was not required; the judge can declare the simplified procedure after the opening trial hearing, so the preparatory phase is not required<sup>107</sup>.

#### b). Concerning the increase in percentage of indictments

When analyzing their percentage increase each year for all of the indictments presented during this period (4,479), regardless of when the complaint was filed, there was a significant increase for indictments in 2012. There was a 55.45% increase from 2008 (779) to 2012 (1,211), and a 42.6% increase from 2011 (849) to 2012 (1,211), as shown in chart 9. This increase can be attributed to the expansion of the Model for Holistic Attention (MAI)<sup>108</sup> and the Attorney General's policies to increase the human resources in the Office for Women's Affairs, as well as the creation of the Sexual Crimes Unit within the National Police Force, and the change to regulations produced by Decrees 7-2011 and 18-2010 of the Congress of the Republic. This reform states that in the courts certain crimes, including crimes of sexual assault, can be heard only by one person, therefore, the OJ also increased human resources to hear these types of cases.

**Chart 9** Trend of the total number of indictments nationwide in crimes of sexual violence against children, 2008-2012



Source: SICOMP nationwide data, sexual assault crimes, 2008-2012

<sup>106</sup>Article 464 from the Code of Criminal Procedure.

<sup>107</sup>Article 465B from the Code of Criminal Procedure.

<sup>108</sup> The MAI was inaugurated in Villa Nueva, Huehuetenango, Alta Verapaz, and Escuintla in 2012; and in Mixco in 2013.

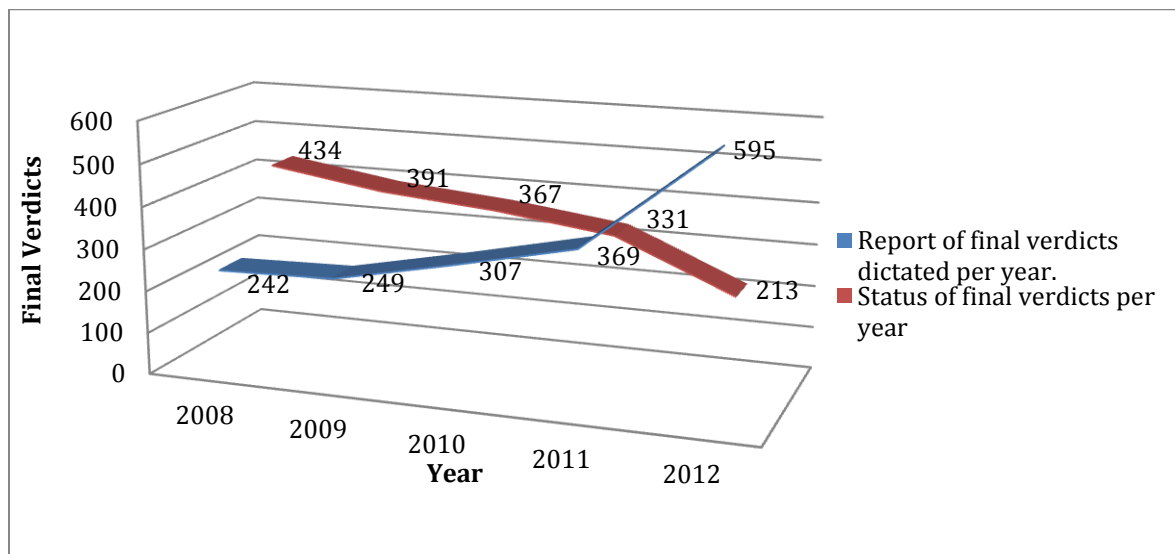
### 3.1.4. Verdict

**KEY FINDING:** During the years 2008-2012, out of the 36,166 complaints presented to the MP for sexual assault crimes, 5.86% (2,118) concluded with a verdict. These include cases with adults and/or children victims.

As shown in the report on the status of complaints (Table 6), 5.86% of the 36,166 complaints presented from 2008-2012 resulted in a verdict. This percentage is comprised of 2,118 cases (1,736 of which ended in a final verdict<sup>109</sup> and 382<sup>110</sup> with the verdict pending further events). SICOMP reported that the total count of final verdicts from 2008-2012 was 1,762. The reason for this difference of 26 verdicts is that SICOMP included verdicts from complaints that were made prior to 2008 but concluded during the period of this study.

Another aspect worthy of mention is the backlog suffered by cases in the justice system, specifically the delay in time from when the complaint is filed with Public Ministry authorities to when the assigned judge issues a judgment, whether a conviction or an acquittal. This can be seen in the following chart: the first variable corresponds to the number of verdicts dictated in this period, regardless of the year the complaint was made (Report of final verdicts dictated per year); the second illustrates the progress of cases that reached a verdict the same year in which the complaint was made (Status of final verdicts per year. The difference between the data allows us to infer that though progress of cases through the system has been slow during the period of study, the past year has witnessed a higher resolution of cases in comparison to previous years.

**Chart 10 Delay of cases in the Justice System**



Source: SICOMP nationwide data, sexual assault crimes, 2008-2012

From 2008 to 2012, the provinces that reached the most verdicts were Guatemala with 235, Quetzaltenango with 69 and Retalhuleu and Escuintla with 45 each. However, a higher verdict number is not necessarily proportional to the number of complaints received for sexual crimes. For example, Alta Verapaz had the second highest number of complaints received during these years (2,534) but in ranked 15<sup>th</sup> in the number of verdicts (47). However, it is important to note that in

<sup>109</sup> A final verdict means there is no pending procedural action that could modify it.

<sup>110</sup> A verdict pending further events is susceptible to actions taken by either side of the case to challenge the judge's final decision by means of a procedural remedy, such as: Appeal, Special appeal, Revocation, Restoration, Clarification, Expansion, and Sanction



August of 2012, the Public Prosecutor's Office created the Model of Comprehensive Care in Alta Verapaz, as well as the Prosecutor's Office for Women and Child Victims.

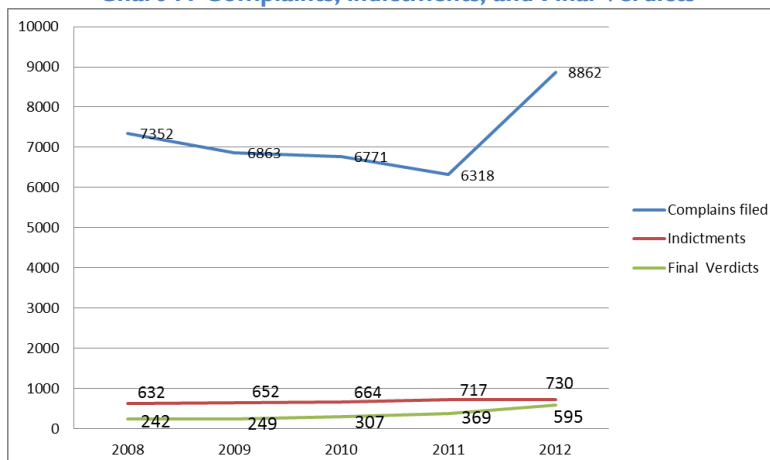
**Table 8 Sexual Crime Verdicts by Province, 2008-2012**

Sentences by Province	Province	2008	2009	2010	2011	2012	Total by province 2008-2012
	Alta Verapaz	5	7	10	5	20	47
	Baja Verapaz	4	6	6	7	9	32
	Chimaltenango	4	8	13	8	23	56
	Chiquimula	6	11	12	8	10	47
	El Progreso	5	8	6	12	9	40
	Escuintla	17	14	14	8	31	84
	Guatemala	63	73	99	126	190	551
	Huehuetenango	5	6	6	7	19	43
	Izabal	4	4	8	14	21	51
	Jalapa	7	7	6	5	9	34
	Jutiapa	3	1	5	6	17	32
	Petén	13	6	11	12	18	60
	Quetzaltenango	24	21	24	36	39	144
	Quiché	8	7	14	15	27	71
	Retalhuleu	16	7	22	10	22	77
	Sacatepéquez	6	11	8	17	19	61
	San Marcos	8	9	10	20	29	76
	Santa Rosa	12	11	6	18	16	63
	Sololá	5	8	9	13	21	56
	Suchitepéquez	15	3	4	6	20	48
	Totonicapán	5	6	6	4	12	33
	Zacapa	7	15	8	12	14	56
	<b>Total</b>	<b>242</b>	<b>249</b>	<b>307</b>	<b>369</b>	<b>595</b>	<b>1762</b>

Source: SICOMP nationwide data, sexual assault crimes, 2008-2012

As noted in Chart 11, the percentage of complaints to reach an indictment and then a verdict was extremely low (5.86%) from 2008-2012, showing that in order to achieve a greater number of resolved cases, sexual violence cases need to be addressed effectively beginning in the criminal investigation stage.

**Chart 11 Complaints, indictments, and Final Verdicts**



Source: SICOMP nationwide data, sexual assault crimes, 2008-2012

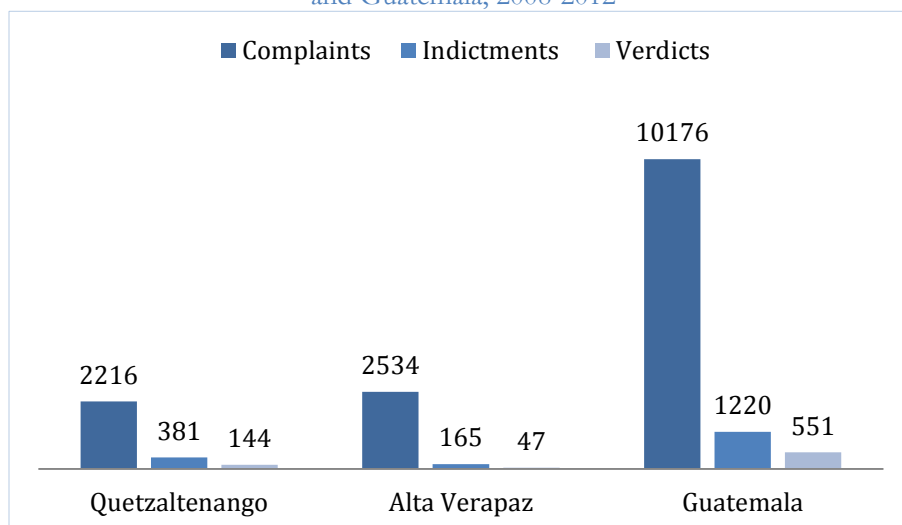
### Concerning the increase in percentage of verdicts

Using final verdicts dictated per year as the sole variable, the figures show an increase in verdicts from 2012 (595) compared to 2011 (369), representing an increase of 61%. Furthermore, when verdicts from 2008 are compared with those in 2012, one sees a percentage increase of 145%.

### Analysis of complaints, indictments, and verdicts in the provinces with the highest number of cases during this period

The provinces that this study prioritized – because they are the ones with more complaints in the MP for cases of sexual assault – have different characteristics. For example, in Quetzaltenango 17% of the complaints received 2008-2012 reached the indictment stage, 5% above the national average of 12%. Further, in this same province 6.5% of complaints achieved verdicts, which was 1.7% above the national percentage of 5.86%. On the other hand, in the province of Alta Verapaz, the percentage of indictment requests relative to complaints (2,534) was 6.5%, or 5.5% less than the national average. It is a similar situation with verdicts, with only 1.85% of complaints reaching a verdict, or 4% less than the national average.

**Chart 12 Complaints, Indictments and Verdicts in the Provinces of Quetzaltenango, Alta Verapaz and Guatemala, 2008-2012**



As for Guatemala, the province with the highest number of cases, the percentage of complaints that reach indictment is the same as the national average of 12%. The number of cases in Guatemala province that reached a verdict is slightly higher than the national average with 5.41%. It can be appreciated that Guatemala is the province that sets the tendency for the high number of cases that it reviews<sup>111</sup>.

## **3.2. Study of CSA files of cases in three provinces**

The study of files in the three provinces with highest number of complaints for sexual assault in the country is the best opportunity to identify the practices in the attention, procedure and resolution of cases in the CJS. From the data collected through a thorough process of surveying, systematization and analysis, key findings were obtained. They show the practices that help or do not help a case to conclude in a verdict. The study of files includes only concluded cases with a firm verdict, that is, they do not have any pending legal procedure.

The total number of concluded cases during 2008-2010 from the three provinces object of the study is 232 files. Guatemala has 149 cases, Quetzaltenango has 60 and Alta Verapaz has 23. After applying the statistical formula to obtain a significant sample in the study, it was determined that 182 files should be analyzed; 108 in Guatemala, 52 in Quetzaltenango, and 22 in Alta Verapaz, which represent 78% of the total number of files<sup>112</sup>.

### **3.2.1. CSA Victim Demographic profile**

In the sample of 182 cases, it was determined that 203 children were victims of sexual assault, which confirms the nationwide pattern of more than one victim per case. The main characteristics of the studied group were:

The age range most affected by CSA zero to thirteen years of age,<sup>113</sup> equivalent to 72% (146) of the sample. The sample's data showed that there were six infants from one to three years old, nineteen preschoolers between four and six years old, 121 primary school children between seven and thirteen years old, and that the most vulnerable age is thirteen. Adolescents between the ages of fourteen and seventeen years formed the second group and made up 28% of the sample. In the sample, the 86% (175) of the victims are female and the 14% (28) are male.

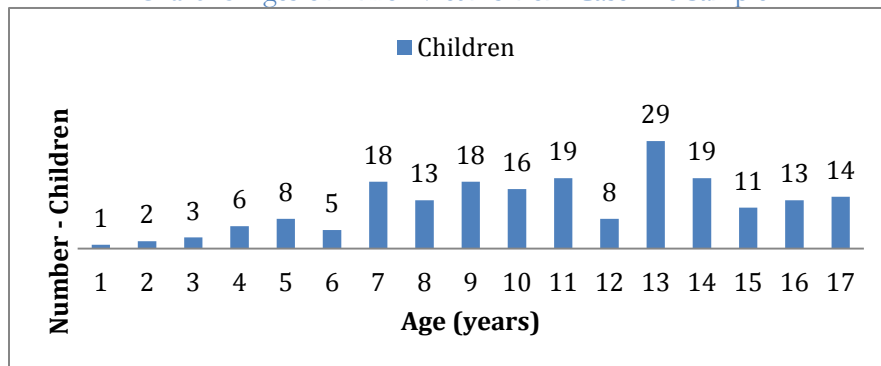
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<sup>111</sup> These percentages were gathered from the 36,166 sexual assault cases between 2008 and 2012.

<sup>112</sup> Most of these were started and processed before the reforms in Congress to the Penal Procedural Code in Decrees 18-2010 and 07-2011. Neither had protocol for receiving testimonies from children established, such as Agreement 13-2013 by the Supreme Court of Justice, and the use of General Instruction 02-2013, which was issued by the Public Prosecutor's Office on March 8<sup>th</sup>, 2013.

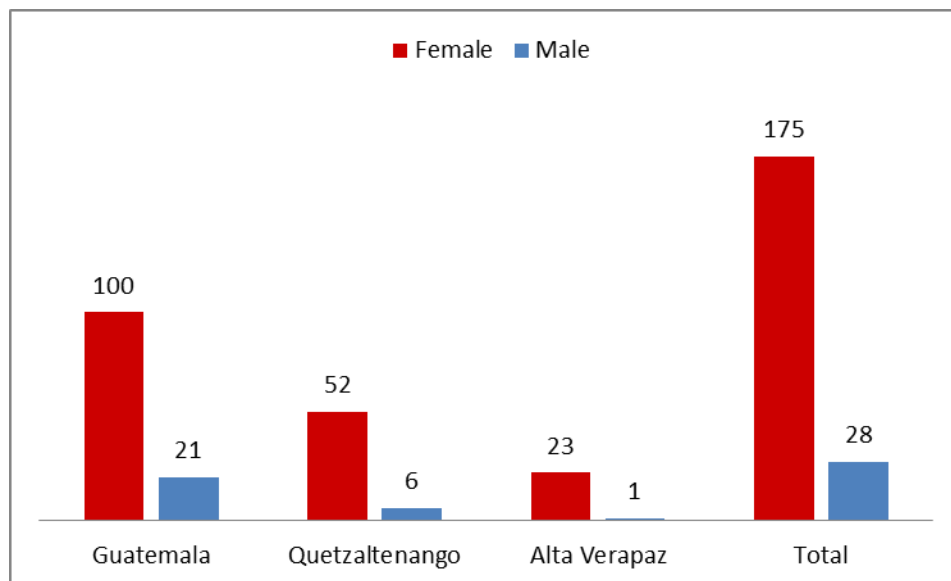
<sup>113</sup> Decree No. 27-2003. Ley Pina. Art. 2 Definition of childhood and adolescence. For the purposes of this Law, a child is a person from their conception until thirteen years of age, and adolescent is a person from thirteen to eighteen years of age.

**Chart 13** Ages of Minor Victims from Case File Sample



**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

**Chart 14** Minor Victims from Case File Sample Grouped by Gender



**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

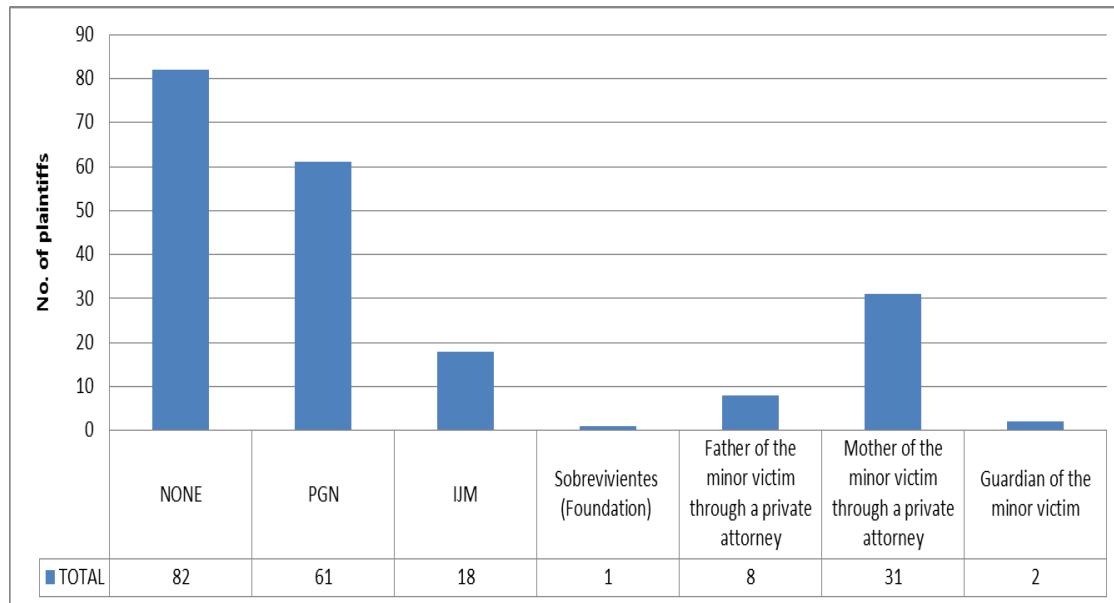
The ethnic background of 76% of the victims could not be established. Of the 24% of the sample with identified ethnic background: 28 victims were identified as *ladinas*, seven were *Q'eqchi'*, three *K'iche'*, three *Pocomchi'*, two *Kaqchikel*, two *Mam*, and three foreign persons (two Salvadorians and one Mexican).

Of the sample, 187 victims, 92%, speak Spanish, eight speak *Q'eqchi'*, four speak *Pocomchi'*, two speak *Mam* and two speak *K'iche'*.

Out of the 203 victims, six minors have a disability, such as blindness from birth, mild mental retardation, psychomotor retardation or a mental disorder. From these, two cases spent between nine and ten months in the CJS, which shows a relative procedural timeliness in the criminal prosecution with regard to cases of victims with a disability. The other cases lasted an average of two years and nine months. In these processes none of the children or adolescents gave a pre-trial testimony, like in the majority (197) of cases of the sample. Victims gave their testimonies an average of six times to experts and officials in the CJS.

From the case file review, it was also seen that child victims often lacked representation in the criminal processes for sexual assault crimes. From the sample, no person or institution from the PGN acted as joint plaintiff with the victim, despite the fact that there has been since 2003 a regulatory obligation from the PGN to do so. In 40% (82) of the cases there was no active representation from the State. The PGN only represented 30% (61) of the sample. The mother, father or guardian represented children in 20 % (41) of the sample. In 10% (19), a non-governmental organization acted as joint plaintiffs to represent the children interests. Through this sample, it is evident that most cases lack representation even with the mandate.

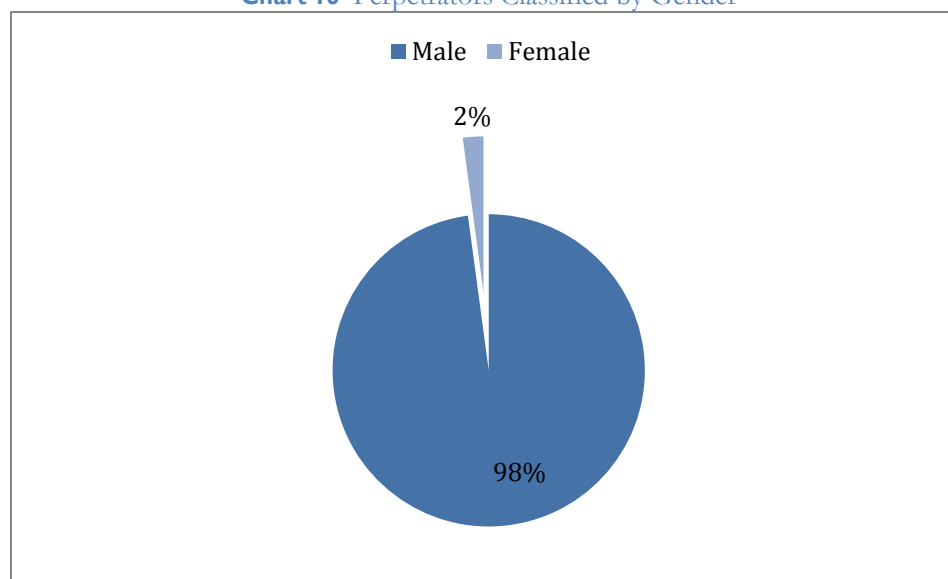
**Chart 15** Number of Joint Plaintiffs



Source: Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

### 3.2.2. Demographic profile of perpetrators of sexual crimes

In the 182 cases of the study sample, there are 188 perpetrators. In some cases there is more than one perpetrator. From the total of perpetrators in the sample, the 98% are male and 2% are female.

**Chart 16** Perpetrators Classified by Gender

**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

Seventy-six percent of perpetrators were in preventive imprisonment and 24% were subject to an alternative measure. In cases of aggravated rape or rape of a child under 12 years of age<sup>114</sup>, a regulatory prohibition prevents the alternative measure benefit from being granted. This is particularly significant because 109 victims, or 54% of the sample, are under the age of twelve.

**Table 9** Alternative Measures Granted

Alternative Measure		Total	Percentage	Percentage of the Total
1) The house arrest in the own home or residence or under custody from other person, without any surveillance from the court.	No	25	55.6%	55.6%
	Yes	20	44.4%	44.4%
2) The obligation to submit to the care or surveillance of a specific person or institution, who will inform the court periodically.	No	44	97.8%	97.8%
	Yes	1	2.2%	2.2%
3) The obligation to appear periodically before the court or the assigned authority.	No	5	11.1%	11.1%
	Yes	40	88.9%	88.9%
4) The prohibition to leave the country, the place of residence, or the place determined by the court without authorization.	No	23	51.1%	51.1%
	Yes	22	48.9%	48.9%
5) The prohibition to attend specific meetings or to visit certain places.	No	39	86.7%	86.7%
	Yes	6	13.3%	13.3%

<sup>114</sup> Article 264 Criminal Procedural Code

6) The prohibition to communicate with specific individuals, as long as the right of defense is not affected.	No	27	60.0%	60.0%
	Yes	18	40.0%	40.0%
7) Proper economic bond, through the deposit of money, valuables, constitution of pledge or mortgage, seizing or delivery of assets, or bail from one or more fitting persons.	No	18	40.0%	40.0%
	Yes	27	60.0%	60.0%

**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

From the 45 perpetrators who were granted an alternative measure, most of them received more than one. The most frequently granted measures were: the obligation to appear before the judge or assigned authority (40), the provision of an economic bond (27), prohibition to leave the country without legal authorization (22), house arrest (20) and the prohibition to communicate with specific individuals (18). In only eighteen cases was the perpetrator banned from communicating with the victims and their families, which left 27 cases without this prohibition.

In 75% of the cases, the perpetrators are between the ages of 18 and 42, and in the remaining 25% of cases the perpetrators are 43 or older.

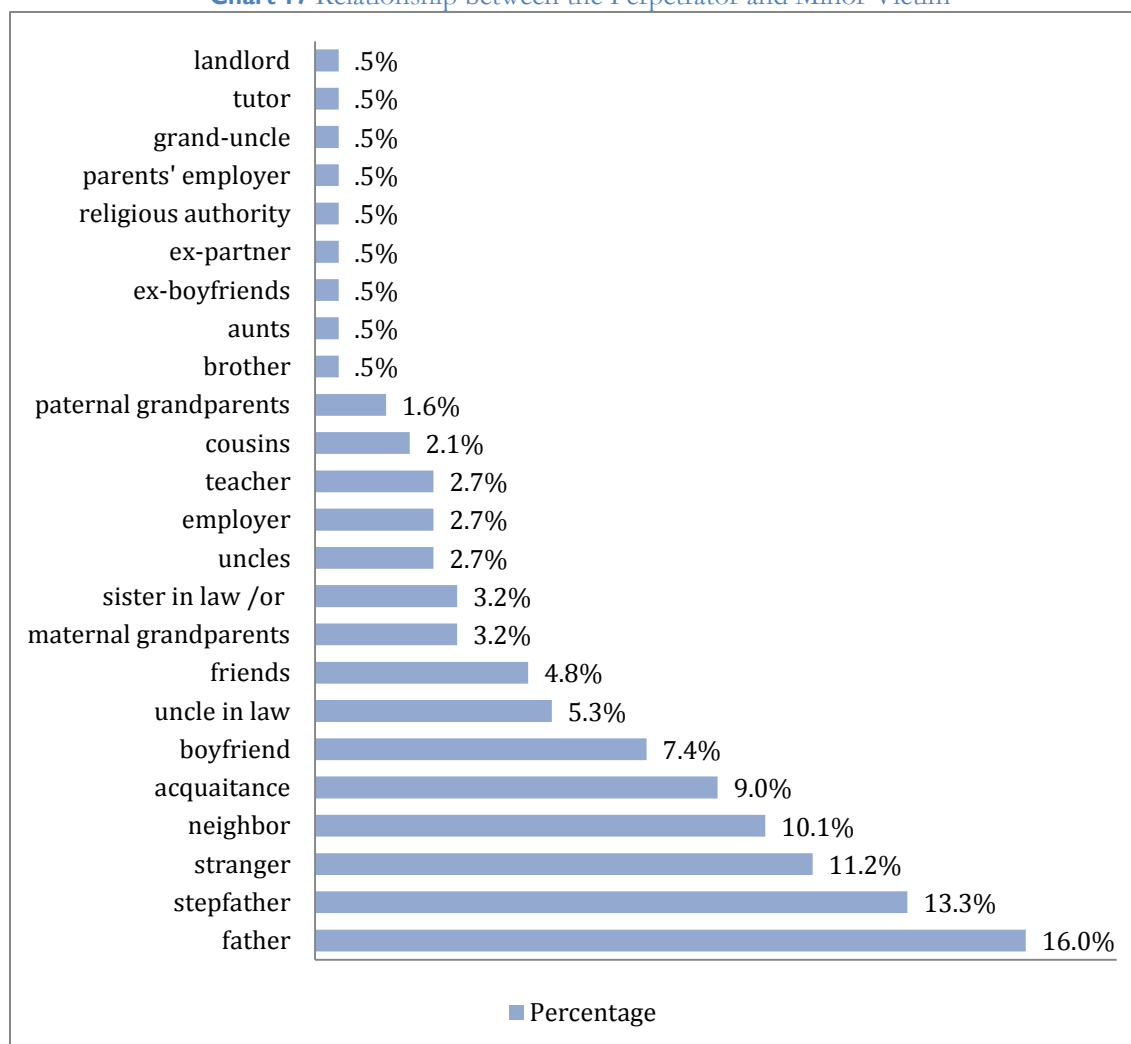
In terms of the marital status, 59% of the perpetrators are single, 40% are married, and 1% is in a *de facto* marital union.

