

Law and Business Review of the Americas

Volume 14 | Number 2

Article 8

2008

The Guatemalan Femicide: An Epidemic of Impunity

Natalie Jo Velasco

Follow this and additional works at: <https://scholar.smu.edu/lbra>

Recommended Citation

Natalie Jo Velasco, *The Guatemalan Femicide: An Epidemic of Impunity*, 14 *LAW & BUS. REV. AM.* 397 (2008)
<https://scholar.smu.edu/lbra/vol14/iss2/8>

This Comment and Case Note is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

THE GUATEMALAN FEMICIDE: AN EPIDEMIC OF IMPUNITY

Natalie Jo Velasco*

SEVENTEEN-year-old Andrea Bacaro was found dead in Guatemala City on June 12, 2004.¹ Andrea had been raped, shot, and abandoned in a ditch where police found her body with her hands tied behind her back and her throat slashed.² She had wounds and cuts all over her face and chest, her cause of death a close range bullet shot to the head.³ When Guatemalan authorities recovered the teenager's body, they noticed the word "vengeance" had been carved into her right leg.⁴

On July 27, 2005, Cristina Hernandez, a twenty-year-old university student was forced into a grey vehicle outside her home in Guatemala by four men.⁵ Neighbors, who witnessed the abduction, immediately alerted the girl's father.⁶ Mr. Hernandez went to the San Juan police station, begged the police to try to stop the kidnapper's vehicle, and pleaded with authorities to put up road blocks to find his daughter's kidnappers.⁷ He searched the city for hours, returning to the police station in hopes to find any good news.⁸ The police officers claimed they had done nothing because no report had been filed.⁹ They informed Mr. Hernandez that "many young girls run off with their boyfriends," therefore they couldn't start a search until Cristina had been missing for at least twenty-four hours.¹⁰

On the morning of July 28, 2005, her body was found dead.¹¹ Cristina had been shot four times, and her body was covered in multiple bite

* Natalie Jo Velasco is a J.D. candidate at Southern Methodist University Dedman School of Law, 2008.

1. Indira A. R. Lakshmanan, *Unsolved Killings Terrorize Women in Guatemala: Culture of Impunity Seen*, BOSTON GLOBE, Mar. 30, 2006, at 1, available at http://www.boston.com/news/world/articles/2006/03/30/unsolved_killings_terrorize_women_in_guatemala/.

2. *Id.*

3. *Id.*

4. *Id.*

5. Amnesty Int'l, *Guatemala: No Protection, No Justice: Killings of Women (An Update)*, at 1 (July 2006), <http://www.amnesty.org/en/library/info/AMR34/019/2006> [hereinafter Amnesty Update 2006].

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Amnesty Update 2006, *supra* note 5.

marks.¹² All but one of the items of clothing she was wearing were returned to her family and were never used for any type of forensic examination.¹³ When the Hernandez family presented her clothes to the Guatemalan Public Ministry to be of assistance in the investigation, they were instructed to burn the items of clothing and throw them away.¹⁴ The Hernandez family, in fear of their safety, went into hiding soon after Cristina's murder; and despite the existence of critical leads, including eye witnesses and potential suspects, Cristina's murderers still remain free to this day.¹⁵

The cases of seventeen-year-old Andrea Bacaro and twenty-year-old Cristina Hernandez are tragically common in the impoverished Central American country of Guatemala. Over the last six years, more than 2,700 women have been raped, mutilated, and brutally murdered in this small Central American country.¹⁶ Of the estimated 2,781 killed, a mere sixteen cases made it to trial.¹⁷ It is this epidemic of unsolved murders that is known today as the Guatemalan "femicide,"¹⁸ and as the death toll steadily increases, Guatemalan authorities continue to allow those responsible to escape justice. Officials discount the severity of the femicide; they fail to conduct proper investigations and allow perpetrators to remain at large; and by omission and a system of impunity, the Guatemalan government is complicit in the terror.¹⁹

Young women ranging primarily between the ages of thirteen and thirty are the main targets for the murders taking place in and around Guatemala City, the nation's capital.²⁰ Patterns of violence including sexual assault, physical torture, and mutilation commonly occur before the women are killed and left in public places.²¹ Perhaps even more disturbing and commonplace in femicide cases, is the continuous failure of Guatemalan authorities to detain those responsible and seek justice for

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Casa Alianza et al., Summary of Report for Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, Mr. Philip Alston, at 10 (2006) (*prepared for use by Philip Alston, U.N. Special Rapporteur on extrajudicial, summary, or arbitrary decisions*), http://www.paqg.org/IMG/pdf/Summary_Report_on_Executions_220806.pdf [hereinafter *Alianza Report*].

17. *Id.*

18. CTR. FOR GENDER & REFUGEE STUDIES, GUATEMALA'S FEMICIDES AND THE ONGOING STRUGGLE FOR WOMEN'S HUMAN RIGHTS: UPDATE TO CGRS'S 2005 REPORT GETTING AWAY WITH MURDER 1 (Sept. 2006), http://cgrs.uchastings.edu/documents/cgrs/cgrs_guatemala_femicides2.pdf [hereinafter *CGRS UPDATE*].

19. U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Integration of the Humans Rights and the Gender Perspective: Violence Against Women*, ¶ 28, U.N. Doc. E/CN.4/2005/72/Add.3 (Feb. 10, 2005) (*prepared by Yakin Ertürk*) [hereinafter *Ertürk Report*].

20. *Id.*

21. *Id.*

the thousands of victimized women.²² As a result, the pain and suffering victims and their relatives must endure are compounded by the knowledge that the government's repeated failure to ensure these cases are thoroughly investigated means Guatemala's predators will remain at large, and access to truth, undiscovered.²³ It is Guatemala's system of impunity that encourages the ongoing femicide as those responsible for the violent acts are fully aware that they will not be held accountable for their inhumane actions.

The Inter-American Commission on Human Rights reported that Guatemalan authorities registered the deaths of 1,188 women between 2001 and August 2004.²⁴ Authorities estimate that this number has since escalated to over 2,700 in recent years, including the 229 women and girls murdered between the months of January 2006 to May 2006.²⁵ But, the precise number of murders is unknown and remains in dispute for a multitude of factors.²⁶ Fear of reporting the murders by the victim's relatives, coupled with a lack of public confidence in state institutions, specifically in the adequacy of how the judicial system responds to complaints, indicates that the figures estimated by Guatemalan authorities are conservative.²⁷ Officials attempt to dismiss the severity of murders that are occurring throughout Guatemala by comparing them to similar statistics for the murder of women in other Latin American countries; however, the evidence of sexual violence, brutality, mutilation, and torture of victims in Guatemala, along with the increasing number of gender-based murders, demands authorities' attention to put an end to the ongoing epidemic.²⁸ Although Guatemalan authorities have taken some positive steps to prevent the violence against women, such as "the ratification of international human right treaties, the introduction of laws and [the] creation of [new] state institutions . . . these measures have frequently not been effectively implemented, monitored or reviewed and have therefore seldom prevented women from suffering violence."²⁹

This article will examine the brutal murdering of women in Guatemala and will look at the culture of impunity that exists in the country. It will begin with a brief historical snapshot of the aftermath of the thirty-six-year civil war and will then delve into the victims and how the femicide has escalated into what it is today. The article will discuss the current laws implemented in Guatemala to prevent the ongoing violence and how

22. Amnesty Int'l, Guatemala—No Protection, No Justice: Killings of Women in Guatemala, AI Index AMR 34/017/2005 (June 8, 2005, available at <http://www.amnesty.org/en/library/info/AMR34/017/2005> [hereinafter Amnesty Report 2005]).

23. *Id.*

24. *Id.* (figure was provided to the Special Rapporteur on the Rights of Women on the Inter-American Commission on Human Rights during her September 2004 visit to Guatemala).

25. Amnesty Update 2006, *supra* note 5, at 2.

26. Amnesty Report 2005, *supra* note 22, at 3-4.

27. *Id.* at 4.

