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ABOUT THE CENTER FOR GENDER & REFUGEE STUDIES

The Center for Gender & Refugee Studies (CGRS) works to advance women's human rights by focusing on gender-based asylum and broader migration policies, both in the U.S. and internationally. Established in 1999 and housed at the University of California, Hastings College of the Law, CGRS serves as a national center for attorneys and other advocates representing asylum seekers fleeing gender-related harm; CGRS aims to positively impact the outcome of individual cases as well as the development of national law and policy that protects women refugees. CGRS engages in collaborative advocacy and public education efforts regarding gender-based asylum issues as well as the root causes that force women to flee and seek protection in the U.S. and elsewhere.

In November 2005, CGRS issued a report entitled *Getting Away With Murder: Guatemala's Failure to Protect Women and Rodi Alvarado's Quest for Safety*. This report explored the root causes why Guatemalan women are forced to seek asylum in order to escape violence in their home country. By publishing this update to the 2005 report, CGRS seeks to highlight the steps that remain to be taken in order for Guatemalan women to obtain the justice and security that they deserve.

To learn more about CGRS's work, including current information about our CAMPAIGN TO HELP END VIOLENCE AGAINST WOMEN IN GUATEMALA, please visit our website: <http://cgrs.uchastings.edu>.

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Guatemala's Femicides and the Ongoing Struggle for Women's Human Rights: Update to CGRS's 2005 Report *Getting Away With Murder* September 2006

Executive Summary

In November 2005, the Center for Gender & Refugee Studies (CGRS) issued a report entitled *Getting Away With Murder: Guatemala's Failure to Protect Women and Rodi Alvarado's Quest for Safety*. This report explored the root causes why Guatemalan women – like Rodi Alvarado – are forced to seek asylum in order to escape violence in their home country. We reported that not only is there systemic tolerance of domestic violence in Guatemala, but an alarming increase in the rate of “femicides” or gender-motivated killings that are carried out with extreme brutality. By publishing this update to the 2005 report, CGRS seeks to highlight the steps that remain to be taken in order for Guatemalan women to obtain the justice and security that they deserve.

In its initial report, CGRS called on the U.S. government to raise concerns about the murders with high-level Guatemalan officials, and to advocate for specific improvements in Guatemala's investigatory and prosecutory procedures. CGRS also urged that the U.S. provide assistance in resolving these crimes, as well as take steps to make economic aid to Guatemala contingent upon favorable progress towards addressing this dire situation. Since the release of *Getting Away With Murder* in 2005, Guatemala's femicides have received heightened attention worldwide, and yet the Guatemalan state has still failed to confront the depth and seriousness of the human rights crisis for women in that country.

The persistent threat to Guatemalan women's lives is amply reflected in the rising numbers of their deaths. In 2005, CGRS reported a striking increase in the number of women killed between 2002 and 2004, and our current update reveals that the numbers show no sign of decreasing. Groups tracking these murders report that more than 1,000 Guatemalan women were killed between the beginning of 2005 and June 2006. The gender-

based nature of these killings has also been noted with concern by the United Nations Committee on the Elimination of Discrimination Against Women.

While the Guatemalan government has pledged its commitment to confronting the crisis, it has not devoted 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 Guatemalan women. Statistics reveal that so few convictions have been handed down that there is almost complete impunity for those who murder women in Guatemala. Recent reports have documented the continuing failure of investigators to collect and protect essential evidence from crime scenes; because crime scenes are mishandled from the beginning, even those cases that make it to a prosecutor's desk have little chance of resulting in a conviction due to a lack of evidence

Furthermore, despite repeated recommendations by organizations such as Amnesty International to create a central, unified database of femicide victims, as well as an urgent search mechanism for missing girls and women, none has been created. At the same time, key Guatemalan officials have continued to blame the victims for bringing this violence upon themselves, and family members of murdered women report that these attitudes often translate into hostility towards them when seeking government intervention and investigation. Blaming the skyrocketing numbers of murdered Guatemalan women on the victims, and implying that their murders are the result of their involvement with gang or other illegal activity, is a clear indication of a lack of commitment to locating and bringing the perpetrators to justice.