93% percent of the perpetrators speak Spanish, 5% speak a Mayan language, and no data is available for the remaining 2%.

It is also important to note that in the 92% of the cases (173), the perpetrators did not use any kind of weapon; they used physical force and psychological violence to coerce their victims. Only 8% of the perpetrators used weapons: eight used guns and seven used knives.

Of the 188 perpetrators of sexual crimes against minor victims, 89% had a close relationship with the victim, which could include parents, grandparents, and/or stepparents of the victims. Neighbors, teachers or employers also fall under this category, because they are familiar individuals to the victims, and generally have a relationship of power or trust. Only the 11% were total strangers to the minor victim.

**Chart 17** Relationship between the Perpetrator and Minor Victim



**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

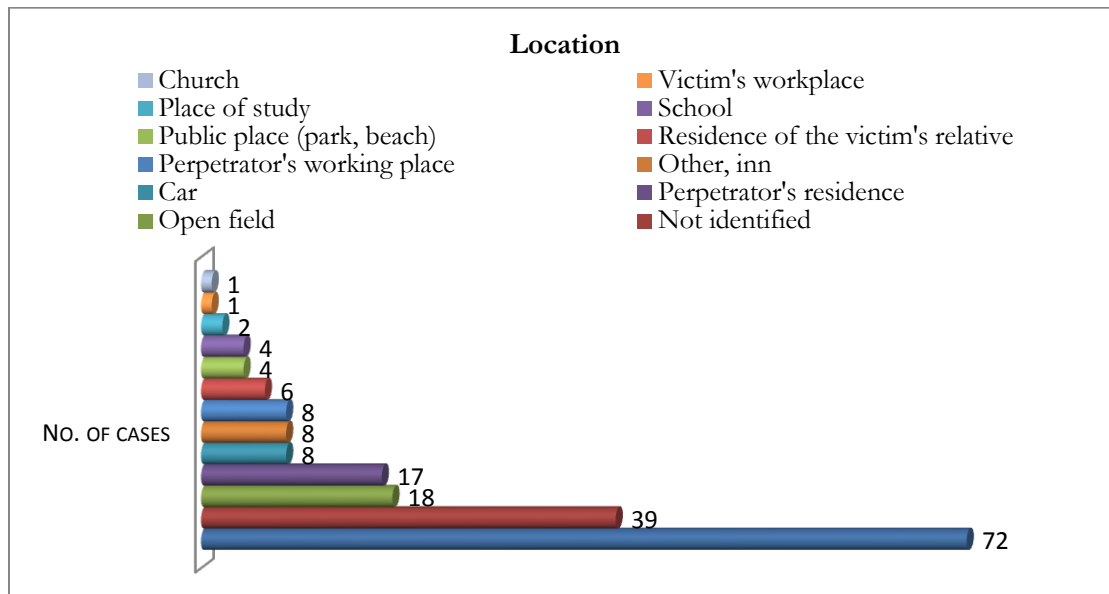
This information is also relevant in terms of the minor victim's representation in the criminal process, since in 58% of the cases, there is conflict of interest between the child's representatives as the father, mother, etcetera, and the fact that one of their relatives is the perpetrator. In these cases, the PGN should intervene as joint plaintiff, but it did so only in 30% of the relevant cases.

The PGN can serve as a joint plaintiff also in the cases that are in the public environment – when the perpetrators are owners, teachers, religious leaders, friends or neighbors. The PGN should also serve as joint plaintiff when the parents do not want to accompany the legal process and serve as the victim's representative.

The presence of the PGN is important to guarantee special protection services for minors. Many of these children will be sent to aftercare homes, separated from their families and social environment. Therefore, these services not only must ensure safe shelter, but they must also grant comprehensive protection, which includes the involvement of multidisciplinary teams who seek the best interest of the minor victims.



**Chart 18** Locations of Child Sexual Assault Crimes



**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

In 38% of the cases the abuse occurred at the victim's residence and in 9% the abuse occurred at the perpetrator's residence or at the residence of a relative. In almost half of the cases, the abuse occurred in closed spaces, under the control of the perpetrator. Because the abuse often takes place in residential spaces, it is urgent that the investigation should focus on the crime scene. However, even though the establishment of the crimes scene is crucial to avoid losing evidence, in only 67% of the case sample registered the location where the abuse occurred.

### 3.2.3. General progress rate of the cases

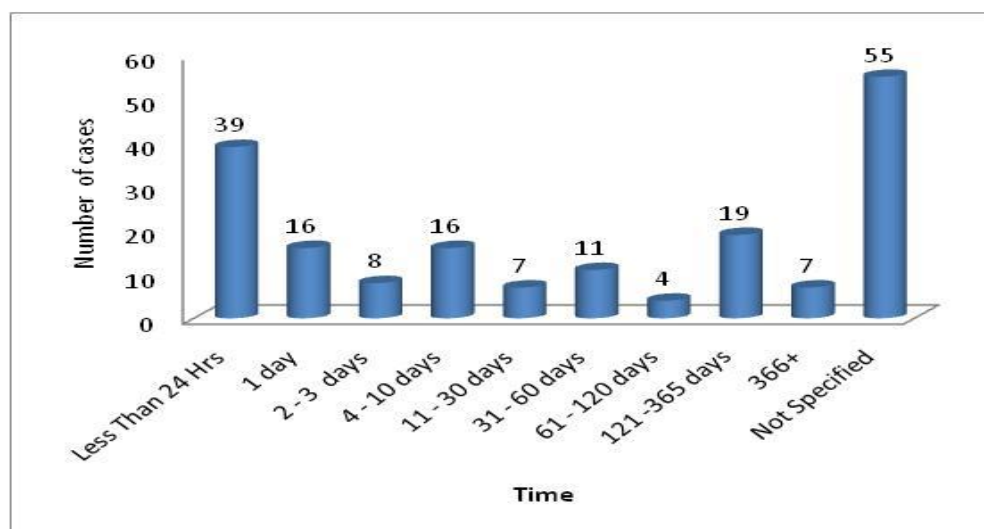
**KEY FINDING:** Thirty percent of minor victims of sexual crimes file a complaint in the first two days after the event, and 40% from the third day on. In 14% of the sample, the complaint was presented four months or more after the event.

The complaint is the statement that lets the MP know, among other legal institutions, about the possible perpetration of a crime.

Any person has the right to present a complaint, including any minor. The complaint does not require any type of formality in order to be accepted by the authorities.

In 39 of the cases, the time between when the abuse occurred and when the complaint was filed was 24 hours. In sixteen cases the complaint was filed during the first day; in six cases 48 hours had passed and in two cases 72 hours had passed. As seen, 34.6% of the cases entered the justice system within the first 72 hours. In 35.2% cases, the complaint was presented three days after the event occurred and in 30.2% of cases, the location of abuse was not determined. The early filing of a complaint is the best practice both for the collection of evidence and for the provision medical treatment to the victim.

**Chart 19** Time between Abuse and the Formal Complaint



**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

Sexual assaults and rapes should be treated as a medical emergency because of their psychosocial as well as physical impact. Therefore the treatment has to be comprehensive and interdisciplinary. Psychological and social attention should be supplied immediately because of the emotional trauma the victim suffers. After rape, post-exposure preventative measures against sexually transmitted infections and other consequences. It is possible to prevent an active HIV infection with early intervention<sup>115</sup>. For this reason, the prophylaxis for HIV must be given early, within the first hour up to 72 hours after exposure.<sup>116</sup>

In 65.4% of cases (119), the time between the event and the presentation of the complaint was more than three days, which makes it difficult to provide emergency medical attention. From these cases, nineteen took between four months to a year to present the complaint, seven cases took more than a year, and two cases took more than four and a half years.

The above suggests the need to create and to strengthen information campaigns that advocate immediate presentation of sexual crimes cases, in order to initiate both the legal prosecution against the alleged perpetrator and comprehensive protection of victims, especially children.

**Key Finding:** Fourteen percent of the arrest warrants in cases of child sexual assault were carried out during the first thirty days after the complaint was filed and 68% were executed a month after the abuse was reported.

An apprehension or arrest is an action by the legal authorities through which a free person is held for the possible committing of a crime. An individual is detained when under suspicion for committing a crime and is placed in front of a judge to give his or her testimony.

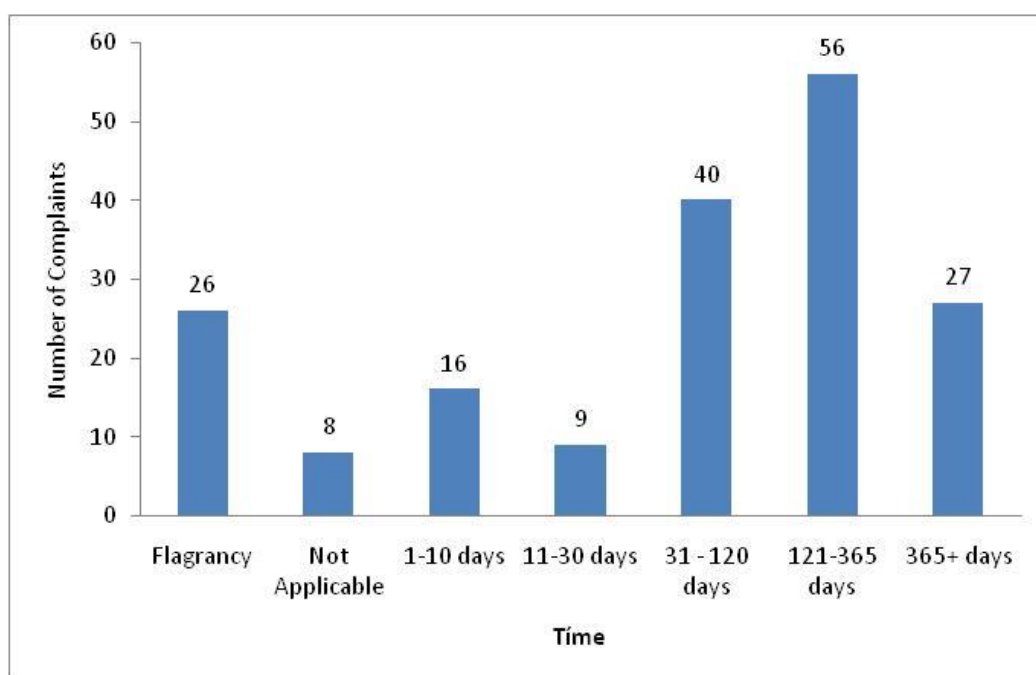
<sup>115</sup>It has been proven that after three days of exposure, there already are infected cells with DNA provirus integrated in its genome.

<sup>116</sup>Costa Rican Judicial Branch, Gender Commission, "Protocolo interinstitucional de atención integral a víctimas de violación sexual en edad joven y adulta (first 72 hours after the event), Costa Rica, p. 4

If the prosecutor determines that an alleged perpetrator should give his or her testimony and that there is reason for the execution of an arrest warrant, the prosecutor will request the judge in charge of the investigation to order an apprehension.

Out of the 182 concluded cases of sexual crimes during 2008-2010 in the provinces of Guatemala, Quetzaltenango and Alta Verapaz, 14% of the cases were crimes where the perpetrator was caught in the act, or shortly after the abuse. In these cases, the apprehension was immediate, without a legal order. In 4% of the cases the judge summoned the alleged perpetrators to hear their testimony; consequently, there was no apprehension order.

**Chart 20** Time between the Complaint and Arrest Warrant



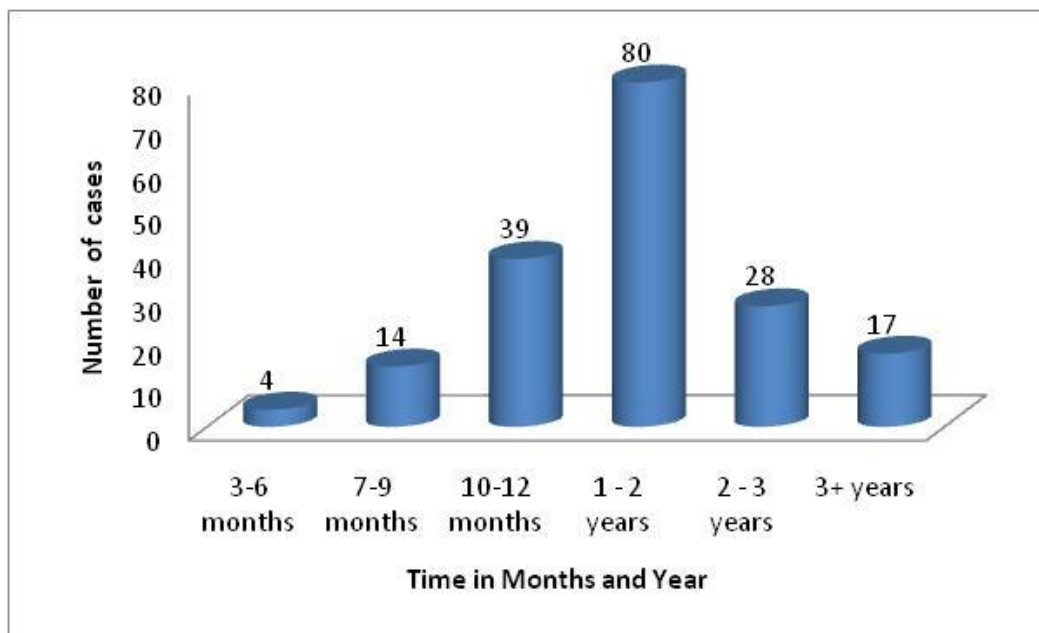
Source: Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

The majority, 68%, of the apprehension orders were made thirty days or more after the complaint. In 14% of the cases, the apprehension was made a year or more after the complaint. In one case, almost seven years passed between the initial complaint and the apprehension order (introductory action, 02/27/2002; and apprehension order, 02/11/2009). The statistics above show the need to strengthen the National Civil Police, particularly in the investigation phase of child sexual assault cases.

**Key Finding:** Thirty-one percent of verdicts for sexual crimes against children were pronounced during the first year after the trial was heard by the CJS. Fifty-nine percent of verdicts were pronounced between the second and third years.

The verdict is the ruling issued by a judge or magistrate that finishes the trial process or to certain charges of the action; it can be a conviction or an acquittal. In relation to the sample surveyed, it is not possible to measure the function of a sole judge since there is no certain date for when closed cases were studied.

**Chart 21** Time between the Introductory Action (complaints and police prevention) and the Verdict



Source: Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

In the sample, 80% of the cases concluded with a conviction and 20% were acquittals.

Thirty-one percent (57) achieved a verdict in less than a calendar year. From these, 80.8% (46) were convictions and 19.2% (11) were acquittals. Forty-four percent (80) concluded two years after the introductory action, 15% (28) concluded after three years, and 9% (17) concluded three years or more after the complaint was filed.

The case that concluded the fastest lasted 98 days and the case that lasted the longest took eight years and six months (introductory action on 02/27/2002 and verdict on 08/18/2010).

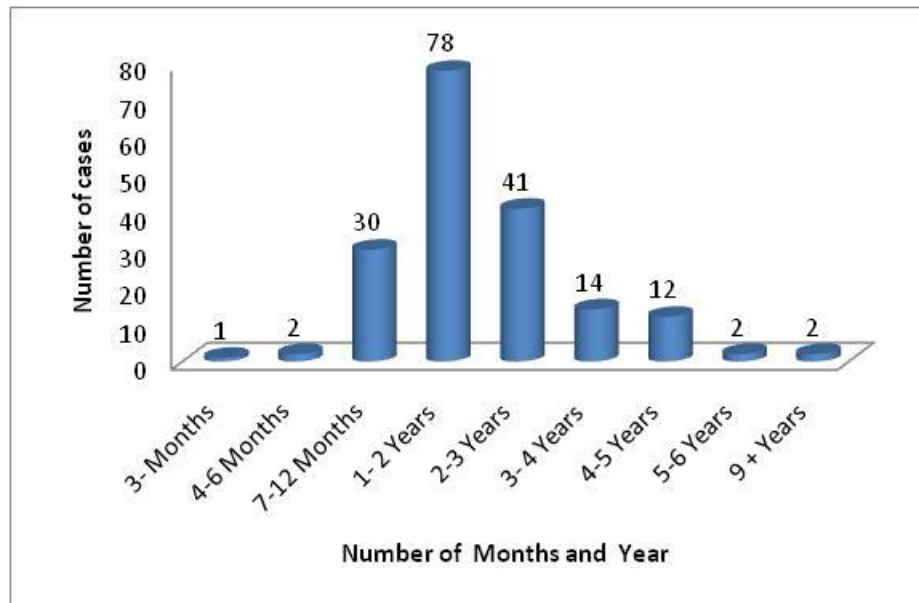
Timeliness in cases of sexual assault against children is essential. The 31% of cases that were concluded in the first year reflect timely attention to the resolution of these cases. However, for the 59% of the cases that needed between two and three years for resolution and for the remaining cases that took even longer, the minor victims and their families were subjects to constant re-traumatization, particularly because most victims gave testimony in the trial and did not have a pre-trial testimony.

It is important to mention that the policy of the Supreme Court of Justice in recent years to use oral hearings to manage criminal proceedings has been vital in shortening the overall length of those proceedings in the regions where the policy has been implemented. Functionality is improved, on the one hand, through the issuance of notifications and summonses at oral hearings instead of via the old system of written communications issued through bureaucratic administrative processes, which delayed legal proceedings. And, on the other hand, the policy reorganizes the administrative function by giving it a specialized, focused role of aiding judges in their performance of judicial functions.

**Key Finding:** Eighty percent of the verdicts for sexual crimes against minors are declared two to five years after the complaint is filed with the authorities of the legal system.

After the court or judge pronounces the verdict, it can be appealed through the procedural means established by the law, with the sole purpose to request its consideration in a higher court.

**Chart 22** Time between the Introductory Action (complaints and police prevention) and the Firm Verdict



**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

The recourses that can be lodged in the Guatemalan CJS are: Appeal, Special Appeal and Annulment.

Out of the 182 concluded cases during 2008-2010 in the provinces of Guatemala, Quetzaltenango and Alta Verapaz, 47% of cases (86) were not subject to appeal.

The shortest case, for a crime of repeated sexual assault, lasted 102 days. It began 06-08-2009; the verdict was pronounced 09-14-2009 and made final in 09-18-2009. During the intermediate stage, the MP recognized the change of its requirement for a summary trial and the change of legal qualification in the crime to sexual aggression, and quickly requested a penalty of five years of imprisonment. The conviction led to a penalty of five years of imprisonment, convertible to a fine of Q5.00 daily. The convicted paid a total amount of Q9,125 (US\$1,700.00)<sup>117</sup> to avoid serving jail time. In this case, none of the parties presented any kind of appeal<sup>118</sup>.

The longest case took more than nine years; it began 02-27-2002, the verdict was declared 08-18-2010 and the verdict was made firm 05-13-2011 (special appeal).

<sup>117</sup> Estimated exchange of Q.7.80 for US\$1.00

<sup>118</sup> Ballot No. 160 from IJM's sample

The second-longest case lasted almost nine years. It began on 09-26-2002, its verdict was pronounced on 08-12-2010 and completed the appeal on 09-06-2011. The cases that took longer to conclude were more likely to result in convictions.

Most of the cases under analysis lasted up to two five years for the verdict to be firm; this represents the 80% of the cases.

As was seen with this as well as the previous two indicators, with the criminal proceedings of sexual crimes against children, the timeliness of proceedings is an element that needs to be reinforced within the CJS.

### 3.2.4. Preliminary Procedures

Out of the 182 cases, 85% (155) filed the complaint directly to the MP and 15% (27) filed the complaint to the PNC (Police Prevention). Because so many complaints are filed with the MP, it is important to improve the attention to and the reception of complaints, as well as to train prosecutors on the reception of complaints.

It is necessary to raise awareness among all MP and PNC officials about CSA and the reception of complaints, since they are the entrance to the CJS for victims of child sexual assault.

**Table 10** Type of Introductory Action that Started the Criminal Prosecution Process, Divided by Province

Province	Introductory Action	Total	Percentage from Province	Total Percentage
Guatemala	Police Prevention	20	18.5%	11.0%
	Complaint	88	81.5%	48.4%
	Total	108	100.0%	59.3%
Quetzaltenango	Police Prevention	4	7.7%	2.2%
	Complaint	48	92.3%	26.4%
	Total	52	100.0%	28.6%
Alta Verapaz	Police Prevention	3	13.6%	1.6%
	Complaint	19	86.4%	10.4%
	Total	22	100.0%	12.1%

Source: Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

Fewer complaints were presented to the PNC, since some individuals know that they will be sent to the MP as a next step. According to the data, the trials that end with a verdict are the ones that enter as a complaint directly to the MP. Twenty-seven cases entered the PNC, of which 23 were crimes in *flagrante*. This statistic shows that the communication between the MP and the PNC needs to be strengthened, for the hearings of complaints and investigation procedures to start as soon as possible and the members of the PNC to have definite criteria to treat this kind of cases.

**KEY FINDING:** In 84% of the cases presented for crimes of CSA, the judge ordered the suspect's arrest.

In Guatemala, the Constitution states that no one may be detained or arrested for being suspected of a crime; the arrest can only occur under a warrant issued by a judge. Evident crimes are the exception.

A preliminary investigation must first occur in order to request an arrest. The arrest warrant by legal order is an indicator that demonstrates that there has been a preliminary investigation of the case which leads the MP's prosecutor to request the arrest of the alleged perpetrator. If there is sufficient evidence that a suspect committed a crime of rape, rape with aggravation or rape of a person who is under the age of twelve, the Guatemalan Code of Criminal Procedure requires the judge to order the suspect's imprisonment; bail and other options are not permissible.<sup>119</sup>

In 152 cases the prosecutors requested an arrest warrant against the alleged perpetrators. In addition, in 23 cases the alleged perpetrators were caught in the act; thus, in 175 (93%) cases the alleged perpetrators were arrested to be brought in front of the appropriate judge. The remainder (6) was summoned by a legal order.

In many cases, the pre-trial detention is a mechanism to prevent the alleged perpetrator from influencing, modifying or hiding evidence that could be useful in the criminal proceedings. Also, as mentioned previously, there are regulatory prohibitions that would grant alleged perpetrators alternative measures to imprisonment.

### 3.2.5. Investigation Methods

**KEY FINDING:** Victims of child sexual assault testified in pre-trial testimony in only 14% of the cases from the sample.

It is a priority for the CJS to know, investigate and punish all crimes of sexual assault against minors, but it is also important for the officers of the justice system to be properly trained on how to treat minor victims in order to minimize the effects of re-traumatization.

This intervention should be carried out by teams of professionals from different disciplines, such as psychology, social work and medicine, among others, who use victim-sensitive methods to obtain children's testimonies, together with prosecutors and judges. In addition, best practices must be sought in order to avoid any confrontation between the victim and the perpetrator. Proper spaces to carry out the interview, such as utilizing closed-captioned television, the Gesell Chamber and folding screens facilitate victim-sensitive interviewing methodology.

In assisting child victims and witnesses, professionals should make every effort to coordinate support services in order to prevent minor victims from having to give their testimony too many times.

When it is in the best interest of the minor victim, the professional teams should accompany him or her throughout the participation in the criminal procedure. They should also provide guidance about the trial process so that the victim and witnesses have a clear idea of what to expect. The minor's

<sup>119</sup>Article 264 of the Code of Criminal Procedure.

participation in hearings should be planned in advance. Throughout the whole process, every effort should be made to guarantee a consistent relationship between the victim and the professional service providers.

As mentioned before, the legal system and the professionals in charge, including judges and district attorneys, should use appropriate procedures to receive testimony from children (both victims and witnesses) who participate in the legal process. These can include interview rooms designed for children, interdisciplinary services provided in one place, child-sensitive audience rooms, recesses during a child's testimony and hearings, and others.

In the hearings where minor victims take part, declarations should be received in pre-trial testimonies, using audio or video recordings that could be reproduced at the trial.

The prosecutor and judges should ensure that the alleged perpetrator of the crime does not interrogate minor victims or witnesses. Every effort should be made in order that minor victims and their families are in a separate room from the alleged perpetrators and their families.

It is important to highlight that because the criminal process is suited for adults and does not cater to the general population, prosecutors in cases of child sexual assault should seek support for minor victims from child psychology experts. The interrogation of minors should be carried in accordance with stage of development, to reduce the possibility of intimidation during interrogation.

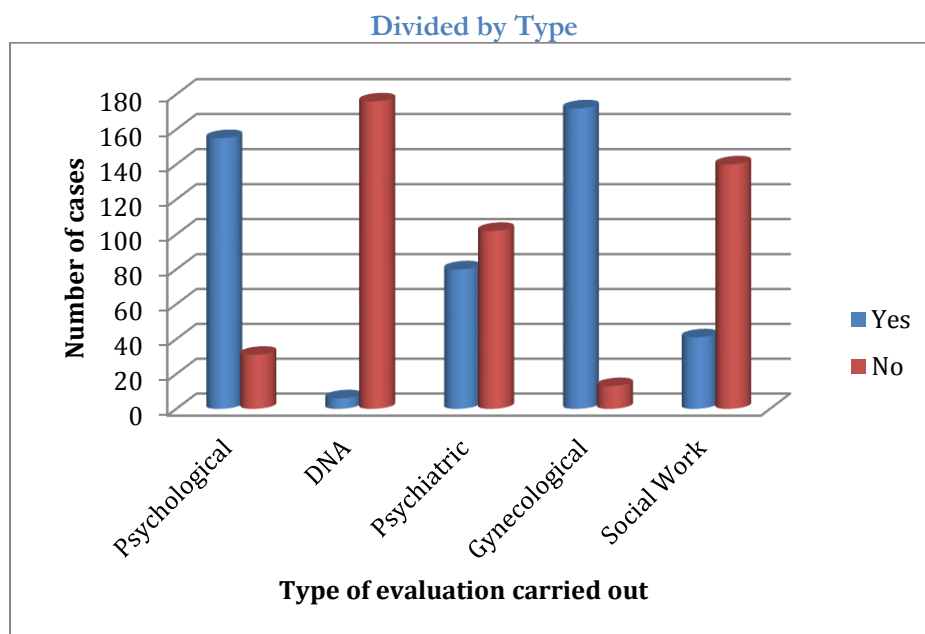
**KEY FINDING:** In 61% of the cases of child sexual assault there were testimonies given by at least four experts which generally included gynecological, psychological, and psychiatric evaluations.