28. *Id.*

29. *Id.* at 6.

the state has failed to exercise even the slightest diligence in the prevention, investigation, and punishment of these crimes.³⁰ Finally this article will conclude with a set of suggestions that should be implemented to put an end to the perpetual violence of women that plagues the country.

I. HISTORICAL BACKGROUND

“The roots of the present gender crimes in Guatemala can be traced back to the civil war that ended in 1996 with a peace agreement between the Guatemalan government and opposition guerilla groups.”³¹ From 1960 to 1996, Guatemala suffered an armed conflict that resulted in the disappearance and death of over 200,000 people and the forcible displacement of over a million Guatemalans.³²

In 1954 after democratically elected president Jacob Arbenz was removed from office, Guatemala experienced a succession of highly repressive dictatorships.³³ Throughout the late 1970s and 1980s, the United States contributed “millions of dollars to the Guatemalan right in an effort to suppress the leftist guerillas, whom the [United States] considered to be Communist.”³⁴ U.S. President Ronald Reagan feared that if one Latin American nation became a victim of Communism, then the surrounding nations would inevitably become Communist countries as well.³⁵ Foreseeing that a ‘domino effect’ could occur, a substantial amount of foreign aid was given to the Latin American right.³⁶

The Mayan indigenous people of Guatemala were among those considered a Communist threat.³⁷ “[A]fter many joined with the Left to demand greater social equality and equal land distribution,” the state responded with widespread violence.³⁸ 83 percent of the estimated 200,000 victims of the civil war were Mayan.³⁹ 400 indigenous villages in the Guatemalan highlands were annihilated and were subjected to the widespread, state-sponsored use of barbaric forms of torture.⁴⁰ The Commission for Historical Clarification (Comision para el Esclarecimiento Historicos, CEH) blamed security forces for 93 percent of these crimes.⁴¹ Furthermore, rape was frequently used as a weapon of

30. *Id.*

31. Kent Paterson, *Femicide On the Rise in Latin America*, AMERICAS PROGRAM REPORT, at 3, Mar. 8, 2006, <http://americas.irc-online.org/pdf/reports/0603femicide.pdf>.

32. CGRS UPDATE, *supra* note 18, at 2.

33. Risa Grais-Targow, *Femicide in Guatemala*, BARDPOLITIK, July 2004, at 29, available at <http://www.bard.edu/bgia/bardpolitik/vol5/29-31.pdf>.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. Grais-Targow, *supra* note 33 (referencing the Commission for Historical Clarification (CEH) Report, 1999).

40. CGRS UPDATE, *supra* note 18, at 2.

41. Jan-Michael Simon, Scientific Investigator, Max Planck Inst., La Comisión para el Esclarecimiento Histórico, Verdad y Justicia en Guatemala, Presentation to the

war creating an environment where women became more and more vulnerable to sexual violence.⁴² In fact, “sexual assaults were so widespread in highland combat zones that one local official commented that it would be difficult to find a Mayan girl of eleven to fifteen who had not been raped.”⁴³ Sadly, many members of the Guatemalan intelligence services, who were to blame for the countless human rights violations that occurred during the civil war, managed to escape prosecution and to date, actively participate in police activities and other private security forces.⁴⁴

In 1996, after the opposition guerilla groups and the Guatemalan government signed the Peace Accord,⁴⁵ the U.S. government and the entire international community assumed that the country of Guatemala was finally at peace.⁴⁶ This premature assumption was far from accurate, however, because the violence once targeted at the internal Communist enemy did not disappear, but instead has been displaced on the weakest sector of society: Guatemalan women.⁴⁷ The consequences of the thirty-six-year “internal armed conflict in terms of destruction of communities, displacement, increased poverty and social exclusion” all have a bearing on the levels of violence against women today.⁴⁸ The brutality of the murders and the signs of “violence on their mutilated bodies bear many of the hallmarks of the terrible atrocities committed during the conflict that went unpunished [in the war] and reveal that extreme forms of sexual violence and discrimination remain prevalent in Guatemalan society.”⁴⁹

In addition to the legacy of violence left after the civil war, Guatemala suffers from a culture that accepts gender and domestic violence. Of the 4,850 reports of domestic violence received by the prosecutor’s office in 2003, not a single case reached trial.⁵⁰ In 2004, 10,000 reports of family violence were received by the prosecutor’s office, yet a mere 370 reached trial.⁵¹ The Human Rights Ombudsman and many women’s rights organizations estimate that 90 percent of incidents go unreported, leaving one to “assume that the actual incidence of domestic violence is exponentially higher than the number reported.”⁵² Furthermore, Guatemala’s deeply

Internacional Colloquium: Estado de Derecho y Delincuencia de Estado en América Latina (Feb. 22-24, 2002) (available at <http://www.juridicas.unam.mx/publica/librev/rev/boletin/cont/106/art/art6.pdf>).

42. CGRS UPDATE, *supra* note 18, at 2.

43. Angelica Chazaro & Jennifer Craig, *Getting Away with Murder: Guatemala’s Failure to Protect and Rodi Alvarado’s Quest for Safety*, 17 HASTINGS WOMEN’S L.J. 141, 151 (2006), available at http://cgrs.uchastings.edu/documents/cgrs/cgrs_guatemala_femicides.pdf [hereinafter *Getting Away with Murder*].

44. CGRS UPDATE, *supra* note 18, at 2-3.

45. Guatemala Peace Accords, Dec. 29, 1996, http://www.usip.org/library/pa/guatemala/guat_final_961229.html [hereinafter *Peace Accords*].

46. Grais-Targow, *supra* note 33, at 30.

47. *Id.*

48. Amnesty Report 2005, *supra* note 22, at 6.

49. *Id.*

50. *Getting Away with Murder*, *supra* note 43, at 150.

51. *Id.*

52. *Id.*

rooted culture of patriarchy is also a factor in the ongoing violence against women.⁵³ Until the 1998 reforms, the Guatemalan Civil Code provided that:

The husband had the duty to protect and support his wife, while she had the right and duty to care for and raise minor children and oversee domestic tasks[.] Husbands could legally object to their wives working outside the home[.] Husbands alone could legally represent the married couple, and they were the sole administrators of the household's financial resources, as well as any of the family assets[.] Even when parents had joint custody, fathers were still the sole legal representatives of their children and the administrators of their assets[.]⁵⁴

Although women's groups were successful in bringing about reform, many of the assumptions underlying these outdated provisions still hold true for many Guatemalans.⁵⁵

II. THE VICTIMS AND THEIR STORIES

Amnesty International reports that “[a]mong the women killed over the last few years in Guatemala are students, housewives and professionals, domestic employees, unskilled workers, members of former member of street youth gangs and sex workers.”⁵⁶ Most of the murders have occurred in urban areas of the country, “which have also witnessed a dramatic rise in violent crime in recent years often linked to organized crime, including drugs and arms trafficking and kidnapping for ransom, or to the activities of street youth gangs known as ‘*maras*’.”⁵⁷

While the murders may be attributed to different motives and may have been committed by both state and non-state individuals, a study of some of the cases shows that the violence is usually gender-based; the gender of the victim would appear to be a significant factor in the crime, influencing both the motive and the context, as well as the kind of violence suffered by the woman and the manner in which the authorities respond.⁵⁸

A. THE CASE OF CLAUDINA VELASQUEZ

Nineteen-year-old Claudina Velasquez was studying to become a lawyer.⁵⁹ On Friday, August 12, 2005, Claudina left for class at the University of San Carlos, where she attended her two Friday-morning classes.⁶⁰ When Claudina did not make it home that evening her parents began

53. *Id.* at 151.

54. *Id.* (discussing the ideals represented in the Civil Code)

55. *Id.*

56. Amnesty Report 2005, *supra* note 22, at 4.

57. *Id.*

58. *Id.*

59. *Getting Away with Murder*, *supra* note 43, at 150.