Guatemala's violent past provides some context for the current wave of femicides sweeping the country, and the virtual impunity that exists for its perpetrators. From 1960 to 1996, Guatemala suffered an armed conflict in which at least 200,000 people were "disappeared" or killed, and over a million Guatemalans were forcibly displaced. The conflict was marked by pervasive state-sponsored violence, which included the annihilation of over 400 indigenous villages in Guatemala's highlands, and the widespread use of barbaric forms of torture. Women were particularly vulnerable to sexual violence, as rape was commonly utilized as a weapon of war. Numerous investigations have concluded that the vast majority of these human rights violations were conducted by members of the Guatemalan intelligence services, many of whom escaped prosecution and now participate in

police activities or are members of private security forces, which have been implicated in the femicides.

The violence of the war, combined with a culture that accepts gender violence, has placed Guatemalan women in an extremely vulnerable situation. Guatemala's legal system is rife with provisions that minimize the seriousness of violence against women. As reported in *Getting Away with Murder*, one-third of all murders of women are believed to be the consequence of domestic violence, yet the Guatemalan Penal Code continues to treat domestic violence as a minor offense. These laws serve as an impediment to Guatemalan women seeking justice and protection from gender-based violence, both in their homes and in their communities.

In 2005, Guatemala appointed its first female Supreme Court President, Beatriz De León, and more recently, there have been some nascent efforts to address the femicide crisis. However, the measures that have been undertaken are grossly inadequate to end the nightmare of violence with impunity for Guatemalan women. Until the Guatemalan government makes more significant efforts towards implementing the recommendations outlined in *Getting Away with Murder*, as well as in Amnesty International's 2005 and 2006 reports, the lives of Guatemala's women will continue to hang in the balance.

Introduction

After suffering ten years of extreme violence at the hands of her husband, Rodi Alvarado fled her native Guatemalan home and sought refuge in the United States (U.S.). Despite the uncontested brutality of the abuse she suffered, and the refusal of Guatemalan authorities to intervene, her request for asylum has sparked intense controversy.¹ Many opponents fear that granting asylum to victims of domestic violence would “open the floodgates,” allowing unmanageable numbers of women into the U.S.² Statistics and historical data demonstrate that this fear is unfounded. However, even if it had a basis, the more sensible and humane response – instead of denying protection in worthy cases – would be to address the conditions which force women like Rodi Alvarado to flee their homelands in the first place.

Towards this end, in 2005, CGRS issued a report that examined the root causes for claims such as Rodi Alvarado’s. The Report, *Getting Away With Murder: Guatemala’s Failure to Protect Women and Rodi Alvarado’s Quest for Safety* (hereinafter “*Getting Away With Murder*”), revealed not only systemic tolerance of domestic violence in Guatemala, but an alarming increase in the rate of “femicides,”³ the brutal killings of women with virtual impunity. At the same time, the report detailed the extensive economic assistance provided by the U.S.

¹ Ms. Alvarado’s claim has yet to be resolved, although it has been pending for more than a decade. She was originally granted asylum by an immigration judge in 1996. The government appealed that grant to the Board of Immigration Appeals (BIA), which reversed it. Towards the end of the Clinton Administration, Attorney General Janet Reno vacated the reversal, and the Department of Justice issued proposed regulations which would address claims based on domestic violence. Attorney General Reno, and her successor, Attorney General Ashcroft, both directed the BIA to decide Ms. Alvarado’s case once the regulations were finalized. Although the regulations were proposed in 2000, they have yet to be issued as final, and therefore, Ms. Alvarado’s claim for asylum remains in limbo. For more information on Ms. Alvarado’s case, see <http://cgrs.uchastings.edu/campaigns/alvarado.php>.

² See Center for Gender and Refugee Studies, *Getting Away With Murder: Guatemala’s Failure to Protect Women and Rodi Alvarado’s Quest for Safety*, at 20 n.9 (November 2005), available at http://cgrs.uchastings.edu/documents/cgrs_guatemala_femicides.pdfhttp://cgrs.uchastings.edu/documents/cgrs/cgrs_guatemala_femicides.pdf.

³ The term “femicide” is used to describe these killings because it captures the gender-specific nature of the crimes, which often involve rape and other forms of sexual assault, as well as torture and mutilation of women’s bodies.

government to Guatemala.⁴ In recent years, the U.S. has invested millions of dollars to strengthen democratic institutions in Guatemala through initiatives such as the “Rule of Law” economic assistance program, the U.S. Agency for International Development (USAID) Office of Women in Development, and the International Criminal Investigative Training Assistance Program. Considering this extensive investment, the U.S. has an obligation to ensure that its programs result in effective protection for Guatemalan women and girls, as well as society at large. In *Getting Away With Murder*, CGRS outlined concrete steps which both governments could take to end the rising tide of violence against Guatemalan women.