The sample shows that in the 182 cases, multiple professionals approached most of the minor victims at different times in order to gather information for expert reports presented as evidence during the trials.

In 94% (172) of cases, Sexual Assault exams were used to examine the minor; in 85% (155), a psychological evaluation was made; in 44% (80) a psychiatric evaluation was made; and in 22% (41) of the cases, an evaluation was made was a social worker. At least two experts approached the majority of the minor victims from the sample set of cases.



**Chart 23** Expert Evaluation carried out with Minor Victims,



**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

The criminal legal system states that experts should send one joint report with their results and conclusions; this should allow for interdisciplinary conclusions. When the professional opinions differ, separate reports should be handed in.

The numbers show that the minor victim is the main source of information to present evidence in criminal proceedings. They also show that there is an urgent need for the professionals of INACIF and other institutions to be properly trained on how to approach minor victims of sexual crimes in order to prevent the child from having to testify multiple times.

It is important to note that since 2011, the Public Ministry has expanded the Model for Holistic Attention to other parts of the country, which will likely mitigate the pattern of victims having to testify multiple times before officials of various institutions.

**KEY FINDING:** None of the 182 cases utilized the Gesell Chamber. One percent of cases used close captioned television (CCTV) to receive the testimony of victims of child sexual assault, and 5% of cases used a folding screen to avoid confrontation between the minor victim and the alleged perpetrator.

Minor victims do not only give their testimony to teams of experts for their reports, they also give their testimony as witnesses. Of the 182 cases from the sample, in only three cases minor victims did not give their testimony. Thus, in 98% of cases there was a testimony before the legal system officers and in the trial itself.

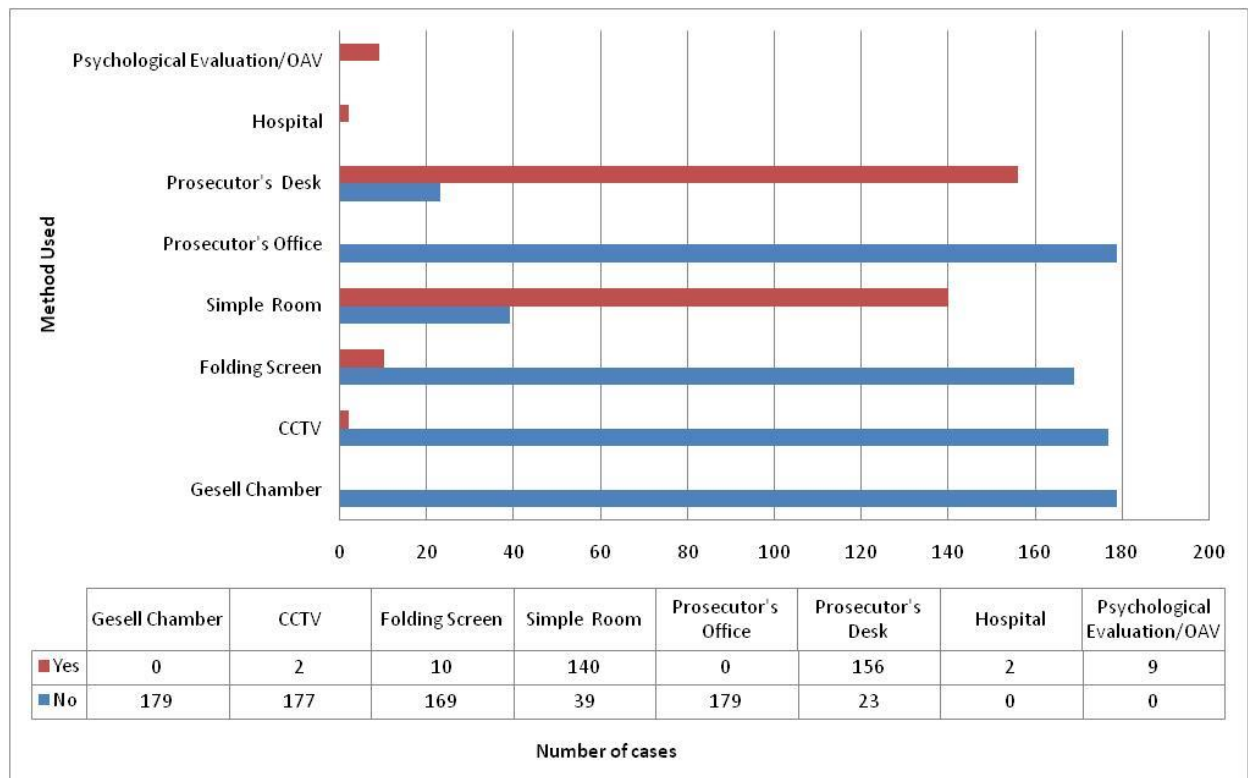
Only 5% of cases (10) from the sample involved a folding screen to avoid confrontation between the victim and the alleged perpetrator. In 1% of cases (2), the testimony was conducted with CCTV. None of the cases utilized the Gesell Chamber. It's important to note that at the time of the study,

Guatemala City was the only city with a Gesell Chamber,<sup>120</sup> and though CCTV existed in the city of Quetzaltenango, neither of these tools existed in Alta Verapaz.

As seen, the strong majority of testimonies from minor victims of sexual crimes were carried out in less than suitable spaces. No mechanisms were used to avoid re-traumatization; the CJS did not make use of the good practices contained in the international and national regulations for minor victims of sexual crimes, according to the statistics from the study's sample.

In two cases, CCTV was used hear the minors' testimonies, but one of them decided not to give his/her testimony.

**Chart 24** Methods Used to Receive Victim Testimony



Source: Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

Most child and adolescent victims testified before several different officials. Forty-six testified to the Attention to the Victim Office from the MP, 170 to the MP's prosecutor, and 126 testified during the hearing. It is important to highlight that in only 14% of cases (26) the minor victims gave pre-trial testimony: nineteen in the preparatory phase and seven before the trial.

In 70% percent of cases minor victims were approached by two or more legal officials during the criminal process. Including reports from experts, at least six different professionals approached minors during the process. With each interaction, the child is revictimized through recounting the event each additional time.

<sup>120</sup> Though the Gesell Chamber was inaugurated in the Public Prosecutor's Office in 2009, it was not operating functionally until mid-2010.

### 3.2.6. Acceptance of Initial Charge

**Key Finding:** In 8% of the cases, the Criminal Trial Court judges revoked the initial charges.

The acceptance of the initial charge begins the criminal process against the alleged perpetrator. The Criminal Trial Court judge issues accepts the initial charge in an oral hearing, after receiving testimony from the alleged perpetrator and after the MP and the defense attorney argue in favor or against the beginning the criminal process against the alleged perpetrator.

The initial charges can be changed *ex-officio* or upon request, in the preparatory phase before the indictment. The right to a hearing is guaranteed to the alleged perpetrator and to the victim.

In 8% of cases (16), the initial charge was revoked. In 92% of cases the judge accepted the argument proposed by the MP.

The revocation of the initial charge was requested in three of the sixteen cases by the defense and in thirteen cases by the MP. All of them requested modification of the classification of the crime. In the majority of revocation requests the request was to modify the type of crime to a more serious or aggravated classification.

**Table 11 Modified Initial Charges from Cases in Sample**

Requesting Institution	Crime Classification in the Initial Charge	Modification of the Initial Charge
MP	Continuous rape with aggravation of penalty	Violent indecent assault
MP	Violent indecent assault	Continuous indecent assault
MP	Violent indecent assault	Continuous violent aggravated indecent assault
MP	Violent indecent assault with aggravation of penalty	Continuous violent aggravated indecent assault
DEFENSE	Violent indecent assault	Aggravated indecent assaults and authorized the route of summary trial
MP	Rape	Rape with aggravation of penalty
MP	Continuous indecent violent assault	Violent indecent assault
MP	Continuous violent indecent assault	Continuous violent aggravated indecent assault
MP	Violent indecent assaults	Continuous violent indecent assault
DEFENSE	Continuous rape with aggravation of penalty and violence against women.	Statutory rape
MP	Tentative aggravated indecent assault	Continuous rape
MP	Indecent assault	Continuous rape with aggravation of penalty
MP	Intercourse through deception	Rape
DEFENSE	Violent indecent assault with aggravated penalty	Violent indecent assault

MP	Rape with aggravation of penalty, attempted theft and alternative theft.	Rape with aggravation of penalty and attempted theft.
MP	Indecent violent assault and rape	Rape

Source: Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

### 3.2.7. Indictments

**KEY FINDING:** In 90% of cases, the Criminal Trial Court Judge accepted the indictment without modifications to the legal qualification.

The indictment confirms the public criminal action made by the prosecutor against the alleged perpetrator and is presented in a written file by the prosecutor at the end of the preparatory phase. It accuses one or several individuals of committing a crime based on the evidence gathered during the investigation. The indictment assumes the MP's firm conviction that the alleged perpetrator is guilty of committing a criminal action.<sup>121</sup>

According to the requirements of procedural law, the indictment has to be self-sufficient; this implies that all the fundamentals have to be deducted from the indictment, without having to turn to other proceedings. The elaboration of the indictment should allow, in a single reading, the determination of the action, the author or participant, the legal qualification, the fundamentals and evidentiary means which confirm that the indictment has a high degree of probability of verification in trial.<sup>122</sup>

An indictment was presented in all of the 182 cases concluded between 2008 and 2010 in the provinces of Guatemala, Quetzaltenango and Alta Verapaz. Only in 19 of cases did the trial court judge modify the initial charge, which shows that in most cases the judge accepted the facts stated in the indictment and the legal qualification presented by the MP.

Even though the percentage of indictments accepted by the Criminal Trial Court without modification was high, some indictments struggled to fully carry out Article 332 Bis from the Code of Criminal Procedure, which establishes the indictment's requirements.

These requirements are:

- a) Useful information to identify the alleged perpetrator and the name and place to be notified to the defense.
- b) A clear, precise and detailed relation of the crime attributed to the alleged perpetrator. At this point, the action must be described with details.
- c) A summarized basis of the indictment, indicating the means of investigation used. This is not a list of the evidence, but an explanation of how each point of the indictment is proven. Here it is appropriate to make a legal reasoning, explaining why the act fits in determined classification of the crime.
- d) Indication of the correct court for the trial.

Only 28% of the indictments fulfilled all the requirements established in Article 332 Bis of the Criminal Proceedings Code. Seventy-two percent of the indictments had some type of weakness in the establishment of requirements. Therefore, it is important to introduce procedures that support

<sup>121</sup> Ibid. P. 276

<sup>122</sup> Ibid. P. 277

prosecutors in their preparation of the memorial of indictment, in order to improve the quality of the indictments and to present better litigation in the specific cases.

**Table 12** Weaknesses in the Fulfillment of the Indictment's Requirements, 332 Bis CPP

Requirements from 332 Bis CPP	Number of Files that do not Fulfill the Requirements
1. Useful data that identifies the alleged perpetrator, the name of his or her defense and address for the receipt of notifications.	9
2. Clear and precise relationship to the crime.	40
3. The basis of the indictment, demonstrating the investigation methods used to establish the probability that the defendant committed the crime for which he or she is accused.	108
4. The legal qualification of the punishable action, explaining the crime that each individual committed, his or her participation, the degree of execution and the applicable aggravating circumstances.	97
5. Indications from the relevant trial court.	3

**Source:** Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces Guatemala, Quetzaltenango and Alta Verapaz.

As the previous table shows, some of the cases did not fulfill more than one requirement. One of the greater weaknesses in the indictments lies in the imputation, that is, the description of the facts, since the correct legal qualification and the necessary means of investigation to prove the fact are deduced from the imputation. Only the facts that can be proved will be useful to the criminal process and only these proven facts will be able to have legal relevance.

The perception of the weaknesses of the legal system by officials from the CJS is consistent with the analysis of the files in indicating that one of the more frequent weaknesses in the indictment is the description of the facts. Support should be addressed towards the strengthening of the section of the training programs on indictments and the evaluation of the performance.

### 3.2.8. Intermediate Phase

**KEY FINDING:** In 22.5% of the cases, the MP requested approval from the judge for the minor victim to testify using pre-trial testimony. Pre-trial testimony was granted in only 14% of the cases of the study.

When it is necessary to receive the testimony of a minor victim of sexual assault, it should be considered how giving the testimony will affect the well-being and re-traumatization of the victim. Because minors are vulnerable, the constant repetition of the event during the criminal proceeding could cause serious psychological consequences as a result of the trauma suffered. International and national frameworks for the treatment of child victims should guarantee the children's best interests; one of the ways to do so is through the use of methodologies that minimize the re-traumatizing effects of the legal process. It is good practice to receive victim testimony with videoconference, CCTV or a Gesell chamber, which record the testimony so that it can be used in the different procedural stages when necessary, mainly during trial.

However, even though the use of the pre-trial testimony is a good legal practice in the judicial proceedings of cases of child sexual assault, in Guatemala's legal culture its use is not widespread.

In the sample of 182 cases, the prosecutor or the joint plaintiff requested pre-trial testimony only in 41 cases (22.5%), but the Trial Court or Sentencing Court judges accepted only 26 of the requests; that is, only in 14% of the cases did minor victims give pre-trial testimony.

These small percentages show that both judges and prosecutors should be educated on the re-traumatizing effects of the legal procedure on minor victims and of practices that can be used to reduce re-traumatization, including the frequent use of the pre-trial testimony in the case of minor victims of sexual assault. This would help also to avoid the loss of the evidence due to a minor's vulnerability. Judges and prosecutors should also find proper spaces to allow a more sensitive environment for victims giving their testimonies, including testimonies that are audio or video recorded. This should also include the constant use of guidelines on justice specializing in issues of children who are victims and witnesses of crimes.

It is necessary to create protocols for attention to and approach of minor victims of sexual assault in the criminal process and in the protection procedure, establishing clearly the functions of institutions and officers who intervene in the testimonies, including the multidisciplinary teams.

### 3.2.9. Verdicts

**Key Finding:** In 13% of the sample, the verdict judge or court granted evidential value to the pre-trial testimony of the child or adolescent victim of sexual crimes.

The verdict is the ruling issued by a judge or magistrate that finishes the trial process or to certain charges of the action; it can be a conviction, condemning the perpetrator, as his or her responsibility in the crime was confirmed, or an acquittal of all charges because there is no certainty of the alleged perpetrators responsibility, or innocence is confirmed. The verdict is an exclusive decision of the judges.

To issue the verdict, the judge or court must consider the evidence according to the rules of the sound and reasoned judgment.

The verdict cannot confirm other facts or circumstances apart from the ones described in the indictment presented by the MP in the opening of the trial, or where appropriate, in the extension of the indictment. This is known as the principle of congruence between the indictment and the verdict.

In terms of the verdict, in the 13% (24) of the cases, the judge or court considered as evidence the testimony of children given in pre-trial testimony, and in the 10% (18) of the cases they did not give probative value to the testimony of minor victims of sexual assault.

From the studied cases, in 80% of the cases (146), judges gave probative value, at least partially, to the testimonies of minor victims and issued convictions. Despite the exhaustion and re-traumatization of the minors, there were 36 acquittals. This exhaustion was due to the fact that the child was submitted to evaluations that were psychological (30), gynecological (31), psychiatric (12), and social (8). In that cases that concluded with acquittals, the majority (94%) had witnesses who were relatives; in not many cases with acquittals were testimonies from friends (22%), neighbors (17%) and police officers (11%). These statistics confirm that crimes of sexual assault are committed in the private.

**KEY FINDING:** From the sample of concluded cases, 80% ended with a conviction and 20% ended in acquittal.

**Table 13** Convictions and Acquittals by Province

Province	# of Convictions	# of Acquittals
Guatemala	82	26
Alta Verapaz	17	5
Quetzaltenango	47	5
<b>Total</b>	<b>146</b>	<b>36</b>

Source: Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

In 121 cases minors completed psychological evaluations, in 138 they completed evaluations with a legal medical expert (Sexual assault Exam), in 70 they completed psychiatric evaluations, in 34 they completed social evaluations and in only six cases a DNA test was requested. This confirms that evidentiary investigative activity in trials of sexual assault focuses on the victim. Witness testimony involved relatives in 80% (145) of cases and there was less participation of witnesses like neighbors (19%), friends (6.6%), or police officers (5.5%). In the 60% (88) of cases there was a joint plaintiff: the PGN in 40 cases, an NGO in sixteen cases, and parents or representatives of the minor in 32 cases.

With regard to acquittals, half of the cases did not have a joint plaintiff. In thirteen cases the PGN was the joint plaintiff, and in five cases the parents had that role.

However, the investigation focused on the same means of conviction in both types of verdicts. The problem stems from the lack of awareness and training of the prosecutors and judges about of tools, such as a joint plaintiff, and their application in cases of CSA.

### 3.3. Interviews with officials and users of the CJS

#### 3.3.1. Training for officials of the CJS

Interviews of CJS officials were conducted to identify the practices in cases of sexual assault. The sample included 75 interviews: 33 judges, 39 prosecutors or assistant prosecutors, and three attorneys from the PGN from the provinces of Guatemala, Quetzaltenango and Alta Verapaz. The questionnaire had both open-ended and multiple-choice questions. The interviews were carried out from November 2011 to February 2012.

**KEY FINDING:** From the interviews conducted by IJM of 75 CJS officials, the sample shows that 54% of the prosecutors, 66% of the judges and 100% of the PGN attorneys have taken part in trainings on CSA.

Out of the officials interviewed, 39% said that at the time of the interview they had not participated in any sort of training related sexual assault and 61% said that they have participated in workshops related to that topic of CSA more than once.



- At the MP, 46% (17 of 39) of the interviewees indicated that they had not had training about CSA as of the date of the interview
- At the OJ, 33% (11 of 33) of the interviewees indicated that they had not had training about this subject as of the date of the interview
- At the PGN, the delegates in each of the provinces stated that they had training (3 of 3)

According to the perception of the interviewees, the trainings provided contributed “to the improvement of investigation, to a better treatment to child victims in order to have better results”. In addition, the trainings contributed to “more knowledge, more objective application of justice, awareness to avoid re-traumatization of children...among others.”<sup>123</sup> These trainings, according to officials, were imparted mainly with the support of the international community and non-governmental organizations in collaboration with the training units.

The training processes for prosecutors and assistant prosecutors are carried out through the Training Unit of the MP (UNICAP) and for judges through the School of Legal Studies. These two training units focus the training process, schedule the trainings and prepare the notifications for officials to attend to the scheduled trainings.

### 3.3.2. Practices in cases of sexual assault, CJS officials

**KEY FINDING:** Out of 33 judges, 24 indicated that, from their experience, the indictments do not fulfill the requirements established in Art. 332 from the Code of Criminal Procedure. They indicated that the indictments contain mistakes which affect the sentence.

In terms of the pre-trial testimony, 72 out of 75 interviewees indicated that the victim’s testimony should be admitted as pre-trial testimony. However, an apparent difference between perception and reality exists, since this study data shows that the pre-trial testimony is not requested, nor accepted, in most of the cases of child sexual violence.

Identifying the practices and the self-perception of officials in relation to their role contributes to the understanding of the CJS from the perspective of an individual who applies justice. The questionnaire, “Interview to identify practices in sexual assault cases, for Prosecutors, Criminal Trial Court Judges, Criminal Sentencing Judges and Lawyers from the PGN”, has questions related to the criminal process, which are analyzed in this section.

With regard to the preliminary procedures each institution carries out when it intervenes in sexual assault cases, prosecutors and assistant prosecutors answered the most of any other group. These officials indicated an average of three preliminary procedures. The table below indicates the order of frequency in which they were listed:

<sup>123</sup>Question 9 of the interview. What benefits or changes has your institution had as a result of training?



**Table 14 Preliminary Proceedings**

No.	Preliminary Proceeding	Number of Instances
1.	Legal medical exam (Sexual Assault Exam)	43
2.	Psychological evaluation	42
3.	Minor victim's testimony	29
4.	Complaint	15
5.	Witnesses	14
6.	Crime scene	10
7.	Alleged perpetrator's identification	5
8.	Precautionary measure	5
9.	Photos	5
10.	Social work report	4
11.	Analysis of traces	3
12.	Psychiatric evaluation	2
13.	DNA test	2

Source: Sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

Most officials who answered considered the medical forensic exam, the psychological evaluation and the child's testimony as most important, which is consistent with the most frequently used evaluations, seen earlier in this case file section of this study.<sup>124</sup> It is necessary for officials to use other investigation means, such as the DNA test, more frequently when there are samples of fluids or when the victim becomes pregnant because of a sexual assault. It is also necessary for official's to establish the crime scene as soon as possible to gather relevant evidence.

With regards to the question about describing the means of investigation used in cases of CSA, the interviewees answered in a way consistent with previous analysis. The means of investigation mostly utilized, according to the interviews, are: the forensic medical exam, the psychological exam and the testimony of the child or adolescent victim.

The questions that follow have a more procedural focus. The analysis of this data made it possible to establish the parameters of officials' perception of the assumptions that influence the acceptance of the initial charge in cases of CSA. Most officials indicated the need of enough conviction elements that demonstrate the possible participation of the alleged perpetrator in the crime attributed to him or her. From the conviction elements listed, the medical forensic exam, the psychological evaluation and the minor victim's testimony are repeated; although this time some are carried out through the use of the Gesell chamber or CCTV to obtain the testimony of minors.

Most interviewees agree that it depends on how the MP or PGN presents the facts to determine the legal qualification or the crime in the acceptance of the initial charge. This determines the judge's criterion to frame a behavior in a specific crime. They agreed that it is a legal role to determine the legal qualification of the crime.

<sup>124</sup> 57 public officials answered (39 prosecutors and prosecutors assistants, 15 judges as officials from PGN). 18 judges did not respond because they indicated that this did not apply to their position as a judge.

The answers to the question, “When is an indictment reform appropriate?” are revealing. Several explained what is established in the regulations indicates that it is appropriate when the circumstances of the crime have been modified. However, some answers show the cultural influence, for example: “*When the perpetrator is linked to the case, the parents become scared and do not want to collaborate anymore. The lawyer takes advantage of this and asks for an indictment reform. They justify it and that is why many of them do not get to a hearing...*” or, “*When the girl says that she was raped and the report says that there was no sexual intercourse, but the thing is that there are no witnesses or evidence*”. These two answers show that, in spite of the fact that they are crimes of public action, the task of pursuing the trial is left to the victim and his or her family and the evidence is analyzed in a traditional way. As was seen in the sample of 182 cases, very few cases have eye-witnesses, so it is left to the victim’s testimony and to the necessary evidentiary tools, because there are no witnesses to testify about the event. Thus, it is necessary to give officials a new focus by training them on the use of evidentiary tools in these types of crimes.

These are the answers of 24 judges, out of 33, who were asked: According to your experience performing your role, do the charges fulfill the requirements established in Article 332 Bis from the Code of Criminal Procedure?

- No, because the MP’s factual basis in most of the cases is deficient.
- No, because there are deficiencies in the evidence presented by the MP.
- No, because the indictment says one thing and there are other elements in the hearing.
- No, because it is difficult. They are not fulfilled, and as a judge I mostly use equity.
- No, because the prosecutor does not prepare them, they do not have a date, and do not have an accurate development, the MP does not say how the events occurred, the investigations are not exhaustive, and judges need evidence.
- No, because there is still a need to get to the bottom (*of the truth of the case*).
- No, technically it fulfills it, but the bottom issues have deficiencies.
- No, it has faults, there are several alleged perpetrators, they copy the facts from one to another, and they do not reason the actions.
- No, recurrent mistake: they make a long account of the event, with irrelevant information and do not register the relevant information; they register police officer’s names and do not offer them as evidence.
- No, declarations do not need decoration, only facts, modality and indication of the place where the action was committed, because a good verdict depends on it.
- No, in the MP’s request they tell the facts and do not indicate the participation of the alleged perpetrator in the actions attributed to them. So there is not a solid and duly grounded indictment, and the technical defense attacks such indictment and the alleged perpetrator cannot be bound to a process.
- No, “sometimes” it is an issue not dealt with where personnel do not have the necessary information, so they exist at a general level of deficiency in the MP. Both the academic training and the existence of chauvinism affect it.
- Yes, it is fulfilled in terms of what the law establishes, but many times there are weaknesses in the definitions presented with a bad relationship of the facts, a bad legal qualification, consequently, the cases get complicated in some instances. When the proper procedures are not used, the alleged perpetrator has to be dismissed because of a bad action.
- No, because there are children in the middle and they do not remember the dates. However, they are admitted in such terms.
- No, because they make very detailed accounts of the facts and do not take into account time, place and modality. They forget the essential.

Another relevant procedural question of the interview is related to the pre-trial testimony that says: “Is the victim’s testimony accepted as pre-trial testimony?” Out of 75 interviewees, 72 answered yes. There exists a difference between the perception and the reality, since the case file study’s data led to the conclusion that the pre-trial testimony is not requested nor accepted in most of the cases of CSA. The conclusion here is that the officials are clear that there exists the need to implement this type of evidence.

The same pattern can be observed in the question, “Is the victim’s testimony considered in the verdict?” Nearly all the interviewees responded affirmatively, saying that the victim’s testimony is essential to the process and, in many occasions, it is the only means of conviction they have. In this question, some mentioned the need to hear the testimony in proper spaces like the Gesell chamber.

With regard to the question, “Please give your opinion on the timeliness of the trial process in CSA cases”, a considerable number of interviewees indicated that for this type of cases, exceptions should be made to accelerate the trials. In some other answers, the interviewees indicated that the delays are due to the workload and that mainly in the sentencing courts there are fewer delays. Others indicated that all criminal cases are the same and there should not be a preference, so this CSA cases should wait their turn to be heard by the tribunal.

In the next question: “Do you know whether your institution is part of inter-institutional coordination protocols in cases of CSA?” only eighteen officials said that they do not know any kind of coordination protocol. This indicates that the majority know about their existence, so the pending task in many of the cases is to support the implementation of these protocols.