60. *Id.*

searching hospitals and police stations.⁶¹ On Saturday, August 13, Claudina's parents were called to identify their daughter's body; she had been raped, brutally beaten, and died as a result of two bullet wounds to the head.⁶² Traces of semen were found on her body.⁶³ Witnesses who heard the gunfire stated that Claudina had been shot some time in the early-morning hours of August 13, 2005; however, authorities never declared a time of death.⁶⁴ Claudina's fingerprints were not taken until 11:30 p.m. that evening, hours after her body had arrived in the morgue.⁶⁵ Skin and fluid samples were taken from Claudina's body, even though no forensic analysis was ever conducted, and her clothing was returned to her family without undergoing any type of analysis.⁶⁶

Witness statements indicated that Claudina had spent the afternoon in a condo in San Cristobal.⁶⁷ The building had private security, yet the Public Ministry never searched or retained the registry of entrances for the days in question.⁶⁸ Furthermore, information was received that indicated that, on the evening of August 12, Claudina was seen accompanied by others in a local supermarket, but the supermarket's surveillance videos were not searched and the manager on duty was not questioned.⁶⁹ Days after Claudina's murder, the primary suspect made a voluntary statement at the Public Ministry.⁷⁰ The suspect was not fingerprinted or taken into custody even though advocates believed there was sufficient evidence to issue an arrest warrant.⁷¹

"Claudina was killed by one thing: impunity . . . [her] killer knew that the likelihood of him being found was very remote."⁷² The way in which Claudina's case was handled is a prime example of how the investigative and prosecutorial processes that are characteristic of the efforts put forth in femicide cases are failing drastically.⁷³ Claudina's parents reported their daughter missing when she failed to arrive at home, but the National Civil Police (PNC) refused to begin a search until she had been missing for over twenty-four hours.⁷⁴ The Public Ministry failed to conduct forensic analysis on any skin, fluid, or clothing found at the crime scene.⁷⁵ This lack of response by authorities evidences a pattern that has repeated itself in nearly all of the other femicides occurring around the country

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Getting Away with Murder, supra* note 43, at 150.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Getting Away with Murder, supra* note 43, at 150. (referring to the October 2005 Affidavit of Ana Maria Mendez, human rights activist and friend of Claudina Vasquez).

72. Amnesty Update 2006, *supra* note 5, at 3.

73. *Getting Away with Murder, supra* note 43, at 149.

74. *Id.*

75. *Id.*

and permits those responsible for the brutal murders to enjoy impunity for their crimes.⁷⁶

B. THE CASE OF RODI ALVARADO

Rodi Alvarado was born and raised in Guatemala.⁷⁷ Her battle and escape to the United States demonstrates the failure of her home country to provide any meaningful protection for women who are victims of domestic violence and femicide.⁷⁸ At a mere sixteen years of age, Rodi married Francisco Osorio, a former soldier five years her senior.⁷⁹ Almost immediately after they were married, Osorio began to threaten and violently assault her, and the assaults continued over the course of ten years.⁸⁰ Osorio raped and sodomized Rodi on numerous occasions, “infecting her with sexually transmitted diseases, broke windows and mirrors with her head, dislocated her jaw, and tried to abort her child by kicking her violently in the spine.”⁸¹ Along with using his hands and his feet against her, Osorio also resorted to weapons, pistol-whipping her, and terrorizing her with his machete.⁸²

Rodi attempted to flee the family home on numerous occasions, but Osorio always managed to track her down, beating her unconscious on one occasion in front of their two children, to punish her for trying to escape.⁸³ He told her that she could never get escape him because he would find her, “cut off her arms and legs, and . . . leave her in a wheelchair, if she ever tried to leave.”⁸⁴ Rodi sought the protection of the authorities, but her attempts were just as futile as her attempts to hide from her husband.⁸⁵ Over the entire course of this decade-long, brutal marital relationship, neither the police nor the courts of Guatemala intervened even once.⁸⁶ The police did not respond when called by a desperate Rodi on the telephone and never took any steps to arrest Osorio or require him to appear in response to written complaints filed by Rodi.⁸⁷ When Rodi finally went before a judge, she was told that he would not “interfere in domestic disputes,” and Osorio was saved once again by the culture of impunity that exists in Guatemala.⁸⁸

In 1996, Rodi fled to the United States in a desperate attempt to save her life and was forced to make a difficult decision to leave her two chil-

76. *Id.*

77. *Id.* at 143.

78. *Id.*

79. *Getting Away with Murder*, *supra* note 43, at 143.

80. *Id.* at 144.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* (citing *In re R-A-*, 22 I. & N. Dec. 906, 909 (B.I.A. 1999), available at <http://www.usdoj.gov/eoir/vll/intdec/vol22/3403.pdf>).

85. *Getting Away with Murder*, *supra* note 43, at 144.

86. *Id.*

87. *Id.*

88. *Id.*

dren behind with relatives.⁸⁹ Rodi sought the help of the San Francisco Lawyers' Committee for Civil Rights, and in September 1996, a San Francisco immigration judge granted Rodi asylum.⁹⁰ Following the granting of asylum, the Immigration and Naturalization Service (INS) appealed the grant to a higher immigration court, the Board of Immigration Appeals (BIA), and in June of 1999, the BIA reversed the decision of the immigration judge by a ten-to-five vote, ordering that Rodi be returned to Guatemala.⁹¹ In December 2000, Janet Reno "vacated" the BIA's decision in Rodi's case, directing the BIA to re-decide the case once the regulations were issued in final form.⁹²

Rodi Alvarado fled to the United States more than a decade ago, yet her batterer still enjoys the Guatemalan system of impunity, a system that continues unabated today.⁹³ "A spiked increase in the murders of Guatemalan women highlights the extent of the state's failure to protect women," and the ongoing "femicides constitute the clearest manifestation of the alarming lack of protection from life-threatening violence for Guatemalan women."⁹⁴

III. FLAWS IN PROCEDURES CARRIED OUT BY THE NATIONAL CIVIL POLICE AND THE PROSECUTOR'S OFFICE

Serious deficiencies persist in the organization and functioning of investigations and prosecutions.⁹⁵ The failure to carry out even the most basic investigations and the inability to process and protect crime scene evidence are indicative of a pattern of negligence by state institutions towards the killing of women.⁹⁶ Recently, the Guatemalan government announced a newly-created National Commission to Address Femicide, with a mission to develop strategies for the government to address the crisis that plagues the nation.⁹⁷ But, even with the government's recent attempt to address the severity of violence against woman and its creation of a National Commission, it has devoted scant resources to existing law enforcement and investigative institutions, and has failed to effectively address the systemic shortcomings.⁹⁸

As a direct result, successful prosecutions are lacking.⁹⁹ Angela Gonzalez, a member of Guatemala's Network to Oppose Violence Against

89. *Id.*

90. *Id.*

91. Getting Away with Murder, *supra* note 43, at 145.

92. *In re R-A-*, 22 I. & N. Dec. 906 (B.I.A. 1999) *vacated and remanded* (A.G. 2001); see also A.G. Order No. 2379-2001, (Jan. 19, 2001), available at http://cgrs.uchastings.edu/documents/legal/ag_ra_order.pdf.

93. Getting Away with Murder, *supra* note 43, at 146.

94. *Id.*

95. Amnesty Update 2006, *supra* note 5, at 3.

96. Amnesty Report 2005, *supra* note 22, at 15.

97. CGRS UPDATE, *supra* note 18, at 10.

98. *Id.*

99. *Id.* at 11.