In its report, CGRS called on the U.S. government to consistently raise concerns about the murders with high-level Guatemalan officials, to call for specific improvements in Guatemala’s investigatory and prosecutory procedures, to provide assistance towards resolving the crimes, and to be prepared to make some forms of economic assistance contingent on a showing of progress. Furthermore, in light of the Guatemalan government’s well-documented failure to comply with its obligations⁵ to prevent and to punish violence against women, CGRS called on it to publicly condemn the abduction and killing of girls and women; to establish concrete guidelines and procedures for investigating crimes of violence against women; to bring its legislation in line with international standards on violence against women; to establish a central, unified database of missing persons as well as a forensics lab; to train judges and prosecutors in matters related to violence against women; to end the general climate of impunity that persists for human rights abuses by the

⁴ While current programs are aimed at positive advancements of social equality, democracy, and the rule of law, U.S. economic assistance in Guatemala has a dark history. It is well-documented that U.S. assistance was used from the time of the U.S.-backed coup in 1954 and throughout Guatemala’s 36-year internal armed conflict to support state-sponsored violence. To this end, President Clinton made a public apology during a 1999 visit to Guatemala: “For the United States it is important that I state clearly that support for military forces and intelligence units which engaged in violence and widespread repression was wrong, and the United States must not repeat that mistake.” See STEPHEN SCHLESIGNER AND STEPHEN KINZER, *BITTER FRUIT: THE STORY OF THE AMERICAN COUP IN GUATEMALA*, Expanded Version (Harvard University Press 1999) (1982) at 265. As reported in *Getting Away with Murder*, a generation of men was indoctrinated in the use of sexual violence as a weapon during the armed conflict. Therefore, the obligation to ensure that U.S. programs result in protection and justice for Guatemalan women is particularly strong in light of its direct contribution to Guatemala’s legacy of violence.

⁵ Guatemala has expressed its commitment to the protection of women’s rights through the ratification and passage of such instruments as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol, as well as the Inter-American Convention to Prevent, Sanction, and Eradicate Violence Against Women. Domestically, the 1996 Peace Accords included provisions for the protection of women’s rights, and Article 4 of the Guatemalan Constitution guarantees equal rights for men and women. See *Getting Away with Murder*, *supra* note 2 at 13.

military and security forces during the internal conflict; and to invite the U.N. Special Rapporteur on Violence against Women and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings for a joint visit to Guatemala. CGRS also stressed that the government should implement all of the recommendations made by Amnesty International in its 2005 report, *No Protection: No Justice: Killings of women in Guatemala*.⁶ Since the release of *Getting Away With Murder* in 2005, the crisis of Guatemala's femicides has received heightened attention worldwide. In March 2006, delegates from countries across Latin America met in Washington, D.C., for a special hearing on femicides at the Inter-American Commission on Human Rights.⁷ In April 2006, the International Federation of Human Rights (Federación Internacional de Derechos Humanos, FIDH) released the results of a two-month fact-finding delegation to Guatemala and Mexico, evaluating the femicide crisis in those countries.⁸ In May 2006, the BBC aired *Killer's Paradise*, a documentary that provides an unflinching examination of the Guatemalan femicides, and illustrates the existence of impunity for these crimes by tracking the unsuccessful efforts of several families to obtain justice after their loved ones were brutally murdered.⁹ In the U.S., Congressional

⁶ In broad terms, Amnesty International called on the Guatemalan government to end impunity for all those responsible for violence against women, to ensure that the nature and dimension of gender-related violence is reflected in official statistics and records, to increase resources for the prosecution of these crimes, and to conduct education and advertising campaigns to combat violence against women. See Amnesty International, *No Protection: No Justice: Killings of women in Guatemala* (June 2005) available at <http://web.amnesty.org/library/Index/ENGAMR340172005?open&of=ENG-GTM> (hereinafter "Amnesty Report 2005").

⁷ Unfortunately, the phenomenon of "femicide" is not limited to Guatemala. The problem first gained international attention when it was revealed that hundreds of women were being killed with impunity in Ciudad Juarez, Mexico. Guatemalan advocates subsequently drew attention to the alarming rise of gender-based killings in their country. The conditions that seem to be giving rise to femicide, such as a legacy of military violence, a history of impunity, and systemic discrimination against women, are shared by countries throughout the Americas. Delegates drew attention to the rise of femicides in countries such as Colombia, Peru, Bolivia, and Argentina while in Washington, D.C. See Kent Paterson, *Americas Program Report: Femicide on the Rise in Latin America*, IRC AMERICAS, March 8, 2006, available at <http://americas.irc-online.org/am/3142>.