The interview also has questions focused in dealing with minor victims of sexual assault. In the open-ended question, “What would you recommend for the care of the victim of CSA?” the answers can be summarized as follows:

- The Gesell Chamber should be used as general rule.
- Children should testify in a proper space.
- Encourage the specialization of education, psychology and psychiatry professionals in the approach of CSA crimes.
- Avoid the re-traumatization of the victim and take measures like avoiding contact with the perpetrator.
- Have an interrogation that is appropriate and sensitive to the age of the child.
- Conduct training and raise awareness among officials of the public system of justice.
- Make and implement procedures established by protocol to avoid the re-traumatization, as well as techniques to address child-specific issues.

According to the answers, most of the interviewed officials know the tools to provide better attention to victims of CSA; the challenge is in their implementation.

In question 23, “What would you recommend for the protection of the victim of child sexual violence?” most of officials indicated:

- To follow up cases until it can be verified that the minor has overcome the trauma.
- To avoid contact with the alleged perpetrator through measures to protect the victim.
- To separate children from the alleged perpetrator.
- To provide counseling to the minor victim and family group.
- To ensure measures for their protection and psychological treatment.

- To encourage coordination between networks (MP, hospitals, media) through the civil society and to create foster homes to avoid the institutionalization of children.

These answers are extremely important, as the criminal prosecution of the alleged perpetrator and his or her punishment is not the only objective of the trial process. In addition, it should be confirmed that the victim has security measures or protection, and that at the end of the process they will be restored. Victim restoration is still a challenge in the Guatemalan system of justice; this challenge can be perceived through the interviews, where the means of investigation focus on the condemnation of the perpetrator, but not seeking the victim's restoration. Both are important.

Question 24, "What would you recommend for the restoration of the victim of CSA?" has a close relationship with the last question because they complement each other. The officials indicated:

- Follow up through the State (comprehensive attention), total follow up, control and economic support if it is required.
- Follow up with psychological treatment.
- Follow up through psychological and psychiatric therapies and to guarantee comprehensive development (education, health, and general welfare), even after the verdict.

### **3.3.3. Alternative exits to the criminal process, Office for Women's Affairs and Child Victims**

This study also includes interviews to prosecutors from the Office for Women's Affairs and Child Victims from the provinces of Guatemala, Quetzaltenango and Alta Verapaz, who work with crimes committed against women, economic violence against women, as well as sexual assault and abuse against minors. Out of 60 prosecutors interviewed, fourteen work as prosecutor agents and 46 are prosecutor assistants. The questions focus mainly in the issue of case procedural exits, other than a verdict, and the perception and application criteria of the prosecutors and assistant prosecutors who are in charge of cases of child sexual assault.

According to the fourteen prosecutor agents, each one has an average of 293 cases, while the assistant prosecutors in the province of Guatemala have an average of 319 files in the prosecution desk. In Quetzaltenango, the only prosecutor agent interviewed indicated that he has an average of 100 files on the table. The seven assistant prosecutors in Quetzaltenango have an average of 650 files in the prosecution table. In the province of Alta Verapaz, the prosecutor agent has an average of 1203 cases, while the assistant prosecutors have an average of 303 cases on the desk. Also, the prosecutors in Alta Verapaz consider that an average of 35-40 new cases enter each month, including all the crimes they hear. They present an average of 10 indictments monthly.

When asked about the difficulties agents and assistants face when they hear cases of child sexual assault, nineteen interviewees from the three provinces indicated that the greatest difficulty is the lack of collaboration from the victims and their parents. Another difficulty nine interviewees detected is to identify the alleged perpetrator, and the other answers mention institutional and coordination challenges, like the lack of investigators for CSA crimes, delays in issuing experts reports from INACIF, workload, improper locations to interview minor victims, lack of support from the victims, lack of vehicles and lack of support from PNC, among others.

Some of the answers showed a direct effect on the investigation, such as: "...since the complaint is belated, the circumstantial evidence is lost...", "...the lack of expression in children to communicate what happened...", "...parents manipulated children in this type of crimes...", "...because of the age of the minor, it is difficult to determine the modality of the action...", "...because of rebelliousness in teenagers..." and "...contradiction in the victim's testimony..." These perceptions show a lack of sensitivity around this issue of CSA, as well as lack of knowledge to use the tools that allow for a better investigation in CSA crimes, mainly in the interview of minor victims.

In the question about the prosecutor's decision when the parents do not provide the necessary collaboration for the investigation, prosecutors and assistant prosecutors answered that they first request the PGN's investigation. This request looks for representation of the minor in the criminal process. Others indicated that they request support from the Childhood and Adolescence Court, which should have the same response of incorporating the PGN in the criminal process. Also, there were answers, such as separating the child from his or her parents and placement in foster home, that we more re-traumatizing. Another answer was to involve the victim's parents in the criminal process by accusing them for the crime of covering-up the abuse.

What is significant in the answers is that the majority of interviewees recognize the PGN as the entity in charge of representing the child in CSA crimes, so the strengthening of this institution is important to improve the CJS in cases of CSA.

As mentioned before, the goal of these interviews is to know the perception of the prosecutors, agents and assistants, in relation to procedural exits, other than a verdict, in the cases of CSA. For the question of what procedural exits they apply in these cases, most of them answered that none, because it is not applicable according to regulations (40). Many of them emphasized that they can only present the indictment. Some answers indicated that it was possible to apply dismissal (8), provisional closure (7), and suspension (4).

To the question: "If in a case of CSA, the alleged perpetrator offers to compensate for the damages and the child's representative agrees what you would do?" Most of them answered that such a resolution is not acceptable and that they would continue with the case and call the PGN to join the case as the child's representative. However, there were three answers that indicated: "...if it is a 16 or 17 years old and accepts the compensation, the case is concluded...", "...if the minor is 14 years old and wants to get married with the perpetrator, who also is a minor, it is acceptable" and "...in the crime of sexual attack it is acceptable..." Although a minority of respondents gave these answers, the cultural influence is clear in cases of CSA.

Another question from the interview asks whether they have requested suspension in of this type of case, keeping in mind that this measure can be used only when it is clear that the action is not punishable, that is, it is not a crime, and when it is clear that they cannot proceed because there is an obstacle for the criminal prosecution as prejudicial matter (CPP Art. 291), preliminary trial (CPP Art. 293), or exceptions (CPP Art. 294).

Out of the 60 interviewees in the three provinces, seventeen indicated that they have used the suspension in this type of cases for the following reasons:

- When the perpetrator and the victim are minors and older than 14 years of age, and there is consent in both of them (3 answers)
- As long as it does not constitute a crime and the pertinent evaluations have been made, and when the perpetrator cannot be identified (2)
- There are no conviction elements (2)
- When it does not constitute a crime (2)
- When there is consent and promise of marriage (1)

- Cases of hospitals SVET, because the victims do not leave information, or the victims live with the perpetrator (1)
- It is not possible to proceed and there are not enough conviction elements (1)
- There are difficulties to identify the alleged perpetrator or victims, or when lack of merits was pronounced (1)
- Unknown person and the investigation was exhausted (1)
- If the perpetrator and the victim are minors who live together, the family prevails (1)
- When individuals are summoned and they do not appear to give testimony and when all the investigation means are exhausted (1)
- It does not comply with the assumptions of the crime (1)

Some of the justifications fit in the regulations, but others do not, like the difficulty to identify the alleged perpetrator.

In same vein, the interviewees are asked: “According to Article 310 from the Code of Criminal Procedure, one of the assumptions to dismiss a case is when it is not possible to proceed. In your experience, in what situations it would not be possible to proceed with a case of child sexual assault?” The difference between this and the last questions was that many more interviewees gave their perception and indicated, in 13 instances, “When the alleged perpetrator cannot be identified”. The other answers are related with the regulations and indicate it is not possible to proceed “when there is no crime,” “when the fact is false” or “when the alleged perpetrator died.”

However, there are also answers out of the regulations framework that carry a strong re-traumatization burden towards the victim. These quoted answers provide examples:

- “...contradiction in the victim’s account...”
- “...they are older than 14 years of age, got married or live in domestic partnership...”
- “...when the psychological evaluation establishes that the facts are false....”
- “when the person is older than 14 years of age and has not been able to prove violence...”
- “...when there is no collaboration from the victim’s representatives...”
- “...when the victim dies and it was impossible to gather information...”

The answer that doubts about the truthfulness of the report to which the victims are subject through the expert study or psychological report, is serious, since it appears that the assumption is that the victim lies and that the priority is to establish such assumption with a psychological report, when the only person who can give evidentiary value to a testimony is the judge.

The interviewees were also asked whether they have requested dismissal in cases of child sexual assault; the dismissal is pronounced during the intermediate phase or when the preparation for the hearing absolves the alleged perpetrator. It is applied when a trial is avoided, when the investigation leads to the conclusion that the final result will be an acquittal. Fifty-two interviewees indicated that they have not used such measure and eight indicated that they have.

In the same way, the interviewees indicated that they have requested dismissal when “reasonably, there is no possibility to add new evidence and it is impossible to request the opening of trial, on good grounds”, “when the fact is false”, when “the victim is a minor and the event occurs within the family”, when “it is a sexual assault, the victim disappears, and there was no psychological exam”, when there is “contradiction in the victim’s account”, “when the victim does not have evidence of violence, they are older than 14 years of age, so it is an agreed relationship, or when the victim has a change of mind.” These kinds of answers are a product of cultural norms. Therefore, it is essential to



raise awareness among CJS officials, both for approaching victims of CSA and for investigation strategies in CSA cases.

The judge is another key actor whose behavior should be analyzed with regard to CSA crimes particularly when a lack of merit is pronounced, when there is no logical circumstantial evidence which shows that the alleged perpetrator committed a crime, this measure only solves the personal condition of the alleged perpetrator, and does not produce any *res judicata* effect. There could be a situation when the judge pronounces a lack of merit and the prosecutor continues with the investigation and requests, with new evidence, the pre-trial arrest of the alleged perpetrator. Judges pronounced a lack of merit in four cases out of 60, and they indicated that they did it when: “it was established that the minor lied,” there were “weak points in the police prevention”, “it was not flagrancy and the perpetrator was arrested”, and the victim was “under 16 years of age and there was consent”. Two of the answers are consistent with the police actions and the arrest, but in the answers that the “minor is lying” and that “there was consent,” again, show the need is to raise awareness about CSA among the officials of the CJS.

In the same line, the interview asks the prosecutors (agents and assistants) whether they think the provisional closure is useful in the cases of CSA. Thirty-six said yes and 24 said no. The provisional closure is appropriate when the investigation deadline set by the judge is due but it is not appropriate to dismiss the case, even though the evidence is not enough to require the opening of a trial, because it is indicated clearly the evidence that could be added. The effect of the provisional closure is the immediate termination of all constraint measures pronounced against the alleged perpetrator.

In the same way, the interviewees were asked about their experiences in requesting provisional closure. There are both positive and negative answers. One interviewee requested provisional closure when “the DNA test could be added, and when adding the evidence the conviction was achieved.” Negatively, one interviewee responded that “the means of investigation requested could not be added; when all the constraint measures cease, the alleged perpetrator escapes; the means of investigation are not added and the family does not want to continue with the process; the minor changes his or her mind.”

The interviewees were also asked if they have requested a summary trial in cases of CSA. Thirty-one of them indicated that they have not requested it, and said that it mainly because the summary trial is a special procedure in which the trial is substituted by a hearing before a trial court judge in the cases where the alleged perpetrator admits to the crime and the MP considers that imprisonment for no longer than five years is enough. The interviewees that indicated that they have requested a summary trial said that it is done mainly for the crime of sexual assault. It is important to mention that the minimum penalty for sexual assault is five years; however, as this study has established, most of perpetrators are part of the victim’s family circle, and therefore the minimum penalty should be increased by two-thirds to eight years and four months, according to the aggravation from Article 174 5o. of the Criminal Code. This mandatory penalty increase sometimes prevents the application of the summary trial in these cases. Thus, it is, again, important to make clear the criteria for the application of alternative measures.

In terms of the request for plea bargain, the sixty interviewees indicated that it is not possible to request it, as these are crimes of public action; the plea bargain is a faculty of the MP, under the judge’s control, of not executing the criminal action for crimes not sanctioned with imprisonment, if they were crimes liable to personal prosecution. In the crimes of public action, whose maximum penalty is not over five years of imprisonment, this measure does not apply.

Lastly, in the interview addressed to prosecutors (agents and assistants) from the Office for Women’s Affairs in Guatemala, Quetzaltenango and Alta Verapaz, they were asked about the advantages and

disadvantages they perceived in the prosecution of crimes of CSA since the Law Against Sexual Assault, Exploitation and Human Trafficking came into force in 2009.

Among the improvements, they mentioned that now they could see that the best interest of the child is in mind; that these crimes are now crimes of public action; that sexual intercourse fits in the crime of rape; ineffective crimes were abrogated; the issue of pre-trial testimony was regulated for CSA crimes. Among the disadvantages, they mentioned that the law has errors in the legislative drafting. The crime of sexual assault cannot be considered aggravated because of a minor victim's age, because the special aggravation circumstances were not included in Art. 195 Quinquies, from the Code of Criminal Procedure; with the revocation of crimes, criteria are needed to frame the behaviors in new crimes; alternative measures are granted in cases of sexual assaults, and penalties are shorter, among others. These disadvantages show that the main need is for training on these issues among the justice sector officials.

The interview allowed the study not only to analyze SICOMP data and the files of IJM's sample, but to know how the officials perceive the system and the application of normative measures.

### 3.3.4. Level of trust in the CJS

**KEY FINDING:** Of the 22 interviews conducted of individuals from institutions that treat and hear cases of minor victims of sexual assault, 3% do not trust the CJS whatsoever; 29% said they have little trust in the CJS and its institutions; 42% said that they have the expected trust; and 4% have trust in CJS. The remaining 22% did not answer or they do not have a direct relationship with the justice system.

In terms of CSA, 22 officers and representatives of institutions and organizations that attend and know of criminal cases of children who have suffered sexual assault were interviewed. For this, 22 individuals were interviewed, fifteen were women and seven were men.

The institutions that were interviewed focus in providing specialized attention in cases of CSA. They are:

**Table 15** Institutions with Officials Interviewed

Name of the Institution	Service Provided
Health Center from San Juan Sacatepéquez, San Raymundo, Chuarrancho	Attention to the Victim, Prevention
Universidad del Valle de Guatemala –UVG.	Teaching and psychological advice
Human Rights Office of the Guatemalan Archbishopric (ODHAG)	Training, awareness and promotion of the rights of children through courses for adults responsible of children, and publishing information on the status of children in an annual report.
Human Rights Office Prosecution	Comprehensive treatment to the child and family
The Office against Sexual Assault and Human Trafficking (SVET)	Assessment, promotion and coordination with government institutions.
Buckner Association Guatemala	Legal Counseling, Attention to the Victim, others: Spiritual Support.



Vida para Niños OASIS	Attention to the Victim, others: represent them with social worker.
Hogar Liga de Vida Nueva	Attention to the Victim
Independent psychologist (therapist in IJM)	Legal Counseling, Attention to the Victim
FUNPRONI-Casa Bernabé	Attention to the Victim
National Coordination of Free Legal Assistance to the Victim and their Families (IDPP)	Legal Counseling, Attention to the Victim, Social context
National Civil Police (PNC)	Criminal Investigation
Doctors without Borders	Attention to the Victim and Social Medical Care
UNICEF	Technical and Financial Assistance to institutions that attend directly to cases of Children Sexual Assault including government entities and non-governmental organizations
International Plan	Sponsor organization that promotes the rights of children, among other objectives.
Guatemalan Group of Women (GGM)	Integral, Legal, Psychological, Medical and Social Care
Prosecutor of Human Rights Office (PDH)	Aid, protection, and promotion of the Human Rights focused on the attention to the victim.
Fundación Sobrevivientes (Survivors Foundation)	Legal Counseling and Attention to the Victim
National Commission Against Child Assault (CONACMI)	Defense, protection, and promotion of Human Rights focused on attention of the victim, Prevention with professionals, parents, children, hospitals, PNC, Political Incidence.

Source: Interview to users of the Public Justice System on the handling of CSA cases

The organizations mentioned above, which interact with other institutions and organizations to provide protection and/or attention to the victim in cases of CSA have links with the following organizations:

- OJ: Peace Courts, Children and Adolescence Court, Courts of Guatemala and Mixco
- MP: Office for Women's Affairs
- PGN
- National Civil Police
- Ministry of Public Health and Social Assistance (MSPAS)
- World Vision
- Multi-sectorial Network
- Specialized Department of Children and Adolescence (DENA)
- National Commission Against Child Assault (acronym in Spanish CONACMI)
- Refugio de la Niñez,
- Guatemalan Group of Women (GGM)
- Free Legal Assistance to the Victim and their Families (IDPP)
- Research Center, Training and Support for Women (CICAM)
- Public Institutions for children
- Non-governmental organization and civil associations
- Advancing the Ministry of the Gospel AMG
- Care homes for minors

The interviewees indicated the level of confidence they have of the institutions of the public sector of justice (CJS).

**Table 16 Level of Trust in the CJS,**  
Divided by Institution

Level of Trust in the Treatment of CSA cases by CJS Institutions							
Institution	Expected trust	A lot of trust	No Trust	No relationship	No answer	Lack of trust	TOTAL
MP	10	1	1	0	4	6	22
PGN	8	2	0	3	3	6	22
OJ	10	0	1	1	3	7	22

Source: Interview with users of the Public Justice System on the handling of CSA cases

From this data we can conclude that 3% of the interviewees do not have any level of confidence in the CJS, 29% have some confidence in the CJS and its institutions, 42% stated that they have a moderate confidence, 4% have confidence in the CJS. The rest did not respond, or their work does not have a direct relation with the system of justice.

It is significant that the lack of confidence in the legal system reaches at least 32% of the sample, which is quite high considering that these individuals work with giving attention to vulnerable groups, such as victims of child sexual assault to whom the state must provide attention and supply as many services as possible.

This level of distrust goes hand in hand with the users' perception on the sensitivity of the individuals who treat child and adolescent victims of sexual crimes. Forty-one percent of the interviewees believe that the CJS is insensitive and another 4% believe the CJS is very insensitive, both of which make up 45% of the total sample. This percentage further enforces the recommendation that there should be processes to raise awareness and to provide tools for the officers of the CJS to provide proper attention to minor victims and users of the justice system.

### 3.4. Validation - Panel of experts.

Experts in criminal law, childhood and human rights evaluated this study, based in the following criteria:

- According to their experience, they indicated, whether the analysis of the indicators provides a proper interpretation of the reality of sexual crimes in Guatemala.
- They identified cultural and social elements that affect the interpretation of the indicators.
- They provided strategic suggestions or recommendations to respond to the results of the study.

During this validation process, the experts indicated that the results of the indicators respond to the country's reality, according to their knowledge of the system and of the matter, and that one of the most relevant elements is that these results are based in statistical data, which makes it possible to establish patterns. It is important to mention that the panel of experts reviewed the study and focused mainly in the following recommendations:

- In order to carry out a criminal process that respects the rights of the child victim, the use of the pre-trial testimony with minor victims and proper spaces like the Gesell Chamber and the CCTV are necessary.
- They considered it essential to look for protocols to attend the victims of sexual assault within the first 72 after the abuse, since these cases are a medical emergency. They indicated that there are inter-institutional protocols between the justice system and the health system for the immediate attention of these cases, which must be made public and their implementation must be supported.
- A third element that came up in the experts working table was the alternative exits other than a verdict, and based the discussion in the fact that the number of cases overwhelm the institutions, and that it is impossible to attend all the cases. Best practices should be generated to seek other type of exits, since the criminal process does not the goal to solve social problems in general but only in specific cases. Notwithstanding this discussion, they agreed in the fact that in the current regulations, the procedural exits other than a verdict, mainly for the alleged perpetrators of sexual crimes, are very limited.
- Another recommendation is related to the inconvenience of summoning the perpetrator to appear before the judge, since this the alleged perpetrator opportunity for escape. Though the CJS in Guatemala guarantees the rights of the alleged perpetrator, in CSA crimes it is convenient to apprehend them when there is risk of escaping or when there are obstacles to the investigation. The purpose of this is to protect the minor victim and to guarantee the resolution of the process.

In general, the group of experts considered the study opportune and validated its conclusions and recommendations.

## 4. Conclusions

### 4.1. Guatemala's regulatory framework

- a. In Guatemala, the level of violence against children is serious. This situation is reflected in the high levels of children who are victims of sexual crimes that present formal complaints. However, the national legislation has been changed to meet the international standards, though the problems lie in their implementation.
- b. The state of Guatemala has ratified a series of international instruments that guarantee the exercise and respect of the human rights of children, and also has made efforts to adapt the national regulations to the international standards. In addition, it has created institutions responsible of guaranteeing these rights. Nevertheless, the state's capacity to respond has not been proportionate nor effective in terms of protection, investigation, sanction and compensation of the damage, in relation to child and adolescent sexual assault crimes.

### 4.2. Investigation Phase

- a. In Guatemala complaints filed in cases of sexual assault increased between 2008 and 2012. Of the victims, 33.71%<sup>125</sup> were under the age of 18 and within this age range, 88.32% were female. In almost 90% of the cases, the perpetrators are relatives or acquaintances of the victims.
- b. A fifth of the cases filed at the MP ended in a procedural exit other than a verdict. Only 4.87% of the cases filed at the MP for sexual crimes end in a verdict. This type of crime does not qualify for alternative exits, as they are classified as 'public' crimes. Crimes against minors and cases of rape or sexual assault are not eligible for a plea bargain; conditional suspension of the criminal prosecution; or archiving of the case by resignation or withdrawal of the victim. These guidelines cannot be ignored, especially if the reason given by the justice sector to grant these exits is that the victim does not cooperate in the investigation.
- c. 54% of the cases of sexual assault nationwide are in the investigation phase. This situation can be corroborated by a corresponding report<sup>126</sup> that shows that 46% of the cases filed at the MP in 2008, were still under investigation, more than 4 years after the complaint was filed. The same phenomenon happens with 52% of the cases from 2009; 56% from 2010; 55% from 2011; and 60% from 2012.
- d. 6% (2,122) of the complaints during this period remain in the "Pending" stage, which implies that no investigative measures have been taken. The victims have not only ceased to receive a response from the criminal justice system, but also direct attention for victims.
- e. During the criminal process, minor victims of sexual crimes are at risk of re-traumatization due to the number of times they are required to tell their story to professionals. This

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<sup>125</sup> 43.26 % (26,422) corresponds to adults, and the age of the victims was not registered in the 23.03% (14,070).

<sup>126</sup> Status of the complaints report 2008-2012. SICOMP, April 2013

includes: four experts, a prosecutor, a trial court judge, a sentencing judge (if there is no pre-trial testimony), a psychologist from the MP's Office of Attention to Victims, and an attorney from the PGN. Additionally, the professionals that intervene in the process of protection must be added. This shows that inter-institutional coordination is vital and needs to improve to avoid secondary trauma.

- f. Most of the testimonies of child victims of sexual crimes were obtained in areas unsuitable for them, or without using the mechanisms to prevent re-traumatization. This illustrates that the justice system does not generally use practices included in the national and international regulations for the testimonies of child victims of crimes, according to data of the sample of 182 cases. This includes the negligent use of the Gesell chamber, CCTV, and the folding screens to avoid confrontation of the victim with the perpetrator.
- g. Pre-trial testimony procedures are rarely used with victims of sexual crimes. According to the 2008-2012 SICOMP reports, the MP requested its use only in 1.52 % of the cases nationwide. Instead, the testimony of minors is taken during the oral hearing. It is possible to conclude that prosecutors rarely request pre-trial testimony procedures and that when they do, in most cases judges do not grant it.
- h. According to the data collected in the sample of 182 cases, 34.6% of CSA complaints were filed within 72 hours of the event, the remaining 65.4% of CSA crimes were reported more than 72 hours after the event. This means that prevention measures to avoid the contraction of diseases (like HIV) and sexual transmitted infections, and other consequences will be affected. In addition, it affects the opportunity to collect forensic evidence that could identify the nature and perpetrator of the crime.
- i. Of the 182 sample cases, children knew their aggressor in 88.8% of the cases, either because the perpetrator was a family member or somebody in the child's circle of trust.
- j. According to the data of the sample of 182 cases, in 68% of the cases, an arrest warrant was not issued until more than 31 days after the complaint was filed. This means that in the majority of cases, the victim remained geographically close to the perpetrator during this time, exposing them to further sexual violence.

### **4.3. Formulation of indictments**

- a. Most of the offenses where the MP presented charges were rape, aggravated rape and sexual assault, demonstrating that the investigation focuses on the most serious crimes.
- b. Sexual crime cases of which the MP presents an indictment represent 9.4% of the filed cases during the last 5 years (2008-2012). This includes adults and minors.
- c. The sexual crimes cases filed during 2008-2012 that end in a verdict represent 5.86% nationwide. This includes adults and minors.
- d. According to IJM's sample of 182 cases, acquittals represent 20% of the pronounced verdicts. In spite of this result, children had to testify and had psychological, psychiatric, and legal medical evaluations (Sexual Assault Exam) in most of the cases. This produces re-traumatization in children, and when there is an acquittal, the public institutions will not be in charge of their psychosocial attention.

## 4.4. Enforcement of the Law against Sexual Assault, Exploitation and Human Trafficking

The Law against Sexual Assault, Exploitation and Human Trafficking contains major advances in the area of sexual assault crimes since it specifies legal obligations of the justice system towards the victim, and removes moralistic and gender discrimination elements from the previous legislation. However, this legislation still has significant weaknesses, which have been identified elsewhere<sup>127</sup>.

After the Law against Sexual Assault, Exploitation and Human Trafficking came into force, the government's responsiveness has not been proportional or effective in the area of investigations, sanctions and compensations to minor victims.

It is important to strengthen the training of prosecutors and judges, in order to provide them with tools that will allow them to address the cases of minor victims of sexual crimes in a better way, as well as to apply the reformed crimes and to include them in the Criminal Code.

It is also very important to train officials of the CJS on the use of the pre-trial testimony and proper spaces to hear the testimony, focusing mainly in the best interest of the victim, which is established in the Law against Sexual Assault, Exploitation and Human Trafficking.

It is necessary to develop protocols that establish the institutional functions in terms of their approach to children, and the role of each professional, to avoid the re-traumatization minor victims of sexual crimes.

## 4.5. Other aspects

- a. The average time of the process, from filing the complaint until a verdict is pronounced; in most of the cases is two years. It means that the timescale in which such cases are processed must be improved, bearing in mind the effects the trial could have on the minor.
- b. The study has demonstrated that in spite of the efforts from the justice institutions, mainly the MP, to have updated and reliable records, they still have inconsistencies that do not make it possible to establish accurate data. Those reports can only approximate to reality through estimates, but they cannot be used to know the current situational state of CSA cases, which means that criminal prevention and prosecution policies are based in tendencies.
- c. In spite of the existence of information on addressing cases sexual assault against children, training has been isolated. Training to officials provides content, but lacks ongoing evaluation and monitoring to ensure that officials of the CJS put it into practice.

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<sup>127</sup>PAZ Y PAZ BAILEY, Claudia. "Análisis de los delitos contra la libertad e indemnidad sexual", en el documento "La nueva regulación de la violencia sexual en Guatemala", Instituto de Estudios Comparados en Ciencias Penales de Guatemala, Guatemala, 2010, p. 55

## 5. Recommendations

The following recommendations originate from the study's key findings.