Women noted that only fifteen sentences have been handed down for the more than 2,000 murders in Guatemala.¹⁰⁰

A. INADEQUATE RESOURCES

The heavy case loads, lack of equipment, and the continuing shortage of police investigators play a predominant role in why most initial investigations are flawed.¹⁰¹ In February 2004, Yakin Ertürk, the U.N. Special Rapporteur on Violence Against Women, visited Guatemala to evaluate the magnitude of violence against women.¹⁰² In her report, the U.N. Special Rapporteur noted that “[t]he Women’s Office of the Ministerio Público and the special unit of the PNC reported that 40 per cent of the cases are filed and *never* investigated,” the unit claiming they lack the resources and personnel to carry out a proper investigation.¹⁰³ At the time of the U.N. Special Rapporteur’s visit, the special unit designated to investigate the brutal murders operated with twenty investigators who were subsequently divided into five groups.¹⁰⁴ Each investigator was estimated to have twenty cases pending.¹⁰⁵ Shortly after Yakin Ertürk’s visit, a new Female Homicide Unit (Unidad de Homicidios contra Mujeres), a part of the Criminal Investigation Service (SIC, Servicio de Investigación Criminal) of the PNC was created to investigate the overwhelming number of murders against women.¹⁰⁶ This newly established investigative unit functions with fifteen officers, each covering twenty-three cases; they share one car, one cellular phone, and one working computer.¹⁰⁷ Unit police officers admit, “we don’t have the tools to carry out the work.”¹⁰⁸

In addition, police investigators lack a laboratory for performing DNA tests. Instead, blood and semen samples are examined at the University of San Carlos, where samples are so often received in imperfect condition, the tests are rendered invalid and useless.¹⁰⁹ This lack of scientific expertise, coupled with the fact that there is no national registry of missing people in Guatemala, makes it difficult to cross-reference information received or identify the tortured and mutilated victims.¹¹⁰ The head investigator of the Female Homicide Unit stated in a press article that it was extremely difficult to establish “whether the unidentified women had previously been reported as missing because there was no coordination with the Missing Persons Unit (Unidad de Desaparecidos).”¹¹¹

100. Paterson, *supra* note 31, at 2.

101. Amnesty Update 2006, *supra* note 5, at 3.

102. Ertürk Report, *supra* note 19, at 2.

103. *Id.* at 16.

104. Amnesty Report 2005, *supra* note 22, at 15.

105. *Id.*

106. *Id.*

107. *Id.*

108. Amnesty Update 2006, *supra* note 5, at 3.

109. Amnesty Report 2005, *supra* note 22, at 17.

110. *Id.* at 18.

111. *Id.*

B. DELAYED OPENING IN INVESTIGATIONS

Police officials in Guatemala wait a period of forty-eight to seventy-two hours before beginning a search for a missing person.¹¹² This often inadequate response directly conflicts with the duty of due diligence to prevent violations of human rights.¹¹³ Routine delays in opening investigations have no basis in the law.¹¹⁴ Instead, they are a mere result of bad practice.¹¹⁵ Unfortunately, delaying the opening of an investigation seriously diminishes the chances of finding the women alive or identifying those responsible.

On February 1, 2002, Nancy Peralta left her home at six in the morning to go to work in Guatemala City.¹¹⁶ Nancy failed to return home that evening, and her family immediately began searching local hospitals and police stations.¹¹⁷ When her sister attempted to report Nancy missing, the police questioned whether the family was sure Nancy had not run off with her boyfriend and told her that she would have to wait forty-eight hours to lodge a missing persons' report.¹¹⁸ Nancy's sister provided authorities with a description of Nancy and left a photograph.¹¹⁹ She called the morgue and gave her sister's description but was informed no woman had been admitted, when in fact a death certificate had been issued a few hours earlier on behalf of an unidentified woman.¹²⁰

The next time her family saw Nancy was two days later at the morgue, her flesh perforated with 48 stab wounds and covered with bruises. Her body had been discovered in an empty lot in a slum in the southwest part of the city, a few miles from San Carlos University—her college and the place where she had been abducted.¹²¹

An article and photograph were published in the local press reporting the discovery of a body of an unidentified woman whose throat had been cut.¹²² Nancy's father called the morgue, provided another description of Nancy, only to find out it was his daughter's body that lay lifeless in the morgue.¹²³ Even though both police officials and the morgue had been given a description and photograph of Nancy Peralta, no effort was ever made to cross reference that data with that of the unidentified murder victims.¹²⁴

112. *Id.* at 16.

113. *Id.* at 15.

114. *Id.* at 16.

115. Amnesty Report 2005, *supra* note 22, at 16.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Laura E. Asturias & Virginia del Águila, *Unrelenting Danger*, AMNESTY INT'L MAGAZINE, Fall 2005, at 2, available at http://www.amnestyusa.org/Fall_2005/unrelenting_danger/page.do?id=1105190&n1=2&n2=19&n3=354.

122. Amnesty Report 2005, *supra* note 22, at 16.

123. *Id.*

124. *Id.*

Nancy Peralta's story is one that highlights how authorities fail to open proper investigations of those reported missing.¹²⁵ In Nancy's case, police officials chose not to act based on the notion that Nancy Peralta was missing on her own accord.¹²⁶ They never once carried out an assessment or an investigation of the circumstances in which Nancy went missing, but instead placed the burden of proving her disappearance was not voluntary on the family.¹²⁷ It is these very practices that demonstrate how initial investigations to establish whether a crime has been committed are often lacking and virtually non-existent.¹²⁸

C. FAILURE TO PRESERVE THE CRIME SCENE AND COLLECT EVIDENCE

"[T]here is a clamorous absence of physical and scientific proof."¹²⁹

Fifteen-year-old Maria Franco was left for dead on the ground at approximately 10:00 p.m. on December 17, 2001.¹³⁰ A man informed authorities that a dying woman had been found; however, police failed to arrive at the scene that night, only to turn up the following afternoon to remove the body.¹³¹ Maria's mother reported:

They didn't even do a fluid analysis. They gave me all her clothes in a bag and when I saw some white stains on it, I asked at the morgue: what's this, is it semen? My little girl had been very badly treated, there was blood on her front and back and they didn't do any blood analysis or anything. It's been two years and eight months since she was murdered. Where are the forensic tests?¹³²

Numerous reports have reiterated the consistent and blatant failure of investigators to collect and protect essential evidence from crime scenes.¹³³ Clothes of victims, often stained with blood, semen, and other bodily fluids, are routinely returned to families or buried with the victims without safeguarding key evidence.¹³⁴ The possibility of identifying and prosecuting perpetrators is seriously reduced when samples of specimens such as seminal fluid, blood, skin, or hair are not preserved and analyzed.¹³⁵ The "failure to protect, examine or preserve the crime scene and deficiencies in collecting evidence and maintaining the chain of custody to prevent evidence from being lost or becoming contaminated"

125. *Id.*

126. *Id.*

127. *Id.*

128. Amnesty Report 2005, *supra* note 22, at 16.

129. *Id.* at 17 (quoting the official comment of the IACHR Special Rapporteur on Violence against Women, September 2004).

130. *Id.*

131. *Id.*

132. Amnesty Int'l, *Guatemala: No Protection, No Justice: Killings of Women and Girls - Facts and Figures*, AI Index AMR 34/024/2005, June 9, 2005, available at <http://www.amnesty.org/en/library/info/AMR34/025/2005> (quoting Rosa Franco, mother of Maria Isabel Veliz Franco) [hereinafter *Facts and Figures*].

133. CGRS UPDATE, *supra* note 18, at 12.

134. *Id.*

135. Amnesty Report 2005, *supra* note 22, at 17.

greatly restricts the progress of investigations.¹³⁶ Furthermore, on many occasions, investigators are delayed in reaching the crime scene, which creates an inability to keep the scene free from contamination by local residents or from the press.¹³⁷ Official reports often “indicate that the scene of the crime was tampered with prior to the arrival of the Public Prosecutor’s Office and personnel responsible for processing the crime scene.”¹³⁸

D. LACK OF WILL ON THE PART OF THE INVESTIGATORS

In addition to inadequate resources, the attitudes displayed towards victims and their surviving family members indicate a lack of will on the part of the investigators.¹³⁹ Investigative authorities persistently place blame on the victim and are reported to exude hostility towards family members, both indications that there is a lack of commitment to bring the murderers to justice.¹⁴⁰ Authorities are quick to look for signs that the victim is a prostitute, a “nobody,” or involved in gang related activities in order to justify their lack of due diligence in thoroughly investigating the murders.¹⁴¹ In late 2005, Dorothy Ascody, an American concert pianist, was murdered with a pickax.¹⁴² Rather than search for the stolen car linked to the murder, investigators in the Homicide Unit were looking into possible links between Dorothy and narco-traffickers, despite any indication that the pianist had ever been linked to criminal activity.¹⁴³ What is even more disturbing is that the practice of placing blame on the victim is not limited to individual investigators. In 2004, Guatemalan President Oscar Berger stated, “We know that in the majority of cases, the women had links with juvenile gangs and gangs involved with organized crime,” despite possessing no statistical evidence to support his statement.¹⁴⁴ Although in recent statements President Berger has acknowledged that the ongoing femicides are the product of societal inequalities and discrimination, government officials continue to publicly allege a connection between the victims and organized crime.¹⁴⁵

Relatives of a number of victims complain that they often have to prove their relative was “respectable” or that they had not been involved in any crimes before their complaints are taken seriously.¹⁴⁶ Families are

136. *Id.*

137. *Id.*

138. Press Release, Washington Office on Latin America (WOLA), Human Rights Ombudsman Identifies Serious Shortcomings in Investigation of Murdered Woman in Guatemala (Oct. 26, 2006) (on file with WOLA) [hereinafter WOLA Press Release].