- 5.1. Implementation of public policies to strengthen preventive measures, in order to prevent children from being victims of sexual violence. Polices are also needed within the CJS institutions, establishing mechanisms to ensure dignified treatment of minor victims of sexual assault crimes.
- 5.2. The different officials from the criminal system should apply the international instruments that have been ratified by Guatemala, which guarantee the human rights of children, especially those that favor a better approach from the CJS to minor victims of sexual crimes.
- 5.3. The institutions of the criminal system should accelerate their endeavors to implement a reliable information system, to allow the different agencies from the justice sector to share information for strategic decision making and to avoid inconsistent records. In the case of the MP, it should ensure that all prosecutors use properly the SICOMP, through internal monitoring, supervision and discipline mechanisms. In the case of the OJ, CENADOJ should optimize its data collecting methods and provide analysis of the data on case progression through the criminal courts and tribunals.
- 5.4. There is an urgent need for the implementation of coordination mechanisms between the Public Ministry –as the directing unit of the investigation- and the National Civil Police, to conduct key investigations in the least amount of time possible and locate and apprehend the suspect. This will mitigate further damage to victims caused by the suspect remaining geographically close to them. Once the suspect has been arrested, both institutions must collaborate to sustain the validity of their case, obtaining the investigative material necessary and effectively assisting in the prosecution.
- 5.5. The application of alternative exits to the criminal process should not be encouraged in cases of rape, sexual assault, or other crimes of sexual assault against minors. The exit criteria in these types of crimes should be clearly defined in the MP's policies of criminal prosecution.
- 5.6. The statistics gathered in this study show that minor victims are the main source of information to present evidence in the criminal process. Therefore, there is a need for professionals from INACIF and other institutions to be trained on the treatment of minor victims of sexual crimes, and ensure effective inter-institutional coordination, in order to avoid the need for children to testify excessively in each institution to different professionals.
- 5.7. The Public Ministry's Model of Holistic Attention must be expanded and its best practices must be systematized. It has proven to be a tool that assists victims of sexual violence with dignity, including victims who are children.
- 5.8. Judges and other officers of the CJS need to be aware of the re-traumatizing effects of the criminal process and of the mechanisms to reduce them, including the frequent use of the pre-trial testimony in the case of child and adolescent victims of sexual crimes. They should

also find proper spaces to allow video and audio recording of the victim's testimony. This should include the constant use of the 2005 United Nations Social Economic Council's justice directives on matters concerning child victims and witnesses.

- 5.9. Protocols are necessary to standardize the way in which minor victims of sexual crimes are approached and cared for during the criminal process. The same is true for the protection process, clearly establishing the functions of the institutions and officers that intervene in the testimonies, including multidisciplinary teams.
- 5.10. Information campaigns for the immediate attention of sexual crimes should be created and strengthened, in order to start the prosecution of the perpetrator and to provide protection to the victims of these crimes, especially children, including the urgent medical attention during the first 72 hours after the event.
- 5.11. Coordination mechanisms among officials of the CJS for minors should be established, in order to provide an integral treatment to minor victims of sexual crimes, avoiding re-traumatization and taking advantage of the human and material resources from the institutions.
- 5.12. The training units from the different institutions of the justice sector should develop and set into motion initial and continuous training processes on the issues of protection, investigation, sanction and restitution of damages of minor victims of sexual crimes. These processes should also evaluate whether the acquired knowledge is being incorporated when providing the service.



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### **6.1.2. INTERNATIONAL REGULATIONS**

- Convention on the Rights of the Child.
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
- The Optional Protocol of the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts.
- The Optional Protocol of the Convention on the Rights of the Child to provide a communications procedure.
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council in 2005.
- General Comment No. 8 by the Committee on the Rights of the Child. On the right of the child to protection from corporal punishment and other cruel or degrading forms punishment (2006).
- General Comment No. 12 by the Committee on the Rights of the Child. The right of the child to be heard (2009).
- General Comment No. 13 by the Committee on the Rights of the Child. The children’s rights not to be subjected to violence (2011).

### **6.1.3. NATIONAL REGULATIONS**

- Political Constitution of the Republic of Guatemala (1985).
- Criminal Code and its modifications (1973).
- Criminal Procedural Code and its modifications (1992).
- Law for the Integral Protection of Minors and its modifications (2003).
- Law against Femicide and other forms of Violence Against Women (2008).
- Law against Sexual Assault, Exploitation, and Human Trafficking (2009).

## 6.2. National and International Normative Framework for the Human Rights of Children.

### 6.2.1. International normative framework:

In principle, it is worth pointing out that the international community often expresses its will in both conventional documents like the Convention on the Rights of the Child, which develop international regulations for States Parties, and non-conventional documents —denominated minimum rules, basic principles, directives, recommendations or behavior codes— which do not impose regulations, but help to interpret and explain treaties and express international human rights principles. Under certain circumstances, these non-conventional documents become unwritten law<sup>128</sup>.

According to international law, the Convention on the Rights of the Child is part of a body of law, or *corpus iuris*, that intends to protect the rights of children. This treaty should be considered when interpreting Article VII of the American Declaration of the Rights and Duties of Man, which guarantees the right of children to protection, care and special attention directly from the State and indirectly from society, as well as Article 19 of the American Convention on Human Rights, arguably the most crucial stipulation in the Inter-American System with regard to childhood rights, which states:

“Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

In interpreting the latter article, the Inter-American Court of Human Rights has not acknowledged the existence of a *corpus iuris* in children’s’ rights.<sup>129</sup> Conversely, the Inter-American Commission on Human rights highlights the importance of the whole body of law:

For an interpretation of a State's obligations vis-à-vis minors, in addition to the provision of the American Convention, the Commission considers it important to refer to other international instruments that contain even more specific rules regarding the protection of children. Those instruments include the Convention on the Rights of the Child and the various United Nations declarations on the subject. This combination of the regional and universal human rights systems for purposes of interpreting the Convention is based on Article 29 of the American Convention and on the consistent practice of the Court and of the Commission in this sphere.<sup>130</sup>

The Inter-American court of Human Rights illustrates how the *corpus iuris* on children’s’ rights consists of both regional and universal instruments, as well as non-contractual instruments, which have to be interpreted and applied coherently and harmoniously, as interpretative guidelines from the Convention on Rights of the Child, according to the Vienna Convention on the Law of Treaties.<sup>131</sup>

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<sup>128</sup> See Article 149 of the Political Constitution of the Republic of Guatemala. “About international relations. Guatemala will rule her relations with other States, according to international principles, rules and practices, to contribute to peacekeeping and preservation of freedom, to the respect and defense of human rights, the strengthening of democratic processes and international institutions that guarantee the mutual and fair benefit among the States.

<sup>129</sup> Corte IDH, Caso de los “Niños de la Calle” (Villagrán Morales y otros). Sentencia de 19 de noviembre de 1999. Serie C No. 63.

<sup>130</sup> CIDH, Report N° 41/99, Case 11.491, Menores detenidos contra Honduras, March 10, 1999, paragraph 72.

<sup>131</sup> Freedman, Diego and Martiniano Terragni, “Acceso a la Justicia de Niños Víctimas: protección de los derechos de los niños, niñas y adolescentes víctimas o testigos de delitos o violencia”, Buenos Aires, Argentina, 2009, p. 12. Furthermore, see the Vienna Convention on the Law of Treaties: Article 27. The internal law and failure to comply with the treaties. One part will not be able to appeal to the dispositions of its internal law as justification for failure to comply a treaty. Article 31.3c. 31.General rule of interpretation. I. A treaty has to be interpreted in good faith, according to the common sense that has to be attributed to the terms of the treaty, in their context and having in mind their objective and purpose... 3. Together with the context, another element to have in mind is: ...c) every relevant form of international law applicable in the relationship between the parts.

The conclusion is that states face a series of regulations that turn out to be binding when incorporated into their laws; they form a *corpus iuris*, and authorities cannot ignore them without international accountability.

### 6.2.2. The Convention on the Rights of the Child.

The Convention on the Rights of the Child<sup>132</sup> has formed an international consensus unparalleled by any other human rights treaty within the United Nations. So far, only two states (Somalia and the United States) have not ratified it, while 193 have.<sup>133</sup> Such a consensus is strong indicator of the international community's sensitivity to children's rights issues.

In Guatemala, the Political Constitution of 1985 establishes the opening of the Guatemalan legal system to international law, which facilitates the constant and dynamic reworking of children's rights in Guatemala. Articles 44,<sup>134</sup> 46,<sup>135</sup> and 149<sup>136</sup> of the Constitution establish the preeminence of international human rights guidelines over domestic ones, necessitating their observance and continual review.<sup>137</sup>

With regard to child victims and/or witnesses of crimes, the Convention on the Rights of the Child establishes several special measures to protect them against physical, mental and sexual assault, and ill-treatment.<sup>138</sup> It also specifies the general obligation of States Parties to take action "to the utmost with the resources that are available" (Article 4) to ensure the full validity of their rights, the obligation to give appropriate assistance to parents so that they may fulfill their duties in raising their children (Art. 18), and the right of a child to an adequate standard of living (Art. 27). Evidently, the protection of this right entails a series of actions on the part of public authorities.

Furthermore, Article 34 of the Convention establishes that States Parties have a duty to protect children from exploitation and sexual assault. In addition, Article 39 stipulates that measures should be put in place to facilitate the process of recovery, both physical and psychological, and social reintegration of children who are victims of crimes or abandonment.

Article 12 says States Parties must ensure that children are heard in all legal or administrative procedures. The right of children to be heard is not only hearing their testimony in a formal setting, but also informing them of the process and each of its actions and phases.<sup>139</sup>

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<sup>132</sup> Ratified by the State of Guatemala through Decree 27-90 from the Congress of the Republic of Guatemala.

<sup>133</sup> The information in this chapter about ratifications from the States was extracted from the Office of the United Nations High Commissioner for Human Rights website (<http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>).

<sup>134</sup> Article 44.- Inherent Rights to the human person. The rights and guarantees that the Constitution grants do not exclude others that are inherent to the human person, though they are not listed as such...

<sup>135</sup> Article 46.- Preeminence of the International Law. It is established the general principle that in terms of human rights, the treaties and conventions accepted and ratified by Guatemala, have preeminence over the internal law.

<sup>136</sup> Article 149.- About international relations. Guatemala will regulate her relationships with other States according to the international principles, rules and practices, to contribute to peacekeeping and freedom, to the respect and defense of the human rights, to the strengthening of the democratic processes and international institutions that guarantee the mutual and equal benefit among the States.

<sup>137</sup> Solórzano, Justo. "Los Derechos Humanos de la Niñez y su Aplicación Judicial", Guatemala, 2004, page 66.

<sup>138</sup> Art. 19 from CRC: "1. The State Parties will adopt all the legal, administrative, social and educational measures that are appropriate to protect children against all form of harm and physical or psychological abuse, neglect or negligent treatment, ill-treatment or exploitation, including sexual assault, while the child is under the custody of parents, a legal custodian or any other person who is responsible for them. 2. These protection measures should comprise, accordingly, efficient procedures for the establishment of social programs to provide the proper care to children and their careers, as well as other means of prevention and for the identification, notification, sending to an institution, investigation, treatment and subsequent observation of the cases of child ill-treatment described above, and accordingly, legal prevention.

<sup>139</sup> Article 117 Code of Criminal Procedure, reformed by Decree 18-2010 from the Congress of the Republic... "The victim... Even when the victim has not been constituted the joint plaintiff, according to this Code, has the right to be informed about the rights belonging to her in the criminal procedure..."

By accepting the obligations of the Convention, states commit to guaranteeing and protecting the rights of children and essentially hold themselves responsible before the international community.

To effectively supervise the implementation of children's rights, the **Committee on the Rights of the Child** has been created. This committee consists of independent experts who supervise states' implementation of the Convention's stipulations, including the following optional protocols:<sup>140</sup>

- a) **Relating to the involvement of children in armed conflicts.**<sup>141</sup>The objective is to avoid the recruitment, training or use of children within and across national borders in hostilities by armed groups, recognizing the responsibility of those who recruit, train and use children in this way. To this end, this protocol urges States Parties to raise the minimum age for enlistment to 18 years, taking into account that children require special protection. Guatemala ratified this instrument in 2002.
- b) **Relating to the trade of children, child prostitution, and the use of children in pornography.**<sup>142</sup>The objective is to require states to adopt measures that criminalize the trafficking of children for purposes of sexual exploitation as well as the trafficking of their organs for profit. Also, states must criminalize the production, distribution, divulgation, importation, exportation, possession of child pornography (3<sup>rd</sup> Art.).

States are required to inform child victims of their rights, give them assistance and consider their thoughts. In addition, states must protect children's privacy and identity, ensure their security and avoid any unnecessary delays in the legal process. Moreover, personnel that take part in the process must be properly trained (8<sup>th</sup> Art.).

As general measures, educational and informational programs should be developed to publicize measures for protection and prevention against these crimes, with the aim of raising awareness in the general public. Furthermore, the protocol establishes that child victims should depend on the appropriate care to guarantee their wellbeing and look to proper procedures to obtain indemnifications for the damages they have suffered (9<sup>th</sup> Art.). Guatemala ratified this optional protocol in 2002.

- c) **Optional protocol from the Convention on the Rights of the Child relating to communications procedure.**<sup>143</sup> It consists of granting power to the Committee on the Rights of the Child to learn of concrete cases of children who state that they have been violated of any of their rights protected by the Convention on the Rights of the Child and its optional protocols. This protocol has not been ratified by Guatemala.

To date this committee has examined the State of Guatemala through four reports. The reception of the fifth and sixth joint reports is programmed for October 1, 2015.

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<sup>140</sup>Articles 43 – 45 from the Convention on the Rights of the Child.

<sup>141</sup> Resolution 54/263 from the United Nations General Assembly, approved on May 25, 2000. Ratified by Guatemala with Decree 01-2002 from the Republic of Guatemala's Congress on January 23, 2002.

<sup>142</sup> Resolution 54/263 from the United Nations General Assembly, approved on May 25, 2000. Ratified by Guatemala with Decree 76-2001 from the Republic of Guatemala's Congress, dated December 11, 2001.

<sup>143</sup> Approved by the Council of Human Rights with their resolution 17/..., ..., June 2011, pending approval by the United Nations General Assembly.

The Committee on the Rights of the Child examined Guatemala's initial 1996 report, and among their recommendations included internal legal modifications to the standards established in the Convention.<sup>144</sup>

The Committee examined the second report on Guatemala in May of 2001 and highlighted the following points:

“11. The Committee, in line with its previous recommendation (ibid., para. 25), strongly recommends that the State party support as much as possible the process to draft a new Children and Adolescent Code that is in full conformity with the principles and provisions of the Convention, expedite its approval by Congress, and ensure its enactment and full implementation as soon as possible. This new code should make a clear distinction, in terms of judicial procedures and treatment, between children in need of care and protection and those in conflict with the law, and should therefore not be based on the doctrine of ‘irregular situation.’”

“13. The Committee reiterates its previous recommendation to the State party for a permanent and multidisciplinary mechanism to be developed for coordinating and implementing the Convention at the national and local levels, including the establishment of various mechanisms at all levels to ensure the effective decentralization of the implementation of the Convention, and for the promotion of close cooperation with non-governmental organizations (ibid., para. 27). Further, it recommends the allocation of adequate financial and human resources to existing bodies working in the field of children's rights.”<sup>145</sup>

The Committee's recommendation in the second report was what facilitated the subsequent creation of the Law of Integral Protection to Childhood and Adolescence, taking into account that the Childhood and Youth Code (1996) was not yet in effect.

The Committee examined the State of Guatemala's initial report in July of 2007, referring to the Optional Protocol relating to the trade of children, the prostitution of children and the use of children in pornography, and recommended:

“17. The Committee recommends that the State Party urgently complete the reform of the Penal Code in order to bring it into full compliance with articles 2 and 3 of the Protocol. The Committee urges the State party to pay particular attention to the criminalization of irregular adoptions and the sale of children and to the need to ensure that adoption practices are in accordance with article 21 of the Convention on the Rights of the Child and its relevant Protocol, also taking due account of the fact that since 1 March 2003 Guatemala is a party to the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. Furthermore, the Committee recommends that the State party take the necessary steps to adequately define and criminalize trafficking in persons in its criminal legislation, in accordance with the Protocols Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime

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<sup>144</sup>Committee on the Rights of the Child, 12<sup>th</sup> Period of sessions. CRC/C/15/Add.58. June 7, 1996.

<sup>145</sup>Committee on the Rights of the Child, 27<sup>th</sup> Period of sessions. CRC/C/15/Add.154. July 9, 2001.



18. The Committee notes that the Guatemalan Penal Code allows for the establishment of extraterritorial jurisdiction, but is concerned that the lack of criminalization of numerous offences covered in article 3 of the Protocol constitutes a serious impediment for the establishment and practical implementation of such jurisdiction.

19. The Committee recommends that the State party ensure within its efforts to reform the Penal Code that all provisions of the Protocol be included and that all practical measures necessary be undertaken in order to be able to effectively establish jurisdiction over offences in accordance with article 4 of the Protocol. Furthermore, the Committee recommends that the State party ensure that national legislation does not require double criminality for extradition and/or prosecution of offences committed abroad.”<sup>146</sup>

Additionally, the Committee specifically recommended that the State of Guatemala adopt:

“23. [...] all necessary measures, including legislative amendments, to ensure that child victims and witnesses of any of the crimes under the Protocol are protected at all stages of the criminal justice process, [...] ensure that all child victims of the offences described in the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9 (4) of the Optional Protocol [...]”

The above-mentioned point is very important, because it demonstrates the first time an international body has recommended that the State of Guatemala recognize and respect the rights of child victims in the legal process.

Likewise, the Committee emphasizes:

“24. The State party should be guided by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20) and should in particular:

- (a) Allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;
- (b) Use child-sensitive procedures to protect children from hardship during the justice process, including by the use of special interview rooms designed for children, child-sensitive methods of questioning, and by reducing the number of interviews, statements and hearings.”

From this perspective, the Committee requires that the Guatemalan State look for procedures that avoid the re-traumatization of children during the legal process, including the use of special facilities that hold CCTV rooms and Gesell chambers.

The Committee examined Guatemala’s third and fourth regular combined reports (CRC/C/GTM/3-4) in their 1544<sup>th</sup> and 1546<sup>th</sup> meetings, held on September 14, 2010, and approved them in their 1583<sup>th</sup> meeting, held on October 1, 2010.

Here are some of the formulated recommendations:

“18. The Committee recommends that the State party consider creating a high level authority as a secretariat for Children and Adolescents at the

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<sup>146</sup>Committee on the Rights of the Child, 45<sup>th</sup> period of sessions. CRC/C/OPSC/GTM/C0/1. July 6, 2007.



ministerial level in order to ensure the coordination of the implementation of the Convention and its two Protocols. The Committee brings to the State party's attention its General Comment No.5 on general measures of implementation, in which it reminds the State parties that "effective implementation of the Convention requires visible cross-sectoral coordination to recognize and realize children's rights across Government, between different levels of government and between Government and civil society - including in particular children and young people themselves."<sup>147</sup>

On the other hand, the Committee on the Rights of the Child has issued to date seventeen general observations to support the States in the interpretation and the application of the Convention on the Rights of the Child.<sup>148</sup> Among the general observations, those relevant to child victims of crimes, such as sexual assault, include:

**i. General comment No. 8 (2006) The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts.19; 28, para. 2; and 37, inter alia)**

During the 42<sup>nd</sup> session held from May 15 to June 2 of 2006, the Committee on the Rights of the Child approved General comment No. 8, emphasizing the States Parties' obligation to take immediate action to prohibit and eliminate corporal punishment and all other forms of cruel or degrading punishment of children, and to outline all of the legislative measures and other educational and awareness programs that the States must adopt.

The main aspects of this general observation in the legal system establish:

"11.The Committee defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example,

<sup>147</sup>Committee on the Rights of the Child, (CRC/C/GTM/3-4) in their 1544<sup>th</sup> and 1546<sup>th</sup> sessions, held on September 14, 2010, and approved in their 1583<sup>rd</sup> session, held on October 1, 2010.

<sup>148</sup> GENERAL COMMENT N° 1 (2001). PARAGRAPH 1 FROM ARTICLE 29: PURPOSES OF EDUCATION.

GENERAL COMMENT N° 2 (2002).The role of human rights independent national institutions in the promotion and protection of the rights of the child.

GENERAL COMMENT N° 3 (2003).HIV/AIDS and the rights of the child.

GENERAL COMMENT N° 4 (2003).The health and development of adolescents in the context of the Convention on the Rights of the Child.

GENERAL COMMENT N° 5 (2003). General measures for the application of the Convention on the Rights of the Child (articles 4 and 42 and paragraph 6 from article 44).

GENERAL COMMENT N° 6 (2005) Treatment of unaccompanied minors and those separated from their family outside of their home country .

GENERAL COMMENT N° 7 (2005) Execution of the rights of the child in the first infancy.

GENERAL COMMENT N° 8 (2006) The right of the child to protection against corporal punishment and other forms of cruel and humiliating punishment (article 19, paragraph 2 from article 28 and article 37, among others).

GENERAL COMMENT N° 9 (2006) The rights of children with disabilities.

GENERAL COMMENT N° 10 (2007) The rights of the child in justice for minors.

GENERAL COMMENT N° 11 (2009) Indigenous children and their rights in the light of the Convention.

GENERAL COMMENT N° 12 (2009) The right of the child to be listened to.

GENERAL COMMENT N° 13 (2011). The right of the child to not be an object of any form of violence.

GENERAL COMMENT N° 14 (2013) On the right of the child's superior interests to be the first priority.

GENERAL COMMENT N° 15 (2013) On the right of the child to enjoy the highest level of health possible.

GENERAL COMMENT N° 16 (2013) On the obligations of the State in relation to the business sector's impact on the rights of the child.

GENERAL COMMENT N° 17 (2013) On the right of the child to rest, relax, play, and access to recreational activities, culture and art.

kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child."

Evidently, the general observation reaffirms the previous point. Article 37 from the Convention on the Rights of the Child points out that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment", complementing Article 19, which stipulates that the States must "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

The Committee on the Rights of the Child confirms that there is no ambiguity: The expression "all forms of physical or mental violence, injury or abuse" does not allow for any degree of legalized violence against children.

## **ii. General comment No. 12. The Right of the Child to be heard.**

The Committee on the Rights of the Child, during its 51st session from May 12 to June 12 of 2009, provided a legal analysis of the right of the child in this comment. Overall, it illustrates to the States Parties the conditions necessary for this right to become a reality through legal procedures.

In this way, the general comment prioritizes, among others, the following points:

The States Parties cannot assume that children are not able to form their own opinions. On the contrary, the States Parties should assume that children have the ability to form their own opinions and recognize that they have the right to express them; it is not for the children to first demonstrate that they have such ability.

The right to be heard does not impose an age limit to the right of children to express their opinions so the States Parties are discouraged to introduce by law or in practice age limits that restrict the right of the children to be heard in all matters that affect them. Consequently, the full application of Article 12 demands the recognition and respect of the non-verbal forms of communication like play, body and face expressions, drawings and paintings; through which very small children show their ability to understand, choose and have preferences.

"A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child - friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms."<sup>149</sup>

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<sup>149</sup>GENERAL COMMENT N° 12 (2009) The right of the child to be listened

“The right of the child victim and witness is also linked to the right to be informed about issues such as availability of health, psychological and social services, the role of a child victim and/or witness, the ways in which “questioning” is conducted, existing support mechanisms in place for the child when submitting a complaint and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation, and the provisions for appeal.”<sup>150</sup>

**iii. General Observation N° 13 (2011). The right of the child to not being object of any form of violence.**

In 2011, The Committee on the Rights of the Child issued General comment No. 13, which explains Article 19 of the Convention on the Rights of the Child.

It refers to children who have been victims of violence in the justice system, providing definitions of abuse and sexual exploitation, and implementing legal intervention with respect to child victims.

“17. **No exceptions.** The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. “All forms of physical or mental violence” does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child’s absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.

..25. **Sexual abuse and exploitation.** Sexual abuse and exploitation includes:

- (a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity;
- (b) The use of children in commercial sexual exploitation; and
- (c) The use of children in audio or visual images of child sexual abuse;
- (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.”

In addition, General comment no. 13 develops a series of guidelines that States have to follow during the investigation process in cases of violence and legal intervention, which include the child and his family’s right to information. As well, the approach must be coordinated among the different support sectors and approaches. Furthermore, the comment recommends that the States develop disciplinary and administrative actions against professionals for negligence or improper behavior in the processing of the case.

It is important to mention that the Committee on the Rights of the Child recommends in General comment 12 considering its guidelines on justice in cases involving children who have been victims and witnesses of crime, which have approved by the United Nations Economic and Social Council, and are therefore relevant to the States.

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<sup>150</sup>GENERAL COMMENT N° 12 (2009) The right of the child to be listened

▪ **Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime**

These directives were approved by the United Nations Economic and Social Council in its 2005/20 resolution of July, 2005. It recognizes that children who have been victims and witnesses of crimes are especially vulnerable and require special protection, proper assistance and support in lieu of their age, level of maturity and special needs, to avoid further damage and trauma caused by their participation in the criminal legal process. Additionally, it recognizes that the participation of children who have been victims and witnesses of crime in the criminal legal process is necessary for an effective trial, particularly when the child victim is the only witness

To this end, among others, the States must guarantee the right of the children to be protected from suffering during the legal process.

“29. Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.

30. Professionals should approach child victims and witnesses with sensitivity, so that they:

(a) Provide support for child victims and witnesses, including accompanying the child throughout his or her involvement in the justice process, when it is in his or her best interests;

(b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child’s participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process;

(c) Ensure that trials take place as soon as practical, unless delays are in the child’s best interest. Investigation of crimes involving child victims and witnesses should also be expedited and there should be procedures, laws or court rules that provide for cases involving child victims and witnesses to be expedited;

(d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child’s testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child’s testimony.

31. Professionals should also implement measures:

(a) To limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;

(b) To ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defense, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;

(c) To ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.”<sup>151</sup>

These guidelines now constitute a tool for the Guatemalan legal system that helps to avoid the re-traumatization of children during the legal process and facilitates the implementation of mechanisms like CCTV or the Gesell chamber for children’s and testimonies.

### **6.2.3. Adaptation of the Guatemalan regulations to the standards of the Convention on the Rights of the Child.**

It is important to highlight that the tutelary model in Guatemala has existed normatively since 1927<sup>152</sup>, beginning with the 1927 reforms to the 1879 Constitution, and then the first law for minors in 1937,<sup>153</sup> which was also expressed in the Codes for Minors in both 1969<sup>154</sup> and 1979<sup>155</sup>. The Law of Integral Protection to Childhood and Adolescence abrogated the previous law in 2003.

The tutelary system was substituted, according to regulations, with the system of Integral Protection, approved by the Convention on the Rights of the Child, and ratified by the State of Guatemala through Decree 27-90 of the Congress of the Republic, which consequently shifted the national norm through LPINA (2003). In this way, after thirteen years of struggle, because of the academic, social and legal movement that demanded the adaptation of internal regulations to the principles of the Convention on the Rights of the Child, the Law of Integral Protection to Childhood and Adolescence was achieved. This law perceives children as full beneficiaries of rights and announces the need to educate them in a spirit of peace, dignity, tolerance, freedom, equality and solidarity.

It also establishes a specific treatment that recognizes the special rights of children, according to their unique condition, and the need for differentiation in the legal treatment of minor victims who are in conflict with criminal law.<sup>156</sup>

Other points of conflict, in terms of incorporating the principles stipulated in the Convention on the Rights of the Child and other international treaties into the internal legal system, include the issues of international adoptions, as well as crimes against sexual integrity. These points have provoked intense debates with stagnations, advances and reversals in the legal reforms.

The problem with the adaptation of internal regulations to the established standards of the Convention on the Rights of the Child was not only present in the process of bringing the Law of Integral Protection of Childhood and Adolescence into effect, but with other instruments as well, such as the ratification of the Hague Convention of May 29, 1994.<sup>157</sup> With regard to the Protection of the Child and the Cooperation in Terms of International Adoptions, its approval and enforcement in the Adoptions Law and the Law Against Sexual Assault and Exploitation and Human Trafficking, was the object of legal and political criticism.

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<sup>151</sup>GENERAL COMMENT N° 13 (2011) The right of the child to freedom from all forms of violence

<sup>152</sup> “Fifteen year old minors will be imprisoned only at the places established especially to this end. A minors’ legislation will establish this case, on matters pertinent to them”. Third paragraph from Article 30 of the Republic of Guatemala’s Constitutive Law, 1927’s reform.

<sup>153</sup> Government Agreement 2043, Juvenile Courts Law.

<sup>154</sup> Decree 61-69 from the Congress of the Republic of Guatemala.

<sup>155</sup> Decree 78-79 from the Congress of the Republic of Guatemala.

<sup>156</sup>SÁNCHEZ, Estuardo. “Hacia una cultura judicial que garantice los Derechos Humanos de la niñez y adolescencia (la nueva competencia del juez de paz)”. *Revista Centroamericana Justicia Penal y Sociedad*, No. 26, January-June 2007.

The Congress of the Republic of Guatemala ratified the previously stated Hague Convention for the first time in 2002, and then ratified it again in 2007, but it does not actually go into effect until December 31 of this year, after a long debate in the Guatemalan courts of justice.

This brief historic review of the development of the new regulations model for the rights of minors illustrates how challenging it has been to recognize the rights of minors in Guatemala, either because those in charge of the State's policies do not consider them important or because minors continue to be perceived as objects and not as subjects.

### **6.2.3.1 Law of Integral Protection of Childhood and Adolescence**

With respect to the regulations framework, the Congress of the Republic of Guatemala, as part of the commitments it assimilated from the Convention on the Rights of the Child, approved the “Law of Integral Protection of Childhood and Adolescence, Decree 27-2003, on June 4, 2003, which came into force the same year, on July 19.

Given that this law was widely debated in previous years, the short period of time between the approval of the regulations framework and its enforcement, which was 1 month and 15 days (without any time between its official press release and its going into effect —the following day), meant that the institutions in charge of creating the legal and operational framework were not prepared to face the challenges created by the approval of the legislation, particularly with regard to the parts on the restitution of rights against threats and violations, which includes the application of penalties to adolescents for violations of criminal law.

The approved legislation in 2003 promoted a paradigm shift in the administration of justice related to children, moving from an eminently “tutelary” culture to one of integral protection, in which children should be considered as subjects of rights and not as objects of the process.

This law is divided into three books. The first section states the fundamental dispositions along with general dispositions for the application and interpretation of the law. It presents what is relevant to the human rights of children, both individually and collectively, and asserts the special rights of disabled children to protection against ill-treatment, and overall the protection of children against exploitation and sexual assault. In addition, it establishes responsibilities and limitations on the exercise of children's rights, regulations on child labor, and obligations of the State, society, parents, guardians or individuals responsible for children, to confront threats and violations to children's rights.

The second book includes organizational regulations, establishing and regulating organizations for the integral protection of children, i.e. the National Commission and the Municipal Commission for Children. They are responsible for the formulation, execution and regulation of public policies. The book also establishes three other institutions: the Human Rights Ombudsman's Office for Children, which is responsible for the supervision of children's rights, the Protection Unit for Working Adolescents based in the Ministry of Labor and Social Welfare, and the Specialized Unit for Children in the National Civil Police, which is responsible for the training and advising in children's rights and duties.

The third book explains the procedural regulations related to the judicial process in the case of children who are victims of threats or violations to their human rights, which are in conflict with criminal law. To this end, it creates a judicial organization, which includes the Chamber for



Childhood and Adolescence and the Children's Trial Court and for Adolescents in Conflict with the Criminal Law, as well as the Trial Court for the Application of Sanctions.

Additionally, the powers of the Peace Courts are extended to review the cases of child victims and to resolve, definitively, cases of children in conflict with the criminal law. Finally, this section establishes the compulsory participation of Attorneys for Children from the Attorney General Office, so that they will intervene in the procedures of child victims, as well as the Public Defense and the Adolescents Prosecutor for taking charge of the legal process of adolescents in conflict with criminal law.<sup>158</sup>

### **6.2.3.2. The Law Against Sexual Assault, Exploitation and Human Trafficking**

The Law Against Sexual Assault, Exploitation and Human Trafficking includes reforms to the Criminal Code to improve the protection of peoples against behaviors that threaten their sexual integrity and their individual freedom, by updating the crimes according to the international treaties requirements, as ratified by the State of Guatemala.

Additionally, the law includes administrative reforms to give greater care to the victims of these crimes. It considers the creation of the Office Against Sexual assault, Exploitation and Human Trafficking, which works to create better policies to prevent sexual assault, exploitation and human trafficking.<sup>159</sup>

It is important to mention that the law also emphasizes the rights of the victims. It not defines these rights, but explains them with legal and technical analyses.

### **Comments about certain aspects of the new Law against Sexual Violence, Exploitation, and Trafficking of Persons (Decree 9-2009)<sup>160</sup>**

The reform that has been most radical is the actual content of this law. It contains important advances in the protection of sexual liberty, accurately describing civil liberties protected by law and removing moral elements and gender discrimination present in the previous legislation. Nevertheless, the new legislation is greatly disproportionate in regards to the severity of crimes, it contains grave errors in the description of typical conduct, and does not bring enough attention to the concept of violence.

Decree 9-2009 repealed several crimes: rape, abduction, and molestation. This repeal has given way to a series of discussions about whether these crimes should be included in a new classification of

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<sup>158</sup> SOLÓRZANO, Justo. "La Ley de Protección Integral de la Niñez y la Adolescencia, una aproximación a sus principios, derechos y garantías". P. 32.

<sup>159</sup> Among them: "...the attention and protection of their victims and to compensate for the damage caused, creating for this the Office Against Sexual Violence, Exploitation and Human Trafficking, assigned to the Vice-Presidency of the Republic, establishing their attributions in terms of commissions and setting a deadline of 60 days after the law has come into force to elaborate their rulings. It instructs the Ministry of Public Finances to create a budget allocation for the Tax Year of no less than Q5 000,000.00 to start operations in that Office, where there will be a compensation fund for the victims of the crimes established in this law..." [http://www.congreso.gob.gt/gt/mostrar\\_ley.asp?id=13128](http://www.congreso.gob.gt/gt/mostrar_ley.asp?id=13128) (consulted on October 5, 2009). [http://www.congreso.gob.gt/gt/mostrar\\_ley.asp?id=13128](http://www.congreso.gob.gt/gt/mostrar_ley.asp?id=13128) (consulted on October 5, 2009).

<sup>160</sup> The new regulation of sexual violence in Guatemala, by Ileana Arduino and Claudia Paz y Paz Bailey/ Institute of Comparative Studies in Criminal Sciences of Guatemala, 2010.

crimes of rape. The approval of Decree 9-2009 has led to an improvement in the protection of sexual liberties. Nevertheless, the new legislation still contains many legislative faults, which are exemplified by gaps and contradictions that should be improved, beginning with a modification of the penal code or an adequate jurisprudential interpretation. The greatest of these faults is the new definition of violence, which is confusing and redundant.

### **6.2.3.3. Law to Prevent, to Sanction and to Eradicate Domestic Violence**

Decree No. 97-96 from the Congress of the Republic promulgated the Law to Prevent, Sanction, and Eradicate Domestic Violence and its Regulations as contained in the Government Agreement 831-2000, and revised through Government Agreements 417-2003 and 421-2003.

There are several international women's rights instruments, which precede this law, particularly the *Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women – Belém do Pará Convention*<sup>161</sup> adopted by the Organization of American States (OEA) in Belem do Para, Brazil in 1994.<sup>162</sup>

In the case of Guatemala, the Law to Prevent, Sanction and Eradicate Domestic Violence does not consider penalties for crimes, but rather moves to regulate security measures and protect victims who have survived domestic violence.

According to Article 2 of the Law to Prevent, Sanction and Eradicate Domestic Violence, there are three key objectives:

- To guarantee life, integrity, security and integrity of the victims of domestic violence.
- To establish mechanisms to prevent domestic violence, regulating the necessary protection measures.
- To give special and immediate protection to women, children, young people, senior citizens and disabled people who are abused at home, taking into account the unique circumstance of each person

In addition, the law establishes which institutions are in charge of receiving and processing complaints, as well as the abilities and obligations of the different intervening sectors and institutions.

The law establishes CONAPREVI as a governing and regulating entity of public policies that are oriented to prevent, prosecute and eradicate domestic violence. It also establishes that security measures will be applied without prejudice to the perpetrator's criminal responsibility.

### **Law against femicide and other forms of violence against women**

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<sup>161</sup> Articles 1, 2 and 3 from the Convention of Belen do Pará: "To the effects of this Convention by violence against women means any action or behavior, based on her gender, which causes death, damage or physical, sexual or psychological damage to women, in the public sphere or in the private one". And it includes the "physical, sexual and psychological violence: that has place in the family or domestic unit, or in any other interpersonal relationship, whether the perpetrator shares or has shared the same home than the woman and it includes, among others, rape, ill-treatment and sexual assault.

<sup>162</sup> Approved by the State of Guatemala, by Decree 69-94 from the Congress of the Republic, ratified in January 1995.



After ratifying the Convention to Eliminate of all forms of Discrimination Against Women,<sup>163</sup> as well as the Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “*Convención Belém do Pará*”<sup>164</sup> the State of Guatemala moved to adopt all the necessary measures to issue, modify, and derogate laws, uses and practices that constitute discrimination against women, as well as to establish expeditious procedures for the protection of victims, improving their access to justice.

The Congress of the Republic promulgated the Law against femicide and other forms of violence against women<sup>165</sup> (children, adolescents and adults), which regulates different types of crimes, such as *femicide, violence against women in its physical, psychological and sexual manifestations, as well as the type of economic violence*. This law also creates preventive measures, such as the execution of security measures in favor of victims, the strengthening of public policies, the issue of compensation to victims and the obligations of the State to fulfill its responsibilities.

According to Articles 1 and 2 of the law, its objective is to guarantee life, freedom, integrity, dignity, protection and equality to women under the law, when because of issues of gender, violence is committed against them in relationships of power or trust.

With regard to the measures to protect and provide security to the victims of gender violence and sexual assault, officials in the public justice system are to exercise regulations that provide the best protection, and effectively apply legal responsibilities during the criminal process.

### **6.3. Participation of minors who have been victims or witnesses in the Guatemalan CSJ**

In the initial legislation,<sup>166</sup> minor victims were considered “objects” of protection. They were not granted any rights, or opportunities to express themselves in relation to their interests, needs and expectations as child victims within the legal procedure.

The paradigm shift that occurred due to the Convention on the Rights of the Child in 1989, considers children instead as “subjects” of rights. The statement that children are bearers of rights means that authorities have to take into account their opinion and resolve cases according to their interests.

Prosecutors and judges must consider children and their opinions and consult with them on important legal issues, since their age does not limit their rights. Overall, child victims must be heard throughout the entire legal process.

#### **6.3.1. The right to report a crime**

Most crimes in Guatemala are public acts, which mean that they are liable to prosecution by the MP.<sup>167</sup> For instance, Art. 197 of the Criminal Code establish that sexual assault crimes are public acts

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<sup>163</sup>Approved by the State of Guatemala by Decree Law 49-82 from the Head of State.

<sup>164</sup> Approved by the State of Guatemala by Decree Law 69-94 from the Congress of the Republic.

<sup>165</sup> Approved by Decree Number 22-2008 from the Congress of the Republic of Guatemala, issued on April 9, 2008, and published on May 7, 2008. It is in force from May 15, 2008. Diario de Centro América, Volume: CCLXXXIV, Number: 27, Pages: 2 .4. (May 7, 2008).

<sup>166</sup>Number 5.1. from this report

<sup>167</sup>Art 24 Bis.Code of Criminal Procedure.

liable to prosecution. In this respect, the investigation should begin as soon as the crime has been recognized through any means, which include the reports of minors.

Article 17 of the Law of Integral Protection of Childhood and Adolescence establishes that children have the right to ask for help and inform any authority of a violation or risk of violation of their rights, who then is obligated to take proper action.

On the other hand, Art. 297 of the Code of Criminal Procedure, establishes that “any person” can file a report, and does not set an age limit. As such, minors should be allowed to file reports.

An officer who does not accept a report from a minor who is a victim of a crime fails to perform his duties.<sup>168</sup>

It is important to mention that in sexual assault crimes, the PGN is empowered to become a joint plaintiff *ex officio*, when the person is a minor, or when there is conflict between the victims’ interests and those of their legal representatives.<sup>169</sup> This precept is integrated from points “a” and “c” from Article 108 of the Law of Integral Protection for Children and Adolescents, which allows the PGN to represent children who lack of representation, and file the complaints of children who have been victims of crimes and do not have legal representation.

On the other hand, the MP has created mechanisms to guarantee victims’ enjoyment of their rights by reducing secondary traumatization, particularly during when they file reports and give testimonies in court. To this end, the general instructions in 07-2008 were approved, relating to the Model of Attention to the Victim, as well as the instructions in 08-2008, which establish directives for the victim’s emotional stabilization in the first interview, and instruction 09-2008, which refers to the protocol for giving care to children, who have been either direct or collateral victims. In paragraph 22 of instruction 09-2008, it states indicates that when possible, particularly in trials and other oral hearings, the testimony of children should be the first to be heard, which helps to avoid unnecessary testimonies being heard before legal authorities. Finally, other mechanisms include instruction 10-2008, which refers to the protocol for paying attention to victims of crimes against their sexual integrity, security and modesty; and general instruction 02-2013, which establishes mechanisms and procedures for prosecutors to observe in the process of preparing child testimonies.

### **6.3.2. The right to be joint plaintiff.**

If a minor victim or his representative wants to initiate the criminal prosecution or join the MP’s prosecutorial team, he should designate himself as a joint plaintiff<sup>170</sup>. In the case of children, their parents or legal representatives can prosecute. If there are no representatives, or if they have a conflict of interest, the PGN, will constitute a joint plaintiff *ex officio*.<sup>171</sup>

Non-governmental associations and institutions that aim to protect of the rights of children can also be joint plaintiffs.<sup>172</sup>

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<sup>168</sup> Art. 419 Code of Criminal Procedure

<sup>169</sup> Artículo 197. 4°. Del Código Penal.

<sup>170</sup> Art. 116 Code of Criminal Procedure.

<sup>171</sup> RODRÍGUEZ BARILLAS, Alejandro, “Los Derechos de la Niñez Víctima en el Proceso Penal Guatemalteco”, Guatemala, 2002, p 88.

<sup>172</sup> Art. 117 del Code of Criminal Procedure..

The designation of a joint plaintiff is restricted in terms of time, since it must be done before the MP opens or dismisses a trial,<sup>173</sup> given that any of the parties can oppose the prosecutor's admission and file corresponding exemptions during the preparatory and intermediate stages.<sup>174</sup>

The exercise of action by a plaintiff is completely optional, which means that in any step of the procedure, the plaintiff can renounce or abandon his designation. However, in cases where victims are minors, a plaintiff cannot renounce or abandon the action without legal authorization. If parents or representatives are the ones moving to renounce or abandon, the PGN will be designated to continue as prosecutors in the penal process.

The importance of the joint plaintiff designation lies in the fact that during the preparation process, plaintiffs can apply for the implementation and hearing of the pre-trial testimony, as well as any other proceedings stated in the Code of Criminal Procedure.<sup>175</sup> The pre-trial testimony is to be implemented when there is fear for the life and/or physical security of the witness, in order to avoid secondary trauma for the child victim, and can be carried out through video conference or other electronic means.<sup>176</sup> In addition, the judge will work to resolve the requirements for pre-trial testimony in cases of crimes mentioned in the Law against Sexual Assault, Exploitation and Human Trafficking, according to the best interests and rights of victims.<sup>177</sup>

The joint plaintiff also has the right to turn to the trial court judge if there is disagreement with the prosecution's decision.

During the intermediate procedure, the joint plaintiff can adhere to the MP's indictment, explaining his own grounds, and point out formal deficiencies in the indictment, appealing for its correction or objecting to it due to the omission of an alleged perpetrator, fact, or situation of interest that is crucial for the decision.<sup>178</sup>

The plaintiff can also give evidence and take part in the trial, examining experts and witnesses, giving evidence and being present in the development and conclusion of the trial.<sup>179</sup>

In light of the above, the role of the joint plaintiff is important, especially if the prosecutor acts in a negligent manner, against the rights of the child victim. If there is a conflict of interest between the underage victim and her representatives, the PGN must assume the role of joint plaintiff. However, once the procedure has begun, the plaintiff must continue until the end of the process; he cannot renounce nor abandon the process at that point.<sup>180</sup>

### **6.3.3. Pre-trial testimony**

In many instances, children who have been victims of sexual crimes are required give their testimony. The pre-trial testimony is a necessary mechanism for obtaining a minimal statement and avoiding the re-traumatization of the victim.

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<sup>173</sup> Art. 118 Code of Criminal Procedure.

<sup>174</sup> Arts. 121 and 339 from Code of Criminal Procedure.

<sup>175</sup> Art. 116 Code of Criminal Procedure.

<sup>176</sup> Art. 317 Code of Criminal Procedure.

<sup>177</sup> Art. 59 Law Against Sexual Violence, Exploitation and Human Trade.

<sup>178</sup> Art. 337 Code of Criminal Procedure.

<sup>179</sup> Arts. 315, 343, 368, 377, 378, 380, 382, from Code of Criminal Procedure.

<sup>180</sup> Art. 47 From the Procedure and Commercial Code establishes that "who acts representing others is obliged to lodge all legally possible recourses, defense and exceptions, at the risk of personal responsibility and of damages and loses..."

However, it is not often implemented because the prosecutor or judge would rather have the child give her testimony in the trial. Because the criminal process can have a re-traumatizing effect on a child victim of a sexual crime, and violate her personal integrity, the use of the pre-trial is justified.

Accordingly, the Law against Sexual Assault, Exploitation and Human Trafficking requires the judge to realize the best interests and rights of the victim.

The pre-trial testimonies of children can be received because they find their base in the State's obligation to avoid their procedural re-traumatization, given that the testimonies of victims can have a great impact in their rehabilitation. Most of all, this procedure prevents perpetrators from intimidating victims.<sup>181</sup>

To carry out a pre-trial testimony, the evidence must be recorded and reproduced in trial. This can be done through CCTV, videoconference, the Gesell chamber or any other tool that the judge considers sufficient to guarantee its reproduction in the trial.

#### **6.3.4. Intervention of the child victim during the preparatory process**

After a child or her representative has filed a complaint, the MP must pursue a mandatory investigation, keeping the child's best interests in mind and recognizing that they are required to protect the child's physical integrity and freedom.

The Code of Criminal Procedure establishes simplified measures, such as the plea bargain and conditional suspension of the criminal prosecution. The Code predetermines in which types of crimes these measures are applicable,<sup>182</sup> which means that the MP can renounce criminal action only when permitted under the law. With respect sexual assault crimes, these measures cannot be implemented if the victim is a minor, due to the fact that the sentence is greater than five years.<sup>183</sup>

In other crimes where the sentence does not exceed five years, if the victim is a child the prosecutor must listen to the child's and her representative's opinions as mentioned in Article 150 Bis of the Code of Criminal Procedure, which refers to the ill-treatment of Minors. When the alleged perpetrator is the child's parent or guardian, the PGN must give consent to the implementation of a plea bargain or the conditional suspension of the prosecution.<sup>184</sup>

On the other hand, underage victims and their representatives can propose a means of investigation at any point of the preparatory procedure<sup>185</sup>. In addition, they can take part in the process of investigation.<sup>186</sup>

While the paragraphs above refer to the rights of child victims to actively participate in the preparatory phase of the criminal process, normally, in reality children are often treated as objects of investigation. For example, there may be an instance where a physical examination is performed against the victim's will, which for a minor is clearly a re-traumatizing action. Article 241 of the Code of Criminal Procedure establishes that physical examinations in cases of sexual crime can only be carried out if the victim acquiesces. If the victim is a minor, her parents or representatives must give

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<sup>181</sup> RODRIGUES BARILLAS, ALEJANDRO, "Los Derechos de la niñez Víctima en el Proceso Penal Guatemalteco"

<sup>182</sup> Articles 25 and 27 Code of Criminal Procedure

<sup>183</sup> It is inferred by integrating to the fixed sentences in the crimes the special circumstances of aggravation contained in Art. 195-Quinquies from the Criminal Code.

<sup>184</sup> Art. 117 Code of Criminal Procedure.

<sup>185</sup> Art. 315 from the Code of Criminal Procedure.

<sup>186</sup> Art. 316 from the Code of Criminal Procedure.

assent, but making sure to take into account the child's opinion. The State of Guatemala must make adequate efforts to ensure that children are treated right-bearers, and nothing else.

With regard to underage victims, their ability to be witnesses must be acknowledged. Article 207 of the Code of Criminal Procedure establishes: "Every inhabitant of the country or a person who is in it has the duty to attend to a citation in order to give testimony..." It does not establish any limitations on giving testimony based on age. In addition, age does not appear to be a requirement for witnesses in determining their suitability, as established in Art. 211 of the Code of Criminal Procedure.

In the case where a child witness gives testimony that goes against the interests of her relatives, the Code of Criminal Procedure establishes two rules. If the child is older than 14 years of age, she can give testimony, having been warned of the exception ahead of time. If she is under 14 years of age, her legal representative must give consent<sup>187</sup>, which in this case would mean receiving consent from the PGN. In both cases, a child victim or witness must be told about her right to abstain. She must to give her opinion about her desire to give testimony or abstain.

If there is a conflict between child victims who are under 14 years of age and their legal representatives with regard to their right to abstain, the judge will decide if they are required give testimony or not, giving priority to the child's best interests, under Art. 214 of the Code of Criminal Procedure.

### **6.3.5. Intervention of child or adolescent victims during the intermediate procedure.**

The intermediate procedure is the procedural stage between the preparatory (investigation) stage and the judgment. The objective of this stage is to deliberate based on the actions or injunctions made by the prosecution after the investigation.

Nevertheless, the indictment has to be made with the active participation of the underage victim. In many cases, the victim's participation is limited because the joint plaintiff exerts more control over the indictment.<sup>188</sup>

Minor victims, or their representative, have the right to be included in the intermediate procedure hearing and the offering of evidence, where they can give their opinions.<sup>189</sup> The participation of minor victims in the intermediate procedure hearing cannot be prohibited, though they are not constituted as joint plaintiffs.

During this phase of the criminal process, the MP, exercising the principle of objectivity, can present the dismissal petition.<sup>190</sup> However, this cannot be done without first listening to the child's opinion or the opinion of her representatives.<sup>191</sup> This is extremely important, given that a dismissal irrevocably ends the criminal process, in favor of the alleged perpetrator.

Also during this phase, the MP can request the provisional closure of the criminal prosecution, particularly when a dismissal is not appropriate and the evidence is insufficient to request the opening

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<sup>187</sup> Arts. 212 and 213 from the Code of Criminal Procedure.

<sup>188</sup> Art. 337 from the Code of Criminal Procedure.

<sup>189</sup> Art. 117 from the Code of Criminal Procedure.

<sup>190</sup> Art. 328 from the Code of Criminal Procedure.

<sup>191</sup> Art. 117 c. from the Code of Criminal Procedure.

of trial.<sup>192</sup>The Trial Court judge can order the provisional closure in cases where the MP has not formulated an indictment by the legal deadline.<sup>193</sup>However, this mechanism, as its name suggests, does not provide sufficient closure to the criminal process.

When requesting a provisional closure, the prosecutor must tell the trial court judge about the time necessary for gather the pending evidence. This is extremely important because the judge will decide the day and hour of the next intermediate hearing, based on what the prosecutor says.<sup>194</sup>

As indicated already, the purpose of the intermediate hearing is to discuss the appropriateness of the prosecution's case, and when formulating the indictment, there will be a deliberation on the facts presented and the likelihood that they will be demonstrated in trial.

The child victims or their representatives should be in the audience, in order to guarantee their right to be heard in the legal process.

### **6.3.6. The child or adolescent victim's intervention during trial.**

The oral trial is the main stage of the criminal process. During this stage, the evidence is admitted and examined and facts are verified, coming to a resolution as a result of the adversarial process.

The sentencing court is formed by three judges, who adjudicate the trial and pronounce the verdict in a collegial manner, in proceedings of higher risk crimes<sup>195</sup>, and individually, in proceedings for non-high risk crimes.<sup>196</sup>

Consequently, unless a sexual assault crime is high risk by nature, it will be adjudicated by one judge.

In most cases the trial will be public, but can be, partially or totally, a closed doors trial, if it affects the modesty, life or physical safety of any of the parties or the individuals who involved, or if a minor is being examined.<sup>197</sup>

Both judges and the MP have to agree on the issue of special protection for child victims, especially if the crime of interest is sexual assault, because of the stigmatizing effects of such a crime. Having in mind the child's best interests, it would be justified to hold the trial discreetly.

According to the international standards of child human rights, victims or witnesses should not testify multiple times. Their testimony should be received in the form pre-trial testimony, and should be given in places specially prepared for such testimony, reducing the re-traumatizing effects of the process. However, if a child testifies in the courtroom, the testimony should be given in a facility with CCTV or Gesell chambers, or other mechanisms that avoid interaction between the child victim and the assumed perpetrator.

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<sup>192</sup> Art. 331 from the Code of Criminal Procedure.

<sup>193</sup> Art. 324 Bis from the Code of Criminal Procedure.

<sup>194</sup> Art. 340 from the Code of Criminal Procedure.