139. CGRS UPDATE, *supra* note 18, at 13.

140. *Id.*

141. *Id.*

142. *Id.* at 14.

143. *Id.*

144. Amnesty Report 2005, *supra* note 22, at 21. (quoting President Berger’s statement to La Nacion newspaper on June 26, 2004).

145. CGRS UPDATE, *supra* note 18, at 15.

146. Amnesty Report 2005, *supra* note 21, at 21

even discouraged from pressing charges, confronted with questions such as, “if she is already dead, what are you looking for?”¹⁴⁷ Threats and harassment often stain the lives of those relatives who demand justice, and many are forced to live life in fear or in hiding.¹⁴⁸ The protection of witnesses and surviving families is yet another significant weakness in the Guatemalan legal system.¹⁴⁹

In addition to the indifferent attitude investigators and officials display, family members frequently report that authorities have failed to provide them with information about the progress of the investigation, failed to pursue potential leads, and have treated victim’s relatives dismissively.¹⁵⁰ Article 116 of the Guatemalan Code of Criminal Procedure allows victims, relatives, and others to act as joint parties to the state prosecution, giving them the right to propose different methods of investigation, the ability to participate in proceedings, request tests and examinations, as well as seek intervention from a judge, should they disagree with a prosecutor’s decision.¹⁵¹ Although Article 116 allows for victims and their relatives to become joint parties, due to the lack of free legal services and the complex process to become a joint party, those individuals who cannot afford to seek legal assistance are denied access to justice.¹⁵²

I asked if I could have copies of the case file and they said no, that we had to become a joint party. As we have very little money, we could not pay for a lawyer. At first they would not even let me see the case file. It was only when I got angry that they started to show me things but I have not been able to get a copy . . . When we ask for certificates or copies of legal documents, they charge us . . . I am going to study law because we don’t have a lawyer so we aren’t accepted as a joint party . . . It is very sad not to have even a lawyer who can write a legal document.¹⁵³

“Even where those affected are not a joint party to the prosecution, article 8^[154] of the Public Ministry Law (LOMP, *Ley Organica del Ministerio Público*) states that it is the responsibility of the prosecutor to provide information to them,” and this information can not be refused.¹⁵⁵ Should a prosecutor fail to provide information about the investigation, they will be subjected to disciplinary action.¹⁵⁶ In addition, according to

147. CGRS UPDATE, *supra* note 18, at 14.

148. *Id.*

149. *Id.*

150. Amnesty Report 2005, *supra* note 22, at 20.

151. *Id.* at 19.

152. *Id.*

153. *Id.* (quoting a statement by Maria Elena Peralta, sister of Nancy Peralta).

154. Decreto No. 40-94, 3 May 1994, *Ley Organica del Ministerio Publico*, tit. I, art. 8 (Guat.), available at http://www.oas.org/JURIDICO/mla/sp/gtm/sp_gtm-mla-leg-publico.pdf.

155. Amnesty Report 2005, *supra* note 22, at 19-20.

156. *Id.* at 20.

Article 49¹⁵⁷ of the LOMP, parties concerned can propose measures at any time during the preliminary phase of investigation, and these measures should be carried out if the prosecutor considers they are useful.¹⁵⁸ Despite the existence of these provisions, officials often do not abide by them.

Several surviving family members report that authorities fail to provide relatives with information about the investigation process. Nancy Peralta's sister, Maria Elena, insisted that the Public Ministry call potential witnesses and asked for a picture of the witness who called the police the night Nancy was killed.¹⁵⁹ Maria Elena and her family also asked investigators to inspect the area where Nancy's body was found; over two years later, the site had yet to be examined.¹⁶⁰

Maria Franco, mother of the fifteen-year-old who was left for dead on the evening of February 2002, reported that her daughter had her mobile phone with her when her body was found.¹⁶¹ She too asked the Public Ministry to investigate the calls from that day, yet officials failed to do so.¹⁶² After obtaining a list of the calls made, Maria Franco handed the numbers over to the prosecutor's office, where the numbers were filed away and have not been investigated.¹⁶³ Even though an eye witness called authorities and informed them of the body of a young woman left for dead, minutes after he saw her body being dragged from a car, the Public Ministry did not investigate the house where the car was that night.¹⁶⁴

IV. GUATEMALA'S OBLIGATIONS AND RESPONSIBILITIES

A comprehensive set of commitments on human rights, including recommendations regarding the fulfillment of the rights of women, are contained in the 1996 Peace Accords.¹⁶⁵ The Guatemalan state pledged to "combat all forms of discrimination against women, to promote equality and women's full and effective participation in all areas of public life and national development."¹⁶⁶ Additionally, in May 2002, the Guatemalan government ratified the Optional Protocol to the U.N. Convention on the Elimination of All Forms of Discrimination Against Women,¹⁶⁷ passed

157. Decreto No. 40-94, 3 May 1994, Ley Organica del Ministerio Publico, tit. III, ch. 1, art. 49 (Guat.), available at http://www.oas.org/JURIDICO/mla/sp/gtm/sp_gtm-mla-leg-publico.pdf.

158. Amnesty Report 2005, *supra* note 22, at 20.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. Amnesty Report 2005, *supra* note 22, at 20.

165. Peace Accords, *supra* note 45.

166. Amnesty Report 2005, *supra* note 22, at 14.

167. United Nations Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women, G.A. Res. 54/4, U.N. Doc A/Res/54/4 (Oct. 15, 1999).

the Law for the Dignity and Integral Promotion of Women¹⁶⁸, the Law to Prevent, Punish, and Eradicate Violence in the Family,¹⁶⁹ and is undertaking reforms to the Civil Code removing certain discriminatory provisions.¹⁷⁰ Despite efforts to put an end to the violence and discrimination that taints the country, gaps exist, especially in the legislative sphere, that make the implementation of legal measures to protect women's rights an uphill battle.

A. THE EXISTING LAWS

In order to fully understand how femicide has escalated to the level it has today, it is necessary to take a deeper look into the existing laws in the impoverished Central American country of Guatemala.

1. *Crimes of Sexual Violence*

Although article four¹⁷¹ of the Guatemalan Constitution guarantees equal rights for men and women, such equality is not reflected in sections of the Criminal Code rendering women more vulnerable to violence.¹⁷² In a country tainted with the existence of brutal murders often coupled with sexual violence, the Criminal Code demonstrates the State's lack of commitment to prevent violence against women.¹⁷³ For example, rape occurring within marriage is not recognized as a crime, rendering spouses and live-in partners incapable of being prosecuted for such an act.¹⁷⁴ This provision condemns women to a life where her human rights are constantly violated. Additionally, it wasn't until December 2005 that the Guatemalan "rape" law, article 200,¹⁷⁵ allowing a rapist to escape charges by marrying his victim was deemed unconstitutional.¹⁷⁶ The action came not from the Guatemalan Congress, but from the Constitutional Court after the Human Rights Ombudsman challenged the constitutionality of the article. Currently pending review, article 200 still applies to cases that were initiated before December of 2005.¹⁷⁷ Furthermore, it is the responsibility of the victim of rape and other sexual crimes to initiate prosecu-

168. DECREE NO. 7-99, *Ley de Dignificación y Promoción Integral de la Mujer*, April 9, 1999 (Guat.).

169. DECREE NO. 97-96, *Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar*, Nov. 28, 1996 (Guat.), available at <http://www.acnur.org/biblioteca/pdf/0145.pdf> [hereinafter *Law to PSEV*].