<sup>195</sup> Criminal Competence Law in Processes of Highest Risk. **Article 3. Crimes of highest risk.** For the purposes of this Law, the following are considered crimes of higher risk:

Genocide; the crimes against people and assets protected by the Human International Right; enforced disappearance; torture; murder; human trafficking; abduction or kidnapping; parricide; femicide; crimes contemplated in the Law Against the Organized Crime; crimes of which the maximum penalty is more than fifteen years of imprisonment in the Law to Prevent and Suppress Terrorism Funding; and the crimes connected to the above will be judged by the competent courts for highest risk processes.

<sup>196</sup> Art. 48, from the Code of Criminal Procedure.

<sup>197</sup> Article 356 Criminal Procedure Code.

The cross-examination is typically causes witnesses to be more apprehensive. In the case of child victims, the sentencing or trial court judges should avoid inappropriate or intimidating cross-examinations by instead receiving a pre-trial testimony<sup>198</sup>. If the child is interviewed in a Gesell chamber or a room with CCTV, the judge or the psychologist should ask the questions. When these mechanisms are not available, the role of the judge as director of the audience is fundamental in avoiding questions and answers that increase trauma. In this sense, the development of regulations and ethics that guide lawyers' behavior is necessary. After the presentation of evidence finishes, the parties, including the joint plaintiff, will issue their conclusions. If the victim is present and wants to speak she will be permitted to do so. This also applies to a child victim.<sup>199</sup>

If a conviction is pronounced, the parties to the action, as well as the victim, will convene in a compensation hearing. During this hearing, the compensation amount, restitution, and damages and losses will be credited according to the case, for the restoration and social reintegration of the victim.<sup>200</sup>

Today, one of the greatest problems is that prosecutors, in many cases, do not investigate restorative elements, so when they attend such hearings, they have little evidence to present to the judge or the court to receive restitution for damages, not only in terms of money, but also mechanisms that play an integral role in victim's restoration.

Another element that is not well developed is whether the Enforcement Judge will issue the correct elements for compensation.

## **6.4. Flow chart of the common stages of the Criminal Process**

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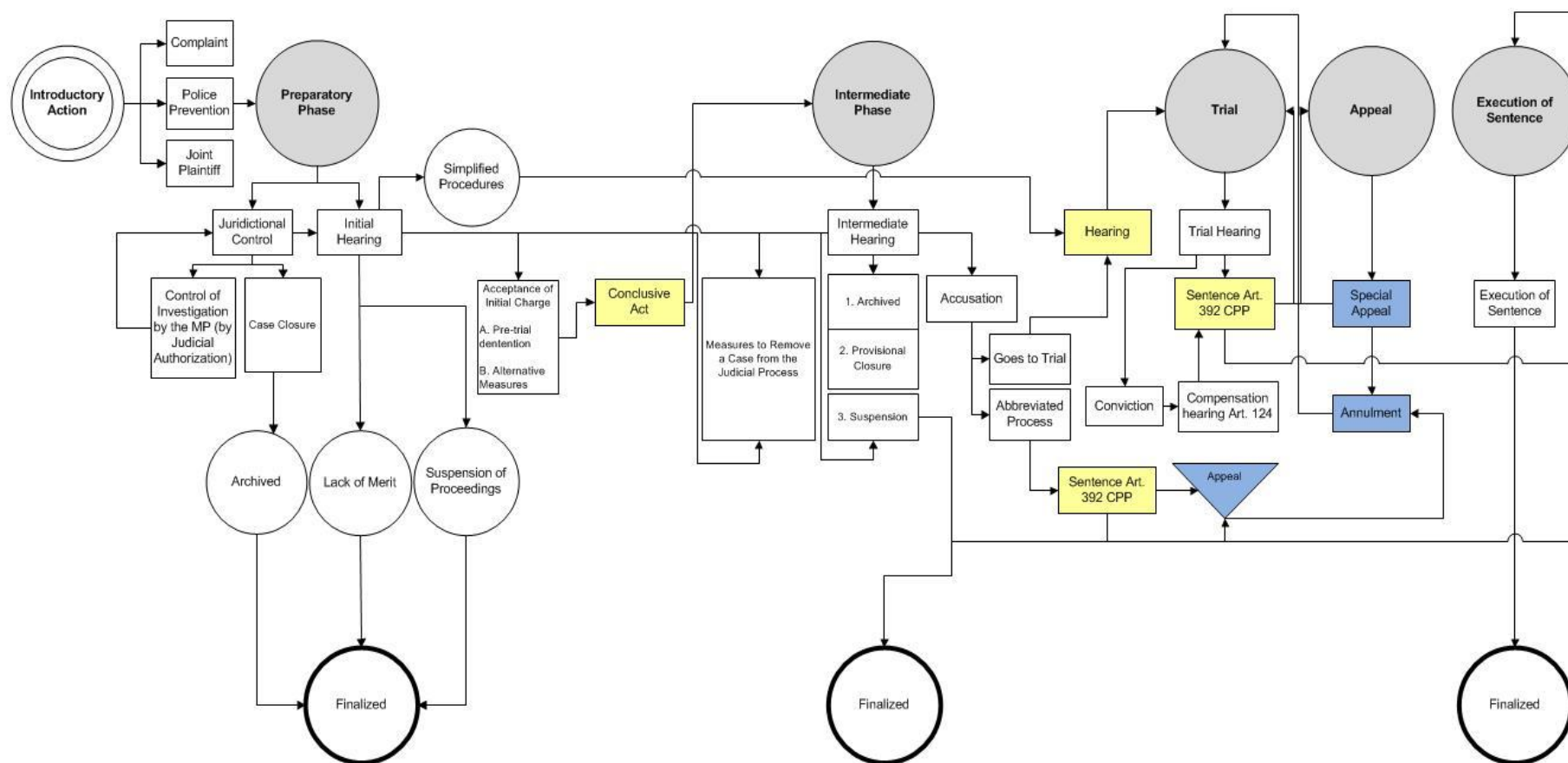
<sup>198</sup>RODRIGUEZ BARILLAS, Alejandro, Op. Cit., p. 151.

<sup>199</sup> Article 382 Code of Criminal Procedure, last paragraph.

<sup>200</sup>Article 124 Code of Criminal Procedure.



## Stages of the Criminal Process (STATES)



**Diagram:** This was constructed by the Gestion Penal por Audiencias lawyer group, the justice and security program: Reduction of Impunity, AECID. This was completed in 2012 for the Guatemalan Criminal Justice System performance Study, 2008-2012.



## 6.5. About Specialized Justice

As a consequence of approving the Law for Integral Protection of Children and Adolescents and the Law against femicide and other forms of violence against women, courts and specialized tribunals were implemented for qualified personnel to deal with such issues, forming the following:

### 6.5.1. Criminal courts and tribunals for the crimes of Femicide and other forms of violence against women.

On April 9, 2008, the Congress of the Republic approved Decree 22-2008, the Law against femicide and other forms of violence against women, which came into force the same year, on May 7. This regulation establishes a series of dispositions oriented to prevent, punish and eradicate violence against women. It also establishes a series of obligations for institutions, officials and agents in charge of overseeing the application of justice, in order that they act with due diligence to prevent, investigate and sanction those manifestations of violence.

Within the Law's framework of implementation, obligations and responsibilities are established for the different institutions of the Legal Sector. Its purpose is to strengthen the capabilities of these institutions so that they have the necessary tools to punish such crimes, and produce conditions that favor the coordination of actions, processes, and decisions amongst the liable institutions and fulfill the resolutions contained in the Law to ensure the integral protection of female victims of violence.

To fulfill Article 15 of the Law against femicide and other forms of violence against women, the Supreme Court of Justice, on February 24, 2010, in Agreement 1-2010 approved the creation of Criminal Trial Courts and Sentencing Courts for Crimes of Femicide and other Forms of violence against women. These courts have territorial responsibility in the provinces of Chiquimula, Guatemala and Quetzaltenango and commenced on October 15, 2010.

In order to regulate the organization and operation of the criminal courts and tribunals for crimes of femicide and other forms of violence against women, the Supreme Court of Justice approved the Management Regulations for Courts and Tribunals for Crimes of Femicide and other forms of Violence against Women, on August 18, 2010, in Article 30-2010, which was then published in the *Diario Oficial* (official newspaper) on August 31, and put into force on the following day.

The Supreme Court of Justice, in light of satisfactory results from having specialized jurisdiction with regard to Femicide and other forms of violence against women,<sup>201</sup> decided with Art. 12-2012 to create the Criminal Courts and Tribunals for Femicide and other Forms of Violence Against Women in Huehuetenango<sup>202</sup> and Alta Verapaz,<sup>203</sup> as well as Femicide Courts and Tribunals in multi-person courts and the Femicide Chamber of the Court of Appeals, with its headquarters in Guatemala.<sup>204</sup>

The article also included the creation of the Tribunal and Second Court for Crimes of Femicide and other forms of Violence Against Women and Sexual Assault, Exploitation and Human Trafficking in

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<sup>201</sup>OJ. "Primer Informe: Juzgados y Tribunales Penales de Delitos de Femicidio y otras Formas de Violencia contra la Mujer", Guatemala, July 2012. P. 47.

<sup>202</sup> Competent to hear cases in which indictment or writ of opening to trial is pronounced, accordingly, from August 17, 2012..Agreement 36-2012 from the Justice Supreme Court, Art. 2.

<sup>203</sup> Competent to hear cases in which indictment or writ of opening to trial is pronounced, accordingly, from August 10, 2012..Agreement 36-2012 from the Justice Supreme Court, Art. 1.

<sup>204</sup>Competent to hear cases from August 24, 2012..Agreement 36-2012 from the Justice Supreme Court. Art. 5.

the Province of Guatemala,<sup>205</sup> and the Criminal Trial Court's Tribunal on Call for the crimes of Femicide and other Forms of Violence Against Women and Sexual Assault, Exploitation and Human Trafficking.<sup>206</sup>

#### **6.5.1.1. On the Material Jurisdiction of the Trial Courts and Tribunals**

The Courts and Tribunals that have jurisdiction in crimes of femicide and other forms of violence against women are specialized to solely hear cases dealing with these crimes:

- Femicide
- Violence against women in its three modalities: physical, sexual and psychological
- Economic violence
- All crimes that concur

The tribunals and courts with jurisdiction in femicide crimes and other forms of violence against women recognize, along with the entire criminal procedure, the security measures established in the last paragraph of Article 4 of the Law to Prevent, to Sanction and to Eradicate Domestic Violence, and Article 9 of the Law against femicide and other forms of violence against women, which grants these bodies the ability to courts to hear such cases.

Therefore, the courts that are linked to the penal cause have jurisdiction over security measures, with the power to issue, modify or revoke them. Consequently, this ends the legal practice of sending measures of security to the family courts. Article 40 of the LVIF says: "The person who receives the complaint has to send it to a family or criminal court, accordingly, in no less than twenty four (24) hours." This implies that if an act constitutes a crime, the entity that corresponds to the crime, according to the law, has the ability to hear the case.

The Second Tribunal of the Trial Court, The Second Sentencing Tribunal and the Criminal Trial Court on Call for Crimes of Femicide and other Forms of Violence Against Women and Sexual Assault, Exploitation and Human Trafficking, other than their previous attributions, hear cases of crimes that have been amended and incorporated to the Criminal Code through the Law Against Sexual Assault, Exploitation and Human Trafficking, which includes sexual assault crimes.

#### **6.5.1.2. Procedural competence for Tribunals and Femicide Courts**

In order to regulate the organization and operation of the Criminal Tribunals and Courts for crimes of Femicide and other Forms of Violence Against Women, as well as the Tribunals and Courts of crimes, drug trafficking, and offences against the environment, the Supreme Court of Justice issued Agreement 30-2010, which includes the Management Regulations for the Courts and Tribunals with competence in crimes of femicide and other forms of violence against women.

The Courts of Femicide and other Forms of Violence Against Women hear cases when at least one of the actions is qualified as Femicide, violence against women, or economic violence in the opening of trial. The courts should continue hearing the process until the issuing of a verdict, even when the legal qualification of the opening of trial had changed during the proceedings.

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<sup>205</sup>Created through Agreement 42-2012 from the Justice Supreme Court, which started to have competence from October 31, 2012, according to Art.1 from Agreement 59-2012, from the Supreme Court of Justice.

<sup>206</sup>Created through Agreement 42-2012 from the Justice Supreme Court, which started to have competence from October 31, 2012, according to Art. 1 from Agreement 59-2012, from the Supreme Court of Justice..

In addition, the regulations establish norms for Crimes, Drug Trafficking and Offences against the Environment Tribunals and Courts. The Courts of Femicide and other forms of Violence against Women, and of Criminal, Drug Trafficking and Offences against the Environment, hear cases until the issuing of the verdict. That is, they preside over the procedural and investigate vestiges, the latter of which typically requires legal orders (search and arrest warrants, requests for phone tapping, among others), until the alleged perpetrator appears before the judge and receives the indictment.

The Criminal Court then refers the record to the Femicide Court, and sets the reasonable due date for the presentation of the prosecution's closing statement, which then coordinates the date of the intermediate hearing (Art. 82, Criminal Procedure Court).

If, for any reason, the Criminal Court pronounces an indictment for a crime that is not femicide or violence against women, it should continue to hear the case until resolution, or in this case, a resolution that decides the offering of evidence, and then it can refer the case to the Femicide Courts.

The Trial Court and Criminal Sentencing Judges' functions can be summarized accordingly:

- Specialized judges will be competent enough to hear the security measures as of indictment.
- Once the competence of the court is established by the indictment, judges will continue to hear a case until its resolution (*perpetuation jurisdictions*).
- The specialized judges will draw together the connected acts according the rules of concurrence and the buildup of cases.

### **6.5.2. Minors Trial Courts.**

The trial court system for children whose rights have been violated or threatened constitutes the first judicial entity in charge of the restitution of their rights.

Jurisdictionally, it is in charge of:

- Substantiation in trial court of proceedings for children whose rights have been threatened or violated, and their restitution by legal resolution (LPINA, Art. 104.a);
- Substantiation in trial court of the behaviors that violate the criminal law, attributable to children under 13 years of age (LPINA, ART. 104.b); and
- Application of legal control to the ruled protection measures (LPINA, Art. 104.e).

In 2012, only 20 courts had the capacity to hear proceedings for violations or threats to the human rights of children in trial court. Of these, only five have exclusive competence. The others have mixed competence, for example, in hearing the proceedings of young people in conflict with criminal law or other aspects, such as family, as in the case of the court in Malacatán, province of San Marcos, or work and social provision in the main city of San Marcos.

It is necessary to indicate that the exclusive courts have their headquarters in the capital city, while the mixed courts are located in the inner country, with a regionalized territorial jurisdiction, meaning they generally includes more than one province of the country, or towns from several provinces, as in is the case of the court in Coatepeque, Quetzaltenango.

### **6.5.3. Chambers of the Court of Appeal with competence to hear Minors Cases**

According to the regulations system, by jurisdiction, the Chamber of the Children's Court of Appeal (LPINA, Art. 107), must do the following:

- Decide on the conflicts of jurisdiction;
- Decide on the excuses, objections and inhibitions according to the Judicial System's Law;
- Decide on the appeal; and,
- Decide on the origin of the concurrence of acts.

Today, four Chambers of the Court of Appeal, which has its headquarters in Guatemala City, Petén, Huehuetenango and Coatepeque have the capability to hear the second instance.

The configuration of territorial competence in itself generates limitations for the access to justice in the court of appeals and, consequently, limits the right to appeal to legal decisions.

Of the four chambers with jurisdictional competence to hear in the second instance, only one of them, located in the capital city, has exclusive competence in terms of cases involving children. Even though they also hear cases involving the recursive activity of adolescents in conflict with criminal law, the rest of the chambers mostly hear cases dealing with other civil and criminal issues.

### **6.5.4. Chambers of the Court of Appeal.**

They preside over the appeals of the final orders and summary trial verdicts pointed out by this code. In addition, they hear the special appeals against the final verdict pronounced by the sentencing courts.

### **6.5.5. Supreme Court of Justice.**

It hears the appeal for cassation that proceeds against verdicts pronounced in the chambers of the Court of Appeal and the revision processes.

## 6.6. Table of crimes

**Table 17 Crime Classifications according to Decree 9-2009 (Derogated and Reformed Crimes from before Decree 9-2009)**

Crimes	
1	173- Rape (Reformed by Decree. 9-2009)
2	Continuous rape
3	Aggravated Rape
4	Continuous Aggravated Rape
5	Attempted Aggravated Rape
6	173-Bis Sexual Abuse (added by Decree 9-2009)
7	Continuous Sexual Abuse (added by Decree 9-2009)
8	Aggravated Sexual Abuse
9	Attempted Sexual Abuse
10	176- Sexual intercourse through Inexperience (derogated by Decree 9-2009)
11	177- Sexual Intercourse through Deception (derogated by Decree 9-2009)
12	178- Aggravated Statutory Rape (derogated by Decree 9-2009)
13	179- Violent Sexual Abuse (derogated by Decree 9-2009)
14	180- Aggravated Sexual Abuse (derogated by Decree 9-2009)
15	Continuous Indecent Abuse (derogated by Decree 9-2009)
16	181- Abduction for Sexual Purposes with Deception (derogated by Decree 9-2009)
17	182- Abduction for the Purpose of Marriage (derogated by Decree 9-2009)
18	183-Aggravated Abduction (derogated by Decree 9-2009)
19	188-Sexual Indecent Exposure (Reformed by Decree 9-2009, former corruption of minors)
20	189- Admission to show and distribute pornographic material to minors (Revised by Decree 9-2009, former corruption of minors)
21	190- Violation of Sexual Intimacy (Reformed by Decree 9-2009, former corruption of minors)

## 6.7. Table of Indicators, IJM Guatemala

The table below summarizes our proposed indicators and the baseline numbers obtained through this study. There is also an analysis of each one of these factors. Some indicators have no analysis as because some cases have more than one indicator in the same analysis.

**Table 18 Indicators and IJM's Indicators**

No.	Indicator	Definition	Baseline at the national level	Baseline of 182 analyzed files
1.	%of CSA complaints that end with a verdict	The proportion of cases presented to the MP that constitute crimes of sexual violence against child victims. After the corresponding formalities ordered by the law, cases conclude with a verdict of either a conviction or acquittal. The complaint is the introductory act through which the CSA cases come to the knowledge of the MP. It does not require any formalities and can be presented by anyone, in verbal or written form.	During 2008-2012, the percentage of sexual assault complaints presented to the MP that conclude in a verdict is 5.86% nationwide. This includes cases of adults and minors.	From IJM's sample of 182 concluded cases between 2008 and 2010 in Guatemala, Quetzaltenango and Alta Verapaz, 80% of cases (146) had convictions and 20% (36) were acquittals.
2.	% of CSA complaints with arrest warrant issued by the Trial Court Judge (TCJ)	For the MP to request an arrest warrant for a perpetrator the latter must be identified as having motive to commit the alleged act. The MP must request the arrest warrant before a competent Criminal Judge and the PNC carries out the process.		In 80% of CSA cases, the judge ordered the arrest of the suspect.
3.	% of CSA complaints with arrest warrant issued by the TCJ	One of the introductory actions by which the MP begins the criminal prosecution.		0% of introductory actions started with a complaint.
4.	% of cases from the sample that demonstrate the implementation of investigative practices.	Determining the investigative methods implemented in CSA cases, as well as the regularity with which they are implemented, makes it possible to identify the most valuable evidence in a sentencing court. This also makes it possible to identify which practices help to avoid the re-traumatization of child victims.		14% of cases with child victims of sexual crimes testified through pre-trial testimony.

		To establish which investigative means are the most recurrent in the criminal process where a child is the victim of a sexual crime, and to determine how many times the minor is evaluated during the criminal process.		In 43% of cases involving child victims of sexual crimes, they were treated at least twice by professionals. The two most common evaluations were gynecological and psychological evaluations, where three professionals treated 22% of the children (CA). The psychiatric evaluation is the third most frequently used and 20% of the victims was evaluated by a professional social worker.
5.	% of declarations from minor victims or witnesses received and incorporated into the prosecutorial process, according to the established protocol for using the Gesell Room.	The testimony of the child victim or witness should only be given once at the start of proceedings, through the use of the pre-trial testimony, considering that there is a concern for their life and physical well-being, in accordance with their best interests. The study measures current protocols and the use of tools like CCTV, the Gesell Room and folding screen to hear the minors' testimonies.		0% of cases used the Gesell Room. 1% used CCTV to hear the child victim's testimony and 5% used the folding screen to avoid confrontation between the underage victim and the perpetrator.
6.	% of CSA cases where the victim or witness in the Gesell Room or with CCTV, decides not to give testimony during the prosecutorial process.			In two cases involving minors, CCTV was used to hear their testimonies. One of them decided not to testify.
7.	% of court orders issued in cases of CSA.	It is necessary to identify the number of resolutions issued by the criminal trial courts, which require that there be sufficient evidence to issue one. The court order binds the suspect to the legal process, implying that there is reason to believe that he took part in the act of interest.		In 100% of the files reviewed a court order was issued.

8.	% of cases in which it is necessary to request a revision of the court order.			In 8% of cases judges of the Criminal Trial Court revised court orders.
9.	% of complaints presented to the Trial Court Judge (TCJ)	The prosecutor presents the indictment to the trial court judge, which outlines information about the alleged perpetrator, specifically his or her exact connection to the event, his participation in the crime, the grounds of the indictment and the legal qualification of the crime for which is being judged. The importance of the indictment lies in the fact that the prosecutor uses it to establish for which actions the alleged perpetrator will be taken to court.	From 2008 to 2012, SICOMP recorded 4,479 indictments in sexual assault cases against adults and minors. Of these, 3,395 correspond to the complaints (36,166) made in that 5 year period, and 1,084 are indictments from previous years.	
10.	% of indictments presented by the MP whose legal charges were admitted without modification to the TCJ.	Indictment reports that the MP presents to the criminal trial court, without modifications, and which permit the case to proceed through trial.		In 90% of cases Criminal Trial Court Judges accepted the indictment without modifications to the legal charges.
11.	% of cases where indictments fulfill the requirements established in Art. 332 bis of the Code of Criminal Procedure.			28% of indictments fulfill all of the requirements established in Art. 332 Bis of the Code of Criminal Procedure. 72% of indictments have insufficiencies.
12.	% of TCJs that point out top performance of prosecutors in written complaints.			10% of the sample had deficiencies in filing indictments since the Criminal Trial Court accepted them, with modifications.



13.	% of files which demonstrate top performance of prosecutors in their written indictments.			Note: prosecutors' performance must be improved in relation to crimes of sexual assault, especially when victims are children.
14.	% of cases where the TCJ accepts the victim testimony, received in the form of pre-trial testimony, according to the established protocol that is the base of the indictment, which then allows the case continues to oral trial.	A victim's pre-trial testimony is a carried out at a different stage than that of the trial. It lays the foundation for the indictment, avoiding re-traumatization of the minor and helping the case to move to oral trial. Identifying the protocol makes it possible to determine whether the prosecutors and judges will apply the principles informing them about the rights of the child. These include the best interests of the child, and non-traumatization, among others.	According to SICOMP, of the 36,166 complaints received by the MP from 2008 to 2012 for sexual crimes against adults and minors, only 550 (1.52 % of the cases) pre-trial Testimonies were accepted.	In 59% of the sample, the Criminal Trial Court Judge, or the Sentencing Judge, accepted the request for pre-trial testimony of child victims of sexual crimes.
15.	% of declarations obtained by the TCJ using the new incorporated protocol as evidential means in their decisions to allow the case to continue to oral trial.	The new protocol exists to raise awareness among Sentencing judges so that they accept pre-trial testimony through the use of proper means. The purpose of the protocol is to reduce the trauma of victims and avoid unnecessary testimonies that damage the victim.		0 cases used the Gesell room. 1% used CCTV to take testimony from CSA victims, and 5% of cases used the folding screen to avoid confrontations between underage victims and their perpetrators.
16.	% of cases in which a judge or tribunal accepts the victim's testimony. This testimony is admitted in court with the new protocol.			In 57% of cases, the sentencing judge or court granted evidentiary value to the pre-trial testimony of child victims of sexual crimes.
17.	% of convictions based, at least partially, on the victim's testimony.			In 80% of the cases the judges gave evidentiary value, at least partially, to CSA victims' testimonies.

18.	Number of months/years that have passed between the date of the first abuse and the date of introductory action in the MP.	This measurement establishes the amount of time taken by child victims or their representatives to approach the justice system and file their complaint.		In 34.6% (36) of cases involving CS Complaints were submitted more than 72 hours after the event, 21.4% (39 cases) within 24 hours, 8.8% (16 cases) on the day of the event, 3.3% (6 cases) within 48 hours, and 1.1% (2 cases) within 72 hours after the event. In the rest (65.4%) complaints were filed more than 3 days after the event.
19.	Average amount of time between the complaint and arrest warrant.	The amount of time between when the complaint is made known to the proper authority and when the proper authority sends the arrest warrant for the perpetrator, taking him to a judge, and thus binding him to a criminal process.	The amount of time between when the complaint is made known to the proper authority and when the proper authority sends the arrest warrant for the perpetrator, taking him to a judge, and thus binding him to a criminal process.	14% of the arrest warrants were issued within the first thirty days after a complaint was filed. 68% were issued a month after the event.
20.	Average length of a case in the system until the issuing of a verdict.	The amount of time the CJS takes to conclude a case and issue a ruling clarifying the punishable action of interest.		59% of the verdicts for sexual crimes committed against children were given between the second and third year after the CJS's hearing of the case.
21.	Average length of a case until the final verdict.	The amount of time the system takes to complete the legal process, moving to the execution of the sentence.		80% of the verdicts for sexual crimes committed against children were resolved between the second and fifth year after the event was heard by the CJS.
22.	# of prosecutors and assistant prosecutors trained in CSA	Prosecutors and assistant prosecutors, attorneys from the PGN that have expertise in the subject of CSA.		From interviews of 70 CJS officers performed by IJM, the sample shows that 54% of prosecutors, 66% of judges and 100% of PGN attorneys have taken part in CSA training.
23.	# of judges trained in CSA.			
24.	# of PGN representatives trained in CSA.			
25.	% of professionals from social agencies who express high	Social professionals are officials from public institutions or representatives of NGOs who assist in cases of sexual assault, from when a complaint is filed to		Out of 22 interviews with officials from public institutions that deal with cases of child victims of sexual

	confidence in the CJS's response to CSA.	the final verdict of the case. This indicator measures the amount of trust in the system's response to victims' need of justice.		crimes, 3% of them indicated having no trust in CJS whatsoever. 29% said they had some confidence in the CJS and its institutions. 42% said that they had the expected level of confidence, and 4% stated having a lot of confidence in the CJS. The rest did not answer, or did not have a direct connection to the justice system.
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**Source:** Data SICOMP 2008-2012 and sample of 182 legal files of sexual assault crimes, 2008-2010. Provinces of Guatemala, Quetzaltenango and Alta Verapaz.

## 6.8. Tools for Collecting Information



"BASE LINE STUDY ABOUT CHILD AND TEENAGE SEXUAL VIOLENCE IN GUATEMALA"

## TOOL FOR COLLECTING AND ANALYZING INFORMATION OF THE CASES

"Expired cases at the Public Prosecutor's Office, at the Judicial System and at the Attorney General's Office, and at other archives from private and non-governmental organizations that take part in the processes"

January 2008-December 2010

**Instructions:** Please mark with an "X" the boxes that apply for your answer and explain briefly the topic if applicable. Please complete the tool with big, legible print letters.

1 Case File Identification									
1.1.	Process No.								
1.2.	Reference No. from the MP (Spanish acronym for the Public Prosecutor's Office):								
1.3.	Judge or court that has knowledge of the case:								
1.3.1.	Identify the sentence court that heard the case.								
1.4.	Kind of offence: (from the prosecution)								
1.5.	Introductory action: (Mark with an "X" the option found in the file)	<input type="checkbox"/> (1). Lawsuit	<input type="checkbox"/> (2). Police Prevention	<input type="checkbox"/> (3). Complaint	<input type="checkbox"/> 1.5.1. Authority to whom it was submitted (used to be in section 4).				
1.6.	Place and date of submission of the introductory action.								
1.7.	Place and date of completion of the process (Date in which sentence was pronounced)								
1.7.1.	Date in which sentence was resolved as final								
1.8.	Kind of resolution with which it was concluded:	<input type="checkbox"/> (1)Dismissal	<input type="checkbox"/> (2). Trial Court Sentence	<input type="checkbox"/> (3). Court of Appeals Sentence	<input type="checkbox"/> (4). Conclusion			<input type="checkbox"/> (5). File	
		<input type="checkbox"/> (6).Summary Trial	<input type="checkbox"/> (7).Plea bargain	(8). Other/Specify: _____					

2 Parties to the action									
2.1. The Victim									
2.1.1.	Gender	<input type="checkbox"/>	(1). Male	<input type="checkbox"/>	(2). Female				
2.1.2.	Child or teenage's age (at the time of the event)								
2.1.3.	Ethnic background	<input type="checkbox"/>	(1). Ladino	<input type="checkbox"/>	(2) Indigenous: Specify: _____	<input type="checkbox"/>	(3) Other: _____	<input type="checkbox"/>	(4). Not recorded in the file
2.1.4.	Language	<input type="checkbox"/>	(1). Spanish	<input type="checkbox"/>	(2) Indigenous language	<input type="checkbox"/>	(3) Other: _____	Specify: _____	
2.1.5.	Please indicate any disability (can't see, hear, etc.)	<input type="checkbox"/>	(1). Yes	<input type="checkbox"/>	(2). No	Specify			
2.1.6.	Are there joint plaintiffs in the process (parents, child or teenage representatives, PGN's [Spanish acronym for Attorney General's Office], representatives or other)	<input type="checkbox"/>	(1). Yes	<input type="checkbox"/>	(2). No	Please identify the person:			
2.2. Perpetrator									
2.2.1.	Gender:	<input type="checkbox"/>	(1). Male	<input type="checkbox"/>	(2). Female				
2.2.2.	Perpetrator's age in years (at the time of the event)								
2.2.3.	Ethnic background	<input type="checkbox"/>	(1). Ladino	<input type="checkbox"/>	(2) Indigenous: Specify: _____	<input type="checkbox"/>	(3) Other: _____	<input type="checkbox"/>	(4). No recorded in the file
2.2.4.	Language	<input type="checkbox"/>	(1). Spanish	<input type="checkbox"/>	(2) Indigenous language. /Please specify: _____			<input type="checkbox"/>	(3) Other: _____
2.2.5.	Marital status	<input type="checkbox"/>	(1). Single	<input type="checkbox"/>	(2). Married	<input type="checkbox"/>	(3). Civil union	<input type="checkbox"/>	(4). Widowed <input type="checkbox"/> (5). Divorced
2.2.6.	Legal condition	<input type="checkbox"/>	(1). With alternative measures	<input type="checkbox"/>	(2). Preventive Custody	<input type="checkbox"/>	(3). Not found	<input type="checkbox"/>	(4). Not personalized <input type="checkbox"/> (5). Other: _____
2.2.7.	Relationship with the victim (relative in the legal degrees, friend, neighbour or other).								

3 General Information About the Process									
3.1.	Indicate the time (hour, day, month, year), the way (action), the place where the event occurred (the real property and personal property of the victim)	Date when the event occurred: Time: Hour, day, month and year	Complete	Incomplete	Not specified	Time: hour, day, month year			
		The way of the event is established	Yes	No					
		The actions indicated in the way fit with the crime established in No. 1.4.	Yes	No	It does not apply				
		Use of weapon	Yes	No	a). Fire arm b). Knife Other). Digitar				
		Does it indicate the way in which the event occurred?	Yes	No	Where?				
		Was the address registered	yes	no	Zone	Town	Department		
3.2.	Arrest warrant issued against the perpetrator	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No						
3.3.	Date in which arrest was carried out								
4 Means of Investigation									
4.1.	The victim testified	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No						
4.2.	Indicate the authority/procedure used to hear the victim's testimony.	<input type="checkbox"/> (1). Before the Victim's Care Office from the MP	<input type="checkbox"/> (2). Foretaste of evidence at the preparatory stage	<input type="checkbox"/> (3 ). Before a prosecutor as a means of investigation	<input type="checkbox"/> (4). Previous to debate in foretaste of evidence	<input type="checkbox"/> (5 ). During Debate (6). Other _____ which one_			
	Number of times the victim testified before each instance	<input type="checkbox"/> (1.a). before the Victim's Care Office from the MP.	<input type="checkbox"/> (2.a.). in foretaste of evidence at the preparatory stage.	<input type="checkbox"/> (3.a ). before a prosecutor as means of investigation.	<input type="checkbox"/> (4.a). previous to the hearing in foretaste of proof	<input type="checkbox"/> ( 5.a). during the hearing.			

4.3.	Total of declarations:	(1) _____ will be added automatically _____				
4.4.	Indicate the means used to hear the victim's testimony	<input type="checkbox"/> (1). Gesell Dome	<input type="checkbox"/> (2). CCTV	<input type="checkbox"/> (3 ). Folding Screen	<input type="checkbox"/> (4). Simple court room	<input type="checkbox"/> ( 5). Prosecutor's office
		<input type="checkbox"/> (6). Assistant Prosecutor's table	<input type="checkbox"/> (7).Other/ specify			
4.5.	Indicate protocol, regulation or parameter used to hear the declaration.	<div>4.5.1. In the Instance <input type="checkbox"/> Yes <input type="checkbox"/> No Which one?</div> <div>4.5.2 In the sentence <input type="checkbox"/> Yes <input type="checkbox"/> No Which one?</div>				
4.6.	Indicate whether the child or teenage victim refused to testify at the CCTV or at the Gesell Dome (see the records that include the proceedings or log book of legal control when other recording means are used).	1. Refused to testify with CCTV or in the Gesell Dome;	2.Declared with CCTV or in the Gesell Dome	3. N/A. The victim did not show up.	4). N/A. Neither the Gesell Dome nor CCTV were used.	
4.7.	Indicate whether the victim child or teenage refused to testify at the CCTV or at the Gesell Dome (see the records that include the proceedings or log book of legal control when other recording means are used)	1. Refused to testify with CCTV or in the Gesell Dome;	2.Declared with CCTV or in the Gesell Dome	3. N/A. The victim did not show up.	4). N/A. Neither the Gesell Dome nor CCTV were used	5) N/A. No child or teenage witness
4.8.	Psychological evaluation of the victim.	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
4.8.a.	Person who carried out the psychological evaluation.	<input type="checkbox"/> (1). Official Expert (MP, INACIF [Spanish acronym for National Institute of Forensic Sciences], PGN).	<input type="checkbox"/> (2). Private Expert			
4.9.	ADN test (In case of pregnancy or	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No			
4.9.a.	Person who did the ADN test.	<input type="checkbox"/> Official Expert/ INACIF/	<input type="checkbox"/> Private Expert			
4.10.	Psychiatric evaluation	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No			
4.10.a.	Person who carried out the psychiatric evaluation	<input type="checkbox"/> (1). Official Expert / INACIF/ MP/ PGN	<input type="checkbox"/> (2). Private Expert			
4.11.	Gynecological test.	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No			
4.11.a.	Person who did the gynecological test	<input type="checkbox"/> (1). Official Expert / INACIF/ MP	<input type="checkbox"/> (2). Private Expert			

4.12.	Social worker evaluation	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No							
4.12.a.	Person who carried out the social worker evaluation	<input type="checkbox"/> (1). Official Expert / INACIF/ MP/ PGN	<input type="checkbox"/> (2). Private Expert							
4.13.	Testimony of other witnesses	<input type="checkbox"/> (1). Relatives <input type="checkbox"/> (6). Policemen	<input type="checkbox"/> (2). Neighbours <input type="checkbox"/> 7). Others	<input type="checkbox"/> (3 ). Friends	<input type="checkbox"/> (4). Teachers			<input type="checkbox"/> (5 ). Physicians		
4.13.a.	If a witness is underage, describe the kind of room where the testimony was given.	<input type="checkbox"/> 1. Simple court room	<input type="checkbox"/> 2. Gesell Dome	<input type="checkbox"/> 3. CCTV	<input type="checkbox"/> 4. Prosecutor's Assistant office			<input type="checkbox"/> 5. There were no underage witnesses (N/A equals to there was no witness)		
4.14.	Documentary evidence related to the victim	<input type="checkbox"/> (1). Birth certificate	<input type="checkbox"/> (2). School Certificate	<input type="checkbox"/> (3). Other: _____						
				1. Psychological evaluation report.						
				2. Psychiatric evaluation report						
				3. Gynecological evaluation report						
				4. Socioeconomic evaluation report						
				5. Medical-legal exam report						
				6. Police Prevention						
				7. Reports from investigators of the Civil National Police (DEIC [acronym for Specialized Division in Criminal Investigation])						
				8. Reports from the Civil National Police						
				9. Report from specialists on crime scene (planimetry, sketching, photograph reports)						
				10. Reports from other institutions						
				11. Medical records.						
				12. Birth Certificates from other people.						
				10. Certifications from other public records.						
				11. Letters.						
				12. Entry of ID Document						
				13. Negative Birth Certificate.						
				14. Records.						
				15. Complaint.						
				16. Ratification of complaint.						
				17. Written Records.						
				18. School or education records.						
				19. Marriage Certificate						
				20. ID Card						
				21. Other: Which ones? (try to fit in the other ones)						



4.15.	Documentary evidence related to the perpetrator	<input type="checkbox"/> (1). Birth certificate	<input type="checkbox"/> (2). ID document	<input type="checkbox"/> (3). Other						
					1. Socioeconomic evaluation report.					
					2. Medical-legal exam report.					
					3. Reports from the Civil National Police					
					4. Report from other institutions.					
					5. Medical records.					
					6. Birth Certificates.					
					7. Certificates of other public records.					
					8. Letters					
					9. ID document entry.					
					10. Negative birth certificate.					
					11. Driver's License copy.					
					12. Records.					
					13. Written records.					
					14. School or education records.					
					15. Marriage certificate.					
					16. Certificate of civil union resolution.					
					17. Reference letters.					
					18. ID document.					
					19. Copy of ID card.					
					20. Certificate of absence of criminal records.					
					22. Social work report.					
4.16.	Physical evidence: (videos, photos or other materials).				1. Records of visual examination.					
					2. Videos.					
					3. Photo album.					
					4. Planimetry.					
					5. A sketch of the place.					
					6. Toys					
					7. Clothing.					
					8. Audios.					
					9. Swabs (Vaginal, oral, semen, blood)					
					10. DVD Gessell Dome					
					11. Blood test					
					12. Other					
4.17.	Socioeconomic evaluation of the perpetrator (under the objectivity principle. Article 108 from the Criminal Procedure Code. Article 65 will be useful for the decision of the minimum and maximum sentence)	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No	Result: _____						
	Person who carried out the socioeconomic evaluation.	<input type="checkbox"/> (1). Official Expert ( INACIF/ MP)		<input type="checkbox"/> (2). Private Expert				Who		

5 Court order					
5.1.	Indicate whether a court order was issued	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No		
5.2.	Indicate the kind of criminal offence	_____			
5.3.	Indicate whether a court order reform was issued	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No	Describe the reform: change of offence: (select)	
5.4.	Indicate whether the court order was challenged.	<input type="checkbox"/> (1) Yes	<input type="checkbox"/> (2) No	Describe the appeals presented _____	
5.5.	The actions indicated in the court order reform, if any, fit in the crime for which a sentence was issued (See number 8.6).	<input type="checkbox"/> (1) Yes	<input type="checkbox"/> (2) No	<input type="checkbox"/> N/A	<input type="checkbox"/> Please indicate why it is N/A <input type="checkbox"/> a). Absolving sentence <input type="checkbox"/> b). Summary trial
6 Charges					
6.1.	Charges were presented before the Criminal Trial Court's Judge	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No		
6.2.	The charges fulfil the Criminal Procedure Code's requirements (332 bis)	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No	If any of items 1.a) to 1.e) are incomplete, the "NO" from no. 6.2 should be marked automatically.	
<p align="center"><b><u>Please mark the requirements that comply</u></b> (Make sure that the act described fits in the charge's legal qualification), Verify quality parameters.</p>					
	<input type="checkbox"/> 1.a). Information useful to identify or personalize the accused, the name of his defence attorney and address to notify them.				

	<input type="checkbox"/> 1.b). The clear, precise, <u>and detailed relationship between the attributed punishable act and its legal qualification</u> ; (the legal qualification is obtained from number 5.2 or 5.3, when the court order's reform is issued.		
	1.b.1.) Who (name of the person on remand, the expression "on remand", the <u>accused, or you</u> )	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	1.b.2.) To whom (aggrieved person)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	b.2.) Age	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	1.b.3.) How (the described actions fit with the crime by which sentence was issued)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	1.b.4.) When (day, month and year)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	1.b.5.) Where (address, location, place where the event took part)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	<input type="checkbox"/> 1.c). The summarized grounds of the charges, expressing the means of investigation used that determine the probability that the accused committed the crime by <div style="text-align: center;">Answer only if it was included or not</div>		
	<input type="checkbox"/> 1.d.). The legal qualification of the punishable act, explaining the crimes each individual has committed, the way of participation, the degree of action and applicable aggravating or attenuating circumstances. <div style="text-align: center;">Answer only if it was determined or not</div>		
	<input type="checkbox"/> 1.e). Instruction from the competent court for the trial. And the documents offered by the MP as means of investigation, attached to the petition related to the previous paragraph. <div style="text-align: center;">Yes or No, if these elements are present.</div>		
6.3.	The accusation is based on the victim's testimony.	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No
	According to the question, just indicate if it is based in the victim's testimony or not.		
6.4.	The Criminal Trial's Judge accepts the accusation without modification in the legal qualification.	<input type="checkbox"/> (1). Yes	<input type="checkbox"/> (2). No
	If the answer is no, indicate the new offence.		

7 Intermediate Stage									
7.1.	The victim's testimony received in foretaste of evidence is accepted by the Criminal or Sentence Trial Court's Judge.	<input type="checkbox"/>	(1). Yes	<input type="checkbox"/>	(2). No	<input type="checkbox"/>	(3) N/A		
7.2.	Other means of evidence were accepted by the Criminal or Sentence Trial Court's Judge.								
8 Sentence									
8.1.	The judge or court values the victim's testimony received in foretaste of evidence.	<input type="checkbox"/>	(1). The judge gives value to the testimony given in foretaste of evidence.	<input type="checkbox"/>	(2). The judge does not give value to the declaration given in foretaste	3) No foretaste of evidence was carried out.			
8.2.	The judge or court values the victim's testimony received according to the established protocol.	<input type="checkbox"/>	(1) The judge gives value to the testimony according to protocol	<input type="checkbox"/>	(2) The judge does not give value to the declaration	<input type="checkbox"/>	(3) N/A, the victim did not testify.	<input type="checkbox"/>	(4) No protocol applied.
								<input type="checkbox"/>	(5) N/A because the person did not show up
8.3.	The sentence is based, at least partially, on the victims testimony:	<input type="checkbox"/>	(1). Yes The judge granted it evidential value.	<input type="checkbox"/>	(2). No The judge did not grant evidential value	<input type="checkbox"/>	(3). The victim did not testify.		
8.3.1	The court granted some value to the child or teenage victim.								
8.4.	Which evidence means were not valued by the sentence judge or court.	<input type="checkbox"/>	(1)The victim's testimony	<input type="checkbox"/>	(2).All were valued.				
8.5.	Sentence	<input type="checkbox"/>	(1). Guilty	<input type="checkbox"/>	(2) Not guilty				
8.6.	Penalty imposed								
8.7.	A first special appeal was issued against the sentence.	<input type="checkbox"/>	(1). Yes	<input type="checkbox"/>	(2). No				
			<b>Mark the option that applies</b>						
		<input type="checkbox"/>	(1). Sentence is confirmed.						
		<input type="checkbox"/>	(2). Sentence is confirmed for less.						
		<input type="checkbox"/>	(3). Sentence is confirmed for more.						
		<input type="checkbox"/>	(4). Sentence was overturned.						

9 The Process Celerity													
9.1. Which appeals were presented?		<input type="checkbox"/> (1) Reversal	<input type="checkbox"/> (2) Appeal	<input type="checkbox"/> (3). Remedy of complaint	<input type="checkbox"/> (4). Special Appeal	<input type="checkbox"/> (5). Cassation							
9.1.a. Write how many times each one of these were presented		<input type="checkbox"/> (1.a). Reversal	<input type="checkbox"/> (2.a).Appeal	<input type="checkbox"/> (3.a) Remedy of complaint	<input type="checkbox"/> (4.a). Special appeals	<input type="checkbox"/> (5.a). Cassations							
		<input type="checkbox"/> (6). Appeal for legal protection	<input type="checkbox"/> (7) Rectifications										
		<input type="checkbox"/> (6.a)Number appeals presented	<input type="checkbox"/> (7.a) No. of rectifications presented										
9.1.b. Court that heard the special appeal.		<input type="checkbox"/> (1). First Court of Appeals from the Department of Guatemala	<input type="checkbox"/> (2). Second Court of Appeals from the Department of Guatemala	<input type="checkbox"/> (3). Third Court of Appeals from the Department of Guatemala	<input type="checkbox"/> (4.). Fourth Court of Appeals from the Department of Guatemala								
		<input type="checkbox"/> (5). Fifth Court of Appeals of the criminal branch from de Department of Quetzaltenango	<input type="checkbox"/> (6). Regional combined Court of Appeals from the Department of Alta Verapaz										
Observations from the compiler about the analyzed file.													
Compiler's information													
Full name and signature													
Place and date													



## Interview to identify practices in sexual assault cases, for Prosecutors, Criminal Trial Court Judges, Spanish acronym for Attorney General's Office)

**Instructions:** This interview is part of a comprehensive study on CSA. The information you provide will be confidential. Please mark with an "X" the boxes that apply to your answer, and explain briefly the subject, when appropriate.

Personal Information	
1	Interviewee's position
2	Organization:
3	Years working for the institution  <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> a). Less than a year</div> <div style="text-align: center;"><input type="checkbox"/> b) 1 to 2 years and 11 months</div> <div style="text-align: center;"><input type="checkbox"/> c) 3 to 4 years and 11 months</div> <div style="text-align: center;"><input type="checkbox"/> d). 5 to 10 years</div> <div style="text-align: center;"><input type="checkbox"/> d).11 years or more</div> </div>
4	Years working with CSA cases: _____
Information about training	
5	What is CSA?
6	Have you had training on CSA topics?  <input type="checkbox"/> (a) Yes <input type="checkbox"/> (b). No
7	When was the last time you attended a training course on CSA?  <input type="checkbox"/> a). 1 to 6 months ago <input type="checkbox"/> b). 7 to 11 months ago <input type="checkbox"/> c). 1 to 2 years ago <input type="checkbox"/> d). More than 2 years ago.
8	What organization provided the training you took?
9	What benefits or changes has your organization had as a result of the training received?
10	What are the preliminary proceedings your organization carries out when it intervenes in a process of sexual assault?
11	Describe the means of investigation used in CSA.
12	What grounds determine the issue of an indictment in processes prepared for CSA crimes?
13	How is the legal qualification or establishment of offence determined in an indictment?
14	When is it appropriate an indictment reform? (This question applies only if you are a Criminal Trial Court Judge or a Prosecutor).
15	According to your experience performing your role, ¿do the charges fulfill the requirements established in Article 332 bis from the Code of Criminal Procedure?  <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="text-align: center;"><input type="checkbox"/> (a). Yes_____</div> <div style="text-align: center;"><input type="checkbox"/> (b). No_____</div> <div style="text-align: center;"><input type="checkbox"/> (c). Why? _____</div> </div>

16	Are there General Instructions to bring charges? (this question applies only for MP).  <input type="checkbox"/> (a). Yes _____ <input type="checkbox"/> (b). No _____ (c). Please describe them _____ _____
17	Is the victim's testimony accepted as foretaste of evidence? <input type="checkbox"/> (a). Yes <input type="checkbox"/> (b). No
18	Is the victim's testimony considered in the verdict? <input type="checkbox"/> (a). Yes <input type="checkbox"/> (b). No (c) Why: _____ _____
19.	Please give your opinion on the celerity of the process in CSA cases. (This applies only to Criminal Trial Court Judges and the Attorney General's Office)
20.	How do you perceive the victim's and plaintiff's level of trust towards the institution you work for? <input type="checkbox"/> (a). High <input type="checkbox"/> (b). Middle <input type="checkbox"/> (c). Low <input type="checkbox"/> (d). No trust at all
21.	Do you know whether your organization is part of inter-institutional coordination protocols in cases of CSA? <input type="checkbox"/> (a). Yes <input type="checkbox"/> (b). No (c). Please describe them _____ _____
22	What would you recommend for the care of the victim of CSA?
23	What would you recommend for the protection of the victim of CSA?
24	What would you recommend for the restoration of the victim of CSA?

Name of the interviewee: \_\_\_\_\_

Name of the compiler of information: \_\_\_\_\_

Place and date: \_\_\_\_\_



## Interview to users of the Public Justice System on the handling of CSA cases

Form: EAG

Card No.:

Date:

Year

**Instructions:** This interview is for organizations that work with CSA and that use the Public Justice System. The objective is to identify the level of trust in the Public Justice System as users. This tool is part of a comprehensive study for the purpose of implementing effectively a training plan on Child Sexual Assault, for MP (Spanish acronym for Public Prosecutor's Office), Judicial System and PGN (Spanish acronym for Attorney General's Office) officials. The information you provide will be confidential.

I. General Information	
1.	Place:
2.	Name of the Institution:
3.	Name of the interviewee
4.	Gender    F <input type="radio"/> 1                      M <input type="radio"/> 2
5	Position of the interviewee:
6.	Time working with the organization:                      year
7.	Name of the organization:
8.	What is the main focus of the organization in relation to CSA: What is the main focus of the organization in relation to CSA: 1. <input type="radio"/> Legal Advice    2. <input type="radio"/> Attention to the victim    3. <input type="radio"/> Other, specify <input type="radio"/> _____
9.	Kind of Organization: <input type="radio"/> 1 International Agency <input type="radio"/> 2 Non-Governmental Organization - national <input type="radio"/> 3 Public Institution <input type="radio"/> 4 Other, specify _____
10.	¿What is your geographical coverage?
Chapter II. Perceptions on the response of the Public System of Justice on dealing with CSA Cases	
11.	With what organizations that provide protection and care in cases of CSA does your organization interact?
12.	What are the main strengths that identify the Public Justice System in dealing with CSA cases?
13.	What are the main weaknesses that identify the Public Justice System in dealing with CSA cases?
14.	How do you evaluate the Public Justice System in dealing with cases of CSA? <input type="radio"/> 1 Very satisfactory <input type="radio"/> 2 Satisfactory <input type="radio"/> 3 Unsatisfactory <input type="radio"/> 4 Very unsatisfactory Why? _____



	In your opinion, what is your level of trust in the Public Justice System institutions in dealing with CSA cases?						
	No.	CJS Institution	1) High level of trust	2) Expected trust	3) Low level of trust	4) No trust at all	Explain
	a).						
	b).						
	c).						
	In your experience with the Public Justice System in relation to the ability to work in a sensitive way with victims of CSA, it has been						
	1. ___ Very sensitive 2. ___ Sensitive 3. ___ Insensitive 4. ___ Very Insensitive						
	What actions would you recommend to strengthen the Justice Protection System in the face of CSA in Guatemala?						

**Thank you for your time and collaboration.**

Observations \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name of the person who carried out the interview \_\_\_\_\_



## Interview to prosecutors of the unit for the woman and victim children

### Base line study about child sexual violence

#### INSTRUCCIONES GENERALES

a) This interview corresponds to the validation of information to finalize IJM's baseline study about Child Sexual violence indicators.

b) The information you provide is for investigation purposes and the identification data will be strictly confidential.

#### 1 GENERAL INFORMATION

Nombre:

1.1. Prosecutor's Office: \_\_\_\_\_ 1.2. Department: \_\_\_\_\_

1.3. Time working for the institution (years and months) \_\_\_\_\_ 1.4. Position \_\_\_\_\_

1.5. Time in the position \_\_\_\_\_

#### 2 GENERAL QUESTIONS

2.1. What is the average of files at the prosecutor's desk? \_\_\_\_\_

2.2. Number of cases assigned per month: \_\_\_\_\_

2.3. How many of these cases are child sexual violence crimes? \_\_\_\_\_

2.4. How many of them manage to press charges? \_\_\_\_\_

2.5. In order of importance, indicate three difficulties that you face to attend cases of child and teenage sexual violence.

2.5.1 \_\_\_\_\_

2.5.2. \_\_\_\_\_

2.5.3. \_\_\_\_\_

2.6. What decision do you make as prosecutor if parents or people in charge of the underage victim do not help in the investigation of sexual violence cases? Please mention 3 possibilities in order of importance.

		2.6.1.	Ask for PGN (Spanish acronym for Attorney General's Office) intervention							
		2.6.2.	Other: _____							
		2.7.	What filtering mechanisms are used in cases of child sexual violence?							
		7.1.	Dismissal		7.5.	Archive				
		7.2.	The Record			Lack of				
					7.6.	evidence				
		7.3.	Suspension		7.7.	Other				
		7.4.	Provisional closure		7.8.					
		8	In your opinion, what is the processal exit more frequently used in child and teenage sexual violence cases. Please put them in order of importance.							
		8.1.	_____							
		8.2.	_____							
		8.3.	_____							
		9	If in a case of child sexual violence, the accused offers to compensate for the damages and the child's representative agrees, what would you do?							
		9.1.	It does not apply in this kind of crime.							
		9.2.	A plea bargain is applicable							
		9.3.	Other							
		10	Have you proposed dismissal as a prosecutor's decision in some of the sexual violence cases where the victim is underage?							
		10.1	Yes <input type="checkbox"/>	10.2	No <input type="checkbox"/>	10.3. Why	(Please answer with the 10.3 options)			
		10.3.1.	It does not constitute a crime							
		10.3.2.	It is not possible to proceed							
		10.3.3.	Others							