170. Amnesty Report 2005, *supra* note 22, at 14.

171. CONSTITUCIÓN POLÍTICA REFORMADA POR ACUERDO LEGISLATIVO NO. 18-93, art. 4, Nov. 17, 1993, available at <http://pdba.georgetown.edu/Constitutions/Guate/guate85.html> [hereinafter *GUATEMALAN CONSTITUTION*].

172. *Getting Away with Murder*, *supra* note 43, at 154.

173. *Id.*

174. *Id.*

175. *GUATEMALAN CONSTITUTION*, *supra* note 171, art. 200.

176. Amnesty Int'l, *Mexico and Guatemala: Stop the Killings of Women*, at 2, Jan. 2007, <http://www.amnestyusa.org/news/document.do?id=ENGUSA20070130001>.

177. *CGRS UPDATE*, *supra* note 18, at 22.

tion of the crime, rather than the Public Ministry itself.¹⁷⁸ Article 106¹⁷⁹ allows an offender to be released from criminal liability if he is pardoned by his victim.¹⁸⁰ This type of provision exposes those who are unaware of their rights in the Guatemalan justice system, or those who simply lack funds, to be pressured and coerced into not filing complaints or charges.¹⁸¹ The Guatemalan Criminal Code also provides that it is only a crime to have sexual relations with a minor if the victim is considered "honest."¹⁸² "This focus on the victim's perceived character and conduct rather than on the perpetrator's punishment has emerged as an undercurrent in the government's investigation and reporting of the femicides."¹⁸³ Articles 89 and 89¹⁸⁴ allow women to marry at the age of fourteen and have not been amended despite repeated urging by the U.N. Committee of CEDAW.¹⁸⁵

2. Domestic Violence

"Despite its nearly epidemic levels, domestic violence is currently not criminalized."¹⁸⁶ The 1996 Law to Prevent, Sanction, and Eradicate Intra-Family Violence failed to criminalize domestic violence, and despite its ratification, it has been thinly applied.¹⁸⁷ Even more disturbing, prosecutors have stated that the perpetrators of violence against women in a family setting can only be charged with assault if signs of physical injury from the abuse persist for ten days.¹⁸⁸ One prosecutor explained:

[F]amily violence does not constitute a crime; as a consequence, a case cannot be initiated unless there are injuries. In that case, it should be determined how much time will be required for the injuries to heal in order to establish whether or not a case should be opened. But, when the woman appears and there are no injuries present, there is nothing that can be done.¹⁸⁹

This approach not only requires that the violence against domestic partners be so grave that signs of injury persist for at least ten days, but it also blatantly ignores other forms of violence, such as psychological violence, and "decreases the possibility for penal or judicial intervention at a time when it could actually prevent a woman from being murdered."¹⁹⁰ Sadly, thirteen percent of the women who reported domestic violence to local authorities were later murdered, and the lack of response has con-

178. *Id.*

179. GUATEMALAN CONSTITUTION, *supra* note 171, art. 106.

180. *Getting Away with Murder*, *supra* note 43, at 155.

181. *Id.*

182. *Id.*

183. *Id.*

184. GUATEMALAN CONSTITUTION, *supra* note 171, art. 88-89.

185. CGRS UPDATE, *supra* note 18, at 22.

186. *Getting Away with Murder*, *supra* note 43, at 155.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

tributed to their deaths.¹⁹¹

B. GUATEMALA'S NATIONAL EFFORTS TO PREVENT VIOLENCE AGAINST WOMEN

The Guatemalan government has taken legal measures to protect women's rights; however, most of their efforts have proven to be unsuccessful.

1. *Belem do Para*

On April 4, 1995, Guatemala ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, commonly known as the Convention of Belem do Para.¹⁹² Guatemala committed to:

[t]ake all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; . . . establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; . . . establish the necessary legal and administrative mechanisms to ensure women subjected to violence have effective access to restitution, reparations or other just and effective remedies . . .¹⁹³

Although Guatemala ratified the Belem do Para, a number of discriminatory legal provisions remain in the statute books that are not in compliance with Guatemala's international obligation to prevent, investigate, punish, and eradicate violence against women.¹⁹⁴ The temporary suspension of article 200 that allows rapists to escape culpability by marrying their victims is a prime example of how domestic law conflicts with the Convention obligations.

2. *Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar*

Additionally, Guatemala implemented The Law for the Prevention, Sanction and Eradication of Domestic Violence, a law that specifically addresses violence against women in accordance with the Belem do Para. Under this law, the registration of cases, the collections of statistics, and the development of public policies are required in order to be in compli-

191. Asturias & del Águila, *supra* note 121, at 4.

192. Inter-American Commission on Human Rights, Organization of American States, Inter-American Convention on the Prevention, Punishment And Eradication Of Violence Against Women "Convention Of Belem Do Para", June 4, 1994, 33 I.L.M. 1534, available at http://www.unicri.it/www/trafficking/legal_framework/docs/inter_american_convention_of_belem_do_para.pdf [hereinafter Belem do Para].

193. *Id.* art. 7(e)-(g).

194. Amnesty Report 2005, *supra* note 22, at 24.

ance with the convention.¹⁹⁵ Furthermore, as a direct result of the implementation of this law, the National Coordinator for the Prevention of Domestic Violence and Violence Against Women (CONAPREVI) was created in 2000.¹⁹⁶ The CONPREVI, which was officially established in 2001, consists of the president, the president of the judiciary, the head of the Public Ministry, the president of the National Statistical Institute, a representative of the Programme for the Prevention of Domestic Violence and Violence Against Women (PROPVEVI), and a representative of the First Lady's Office of Social Work.¹⁹⁷ The primary function of the CONAPREVI is to implement the law to prevent, punish, and eradicate domestic violence. Unfortunately, CONAPREVI has not received the political or financial support needed to fulfill its fundamental task.¹⁹⁸

In February of 2004, CONAPREVI launched a progressive national plan for the prevention and eradication of violence against women known as PLANОВI.¹⁹⁹ This national plan is based on the notion that State institutions are responsible for eliminating all forms of violence against women, domestic included, and in order to effectively address the femicide, action must be taken in a coordinated and comprehensive manner.²⁰⁰ PLANОВI consists of four particular areas:

1. Research, analysis, and statistics.
2. Prevention of Domestic Violence (VIF) and Violence against Women (VCM).
3. Integral assistance to VIF and VCM survivors.
4. State institutional strengthening.²⁰¹

The implementation of PLANОВI has been limited throughout Guatemala due to low financial resources available; however, the Program for the Prevention of Violence of the Inter-American Development Bank has established a special component that will allocate \$6.4 million to CONAPREVI to initiate a successful implementation.²⁰²

3. *The Special Commission on Femicide*

Recently representatives of the three states powers came together to form the newly created Special Commission on Femicide.²⁰³ The Commission's primary purpose is to develop a well-coordinated plan, a well-articulated strategy, and a proposal to address the crisis that plagues the

195. Ertürk Report, *supra* note 19, at ¶ 44.

196. *Id.*

197. *Id.* ¶ 53.

198. *Id.*

199. *Id.* ¶ 54.

200. *Id.*

201. United Nations Division for the Advancement of Women, Republic of Guatemala—Report on the Application of the Convention on the Elimination of All Forms of Discrimination Against Women, at 3, May 18, 2006, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw35/statements/GuatemalaStatement%20English.pdf> [hereinafter CEDAW Report 2006].

202. *Id.*

203. *Id.*

nation.²⁰⁴ It intends to focus its attention and resources on five working areas: research, training, lobbying and political influence, operational decisions, and communication and broadcasting.²⁰⁵

Although positive steps have been taken by the Guatemalan Government in terms of ratification of treaties and conventions and introducing new laws to address the continuing violence against women, until the laws are implemented, and those who are in violation of the laws are prosecuted, the brutality against women that persists around the country is destined to continue.

C. INTERNATIONAL STANDARDS

Violence against women is not only a violation of domestic laws, it is a violation against fundamental human rights that are protected on an international level. "International human rights standards place a clear responsibility on States to take effective measures under the obligations to prevent, protect and fulfill, to deal with any type of conduct by private individuals which impedes the full exercise of human rights, including violence against women in the context of the family or the community."²⁰⁶ Regardless of whether or not these crimes are committed by gang members, the average citizen, the battering husband, or even a state official, those perpetrators committing the crimes are responsible for their acts under international law. The failure of the state of Guatemala to effectively respond to reports of torture, mutilation, killings, and abductions means that the Guatemalan state incurs international responsibility under the obligations it has contracted as a result of ratifying regional and international standards.²⁰⁷

1. *Duty to Protect Rights with Due Dilligence*

The International Covenant on Civil and Political Rights (ICCPR) and the American Convention of Human Rights (ACHR) both promote the ideals of the rights to life, physical integrity, and personal safety.²⁰⁸ It is the obligation of the State not only to recognize and respect the standards enshrined in the international conventions, but each state has an obligation to protect and ensure those rights when they are threatened by criminal activity of private individuals. Article 1 of the Organizations of American States (OAS) ACHR:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin,

204. *Id.*

205. *Id.*

206. Amnesty Report 2005, *supra* note 22, at 25.

207. *Id.* at 26.

208. *Id.*

economic status, birth, or any other social condition.²⁰⁹

In the *Velasquez Rodriguez* case in Honduras where the identities of those responsible were not known, the Inter-American Court of Human Rights emphasized the concept of “due diligence” to describe the degree of effort a State must make in order to comply with its international obligation to ensure the exercise of human rights.²¹⁰ The Court held:

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.²¹¹

The Court clarified that acting with “due diligence” means each State must take reasonable steps to prevent human rights violations, that they must use their available resources to carry out serious, thorough investigations, that they must identify those responsible for the violations, prosecute and impose the appropriate punishment, and ensure the victim or the victim’s family receives adequate reparation.²¹² Furthermore, if State authorities allow violations of human rights to go unpunished, resulting in the victim’s full enjoyment of such rights to not be restored, then the State will have failed to ensure the exercise of the rights provided under article 1 of the ACHR.²¹³ The Court held that the investigation “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.”²¹⁴ Reliance cannot be placed on the victim or the victim’s family to initiate the investigation; instead, authorities themselves must carry out an effective search for the truth.²¹⁵ The Inter-American Court stated “[t]his is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.”²¹⁶ Ultimately the Court concluded that, although a disappearance could not be directly attributed to State officials, the State’s failure to act with due diligence was in itself a breach of the duty to ensure the victim of his/her fundamental human rights.²¹⁷

209. Inter-American Commission on Human Rights, Organization of American States, American Convention on Human Rights, art. 1, Nov. 22, 1969, 1144 U.N.T.S. 123, available at <http://www.cidh.org/Basicos/English/Basic3.American%20Convention.htm> [hereinafter ACHR].

210. Amnesty Report 2005, *supra* note 22, at 26.

211. *Velasquez Rodriguez*, Case No. 7920 Inter-Am. C.H.R., Series C, No. 4, ¶ 172, (1988), available at http://www.javier-leon-diaz.com/enforced_disappearances/Velasquez%20Rodriguez.pdf.

212. *Id.* ¶ 174.

213. Amnesty Report 2005, *supra* note 22, at 27.

214. *Velasquez Rodriguez*, *supra* note 211, ¶ 177.

215. *Id.*

216. *Id.*

217. *Id.* ¶¶ 185-88.

The lack of proper investigations in Guatemala, coupled with de minimis prosecutions of those responsible for the torture, dismemberment, and murders of young women, evidence not only the system of impunity that exists across the country, but also Guatemala's blatant failure to fulfill its international obligations.²¹⁸

2. *Due Diligence in Fighting Violence Against Women*

The idea of due diligence outlined by the Inter-American Court of Human Rights in the Honduras case has also been adopted by the international community with the specific intention of combating violence against women.²¹⁹ In 1993, the United Nations issued the Declaration on the Elimination of Violence against Women.²²⁰ Article 4 reads:

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should . . . [e]xercise *due diligence* to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons²²¹

U.N. Special Rapporteur Yakin Ertürk put forth a series of criteria assessing whether states had adhered to the due diligence standard by evaluating whether or not the right not to be subjected to violence by private persons was available to women.²²² In her report, Ertürk examined whether constitutional guarantees were provided, how the criminal justice system functions, whether reparations were obtainable, whether support services, education, and public awareness programs were available, and whether statistical data was being collected. The U.N. Special Rapporteur ultimately concluded that Guatemala's violence against women is met with impunity as authorities have failed to investigate cases and prosecute perpetrators.²²³ The 2005 report stated that the absence of a rule of law in Guatemala fosters a continuum of violent acts against women and that security and justice institutions have not responded adequately to the crisis at hand.²²⁴

Additionally, Guatemala recently ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The recent adoption of the Protocol "has created a further mechanism for combating violence against women by giving women who have been denied justice in their country the opportunity to seek redress at an international level for violations of their rights under the Conven-

218. CGRS UPDATE, *supra* note 18, at 17.

219. Amnesty Report 2005, *supra* note 22, at 27.

220. Declaration on the Elimination of Violence Against Women, G.A. Res 48/104, U.N. Doc. A/Res/48/104 (Dec. 20, 1993), available at <http://www2.ohchr.org/english/law/eliminationvaw.htm>.

221. *Id.* art. 4(c) (emphasis added).

222. Amnesty Report 2005, *supra* note 22, at 27.

223. Ertürk Report, *supra* note 19, at 2.

224. *Id.*

tion.”²²⁵ Victims or their representatives are allowed to submit a claim directly to the Committee after all other resources and remedies have been exhausted on a domestic level.²²⁶ The Committee can then carry out in-depth investigations and reach a decision on the case in question.²²⁷

Finally, the Belem do Para reflects the enormous efforts of the Inter-American system to develop scientific measures that will protect women’s rights to a life free from violence, whether at home, in the local community, or in the custody of State officials.²²⁸ Article 7 provides:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to . . . apply *due diligence* to prevent, investigate and impose penalties for violence against women.²²⁹

Furthermore, article 8 of the Convention discusses specific measures to implement programs that promote awareness and observance of the right of women to be free from violence, the right of women to have their human rights respected and protected, the education and training of all those involved in the administration of justice, police and other law enforcement, and the research and the gathering of statistics and other relevant information relating to the causes, consequences, and frequency of violence against women.²³⁰

V. WHAT NOW?

On May 10, 2006, a letter with the signatures of 115 members of the U.S. House of Representatives was delivered to the U.S. Department of State.²³¹ The State Department addressed congressional concerns about the femicide in Guatemala and assured Congress that it was engaged in the highest levels of the Guatemalan government to help find solutions to the steadily increasing level of violent murders of Guatemalan women.²³² Despite the recent attention and concern that is being sparked in the United States and by international human rights organizations, the concrete measures needed to seriously address the problem have yet to be undertaken.²³³

225. Amnesty Report 2005, *supra* note 22, at 28.

226. *Id.*

227. *Id.*

228. *Id.*

229. Belem do Para, *supra* note 192, art. 7.

230. *Id.* art. 8.

231. CGRS UPDATE, *supra* note 18, at 24.

232. *Id.*

233. *Id.*

A. RECOMMENDATIONS FOR THE GUATEMALAN GOVERNMENT

As the brutal killing of Guatemalan women continues to increase each year that passes, many suggestions have been made to put an end to the devastation.

1. *Publicly Condemn the Abductions and Murder of Women and Girls*²³⁴

Even though government officials such as President Oscar Berger and Supreme Court President Beatriz de Leon have made public statements regarding the need to eliminate the femicides, concrete action must follow.²³⁵ Guatemalan authorities should make public announcements condemning the violence against women and should not make any assertions that place blame on the victim or dismiss the severity of the crimes by explaining that they are a result of organized crime and gang violence.²³⁶

2. *Establish Concrete Guidelines and Procedures for All Steps of Criminal Investigation into Reports of Violence*²³⁷

Immediate, coordinated, full, and effective investigations into all cases of abduction and murder of young women and girls should be carried out, making sure that the institutions involved—the PNC, Public Ministry, judiciary, and forensic offices—collaborate fully and are provided with the necessary gender training resources to fulfill their duties.²³⁸ Crime scene investigations should be preserved and examined immediately in order to prevent contamination from outside parties and should meet international standards.²³⁹

3. *Create a Central, Unified Database of Missing Persons*²⁴⁰

In the case of Nancy Peralta, the morgue was unable to identify Nancy's body, even though her family had reported her missing, provided a photograph, and provided a detailed description.²⁴¹ An urgent search mechanism in cases of women reported missing should be created.²⁴² In order to help minimize the number of unidentified victims, a comprehensive list of women reported missing should be compiled.²⁴³ Additionally, a missing persons database should be created in order to improve documentation and the cross-referencing of case data.²⁴⁴

234. *Id.*

235. *Id.* at 25.

236. *Id.*

237. CGRS UPDATE, *supra* note 18, at 24.

238. Amnesty Report 2005, *supra* note 22, at 29.

239. *Id.*

240. CGRS UPDATE, *supra* note 18, at 26.

241. *Facts and Figures*, *supra* note 132, at 1.

242. Amnesty Report 2005, *supra* note 22, at 30.

243. *Id.*

244. *Id.*

4. *Bring Legislation in Line with International Standards on the Violence Against Women*²⁴⁵

Currently, there are several gender-discriminatory provisions in the law.²⁴⁶ Legislation proposing the criminalization of sexual harassment should be approved along with the permanent suspension of article 200 of the Penal Code, which would disallow rapists to be exonerated of their crimes by marrying their victims.²⁴⁷ Additionally, article 106, which allows for the pardoning by the victim in certain crimes, should be reformed to be inapplicable in cases of rape, domestic violence, and other sexual crimes.²⁴⁸ Moreover, the Center for Gender Related Studies recommends that the adoption of legislation that would specifically address femicide cases within the Penal Code and increase resources for the prosecution of murders of women.²⁴⁹

5. *Train the Judiciary, Investigators, and Other Authorities in Matters Related to Violence Against Women*²⁵⁰

Gender training, technical assistance, material resources, and oversight should be provided to the PNC, the Public Ministry, and to the judiciary personnel.²⁵¹ Furthermore, the judiciary personnel should be expanded in order to send a message that perpetrators will be prosecuted for their violent actions. An intensive, ongoing training for all police investigators, crime scene investigation officials, and forensic experts should also be initiated.²⁵²

6. *Implement a Zero-Tolerance Policy to End Impunity*²⁵³

The Guatemalan government should not only publicly condemn the violence against women, but should state that gender-based violence is unacceptable and will not be tolerated.²⁵⁴ An official who fails to take immediate action to prevent injury to Guatemalan women believed to be at immediate risk should be subject to disciplinary action, and any acts of harassment and intimidation against a victim's relatives, witnesses, or members of human rights organizations should be thoroughly investigated and the perpetrators brought to justice.²⁵⁵

245. CGRS UPDATE, *supra* note 18, at 26.

246. Ertürk Report, *supra* note 19, at 18.

247. *Id.*

248. Amnesty Update 2006, *supra* note 5, at 9.

249. CGRS UPDATE, *supra* note 18, at 26.

250. *Id.* at 26.

251. Ertürk Report, *supra* note 19, at 21.

252. CGRS UPDATE, *supra* note 18, at 26.

253. Amnesty Update 2006, *supra* note 5, at 9.

254. *Id.*

255. *Id.*

B. RECOMMENDATIONS FOR THE U.S. GOVERNMENT

The U.S. government should play an active role in eradicating violence against women in Guatemala by using its influence as a global leader to afford real protection for women's human rights and to bring those responsible to justice.

1. *Congressional Resolution*

The United States should support and sponsor a congressional resolution condemning the murder of over 2,700 women in Guatemala. This resolution should identify the murders as gender-based and publicly condemn the ongoing violence against women, expressing sympathy and condolences for the victim's families.²⁵⁶ Congress should encourage the U.S. Department of State to help Guatemalan authorities resolve crimes by incorporating effective investigative and preventative efforts into their daily routines.²⁵⁷ As a global leader and a promoter of peace, it is the duty of the United States to uphold the ideals of human rights and rescue a country stained by such tragedy.

2. *Congressional Delegation to Investigate the Femicides*

The U.S. government should also employ a delegation to investigate the ongoing femicide. This delegation should consist of members of Congress and representatives of human rights organizations who will encourage immediate, coordinated, full, and effective investigations.²⁵⁸ They should establish a foundation where funds will be allocated to train local Guatemalan authorities in order to provide them with the resources necessary to conduct thorough investigations. U.S. policymakers should also pressure Guatemalan officials to bring legislation and policy in line with the international standards on violence against women, as well as make necessary changes in civil and criminal codes to prevent domestic violence.

Ultimately, the United States' financial assistance to the Guatemalan criminal justice system over the years has had little impact on improving Guatemalan authorities' response to femicide and other acts of violence against women.²⁵⁹ As in Rodi Alvarado's case, if the United States seeks to prevent opening the floodgates of refugee asylum seekers, as a global leader it must get to the root of the problem in Guatemala and use its considerable influence to pressure authorities to finally implement concrete reforms in its legislative and criminal justice system in order to protect the human rights of women.²⁶⁰

256. *Getting Away with Murder*, *supra* note 43, at 162.

257. *Id.*

258. *Id.* at 163.

259. *Id.* at 169.

260. *Id.*

VI. CONCLUSION

On February 8, 2006 two young women were found stoned to death outside of Guatemala City; their skulls were destroyed and their killers remain free.²⁶¹ Sadly, this story is hardly any different than the other 2,781 young girls and women murdered since 2001 in the impoverished country of Guatemala.²⁶² “Expectations have been raised, again and again, but results have rarely followed. Insecurity and inequality prevail, and a history of failed opportunities has created a disenchantment in a population eager for change.”²⁶³

While some initiatives have been taken over the past years to address the femicide crisis, there has been no real impact on the numbers of women raped, tortured, mutilated, and ultimately killed in Guatemala.²⁶⁴ Seven years after the onset of the femicide, a range of serious failings and shortcomings still exists. Investigations into missing-persons reports are delayed, crime scenes are not preserved and often are contaminated, evidence is rarely collected, and forensic tests are not performed.

While the Guatemalan government has pledged its commitment to confronting the crisis, it has not devoted the necessary resources to existing law enforcement and investigative institutions, nor has it been willing to take a closer look at its systematic failure to protect the women of Guatemala.²⁶⁵ Instead, authorities place blame on the victim, dismissing the severity of the ongoing murders.

A failure to prosecute those responsible for the brutal killings sends a message to perpetrators that they can get away with murder. “There is a common denominator to all the murders: impunity,”²⁶⁶ and as long as the authorities fail to investigate and imprison the guilty, women will continue to die because of a country’s blatant indifference.

261. PATRICIA DAVIS & CARRIE STENGEL, GUATEMALAN HUMAN RIGHTS COMMISSION/USA, VIOLENCE AGAINST WOMEN UNCHECKED IN GUATEMALA (2006), available at http://friendsoflatinamerica.typepad.com/hocofola/2006/03/violence_agains.html#more.

262. Alianza Report, *supra* note 16, at 9.

263. Amnesty Update 2006, *supra* note 5, at 7 (quoting the U.N. High Commissioner for Human Rights following her visit to Guatemala on May 27, 2006).

264. *Id.*

265. CGRS UPDATE, *supra* note 18, at 2.

266. Lakshmanan, *supra* note 1, at 2.