⁸ International Federation of Human Rights (Federación Internacional de Derechos Humanos, FIDH), *International Mission of Investigation Report: Femicide in Mexico and Guatemala (Informe: Misión Internacional de Investigación: El Femicidio en México y Guatemala)*, no. 446/3 April 2006, available at http://www.fidh.org/article.php?id_article=3262 (hereinafter "FIDH Report") (excerpts translated from the original by CGRS). The delegation responsible for the FIDH Report consisted of members of FIDH's newly-created Action Group for Women's Rights, which traveled to Guatemala and Mexico in September and October of 2005. Headed by Shirin Ebadi, the 2003 recipient of the Nobel Peace Prize, the Action Group for Women's Rights works towards the practical implementation of CEDAW. See <http://www.fidh.org> for more information.

⁹ *BBC This World: Killer's Paradise* (BBC television broadcast May 4, 2006). *Killer's Paradise* was produced and directed by Giselle Portenier with BBC reporter Olenka Frenkiel.

Representatives Barbara Lee, Tom Lantos, and Hilda Solis co-sponsored a bipartisan letter in which they – and 112 other members of Congress – requested that the U.S. State Department urge and assist the Guatemalan government to effectively address and eradicate femicides.¹⁰ Unable to obtain justice from the Guatemalan courts, families – with the assistance of the Center for Justice and International Law (CEJIL) – have filed a petition with the Inter-American Commission of Human Rights (IACHR), alleging violations of the American Convention on Human Rights, a fundamental human rights treaty for the nations of the Americas. The IACHR only takes action on cases where there are no effective domestic remedies available; therefore, if the CEJIL complaint is deemed “admissible,” it would mean that the families have made an initial showing that there is no justice for victims of femicide in Guatemala.¹¹

Notwithstanding growing international attention, the Guatemalan state has failed to confront the depth and seriousness of the crisis. Recent pledges to address the ongoing brutal murders of women, including public statements by Guatemalan President Óscar Berger, Supreme Court President Beatriz De León, and members of the Guatemalan Congress, have yet to be matched with efficient investigations and successful prosecutions of those responsible for the killings. While the past year has seen some positive advances for women, including the appointment of Ms. De León as the first female president of the Supreme Court, there has been no reduction in the killings of women or the state of insecurity in which Guatemalan women and girls are forced to live. The failure of the Guatemalan state to prevent, investigate, or prosecute the murders of women, as well as a history of impunity, and a reluctance to adopt legislative reforms has left Guatemalan women in as much peril as ever before. By publishing this update to its 2005 report, *Getting Away With Murder*, CGRS seeks to highlight the steps that remain to be taken in order for Guatemalan women to obtain the justice and security that they deserve.

¹⁰ Specifically, the letter suggested that the U.S. government provide technical assistance to improve homicide investigations, support the implementation of Guatemala’s National Plan for the Prevention and Eradication of Domestic and Interfamilial Violence (*Plan Nacional para la Prevención y Erradicación de la Violencia Intrafamiliar y Contra las Mujeres*, PLANNOVI), reinforce existing forensic teams and provide other investigative tools, provide assistance to harmonize data collection on crimes against women and human rights defenders, and increase support for victim’s rights advocates.

¹¹ The IACHR has not yet determined the admissibility of the case. If the petition is admissible, the IACHR then proceeds to investigate the case, through correspondence with the parties, in-country investigations or hearings.

The Deaths: The Crisis Continues for Guatemalan Women

The persistent threat to Guatemalan women's lives is amply reflected in the rising numbers of their deaths. As noted in previous reports by Amnesty International, as well as in *Getting Away with Murder*, a significant and fundamental problem is that there is no standard system for collecting data on violence against women in Guatemala. Furthermore, many crimes go unreported, either because the victims feel that nothing would come of it, or because they fear reprisal. This brings into question the reliability of data regarding the number of women killed and the manner in which they died.¹² But despite any discrepancies in statistics, it is clear that the rate at which women are killed continues to rise. In *Getting Away with Murder*, CGRS reported a striking increase in the number of women killed between 2002 and 2004,¹³ and the numbers show no sign of decreasing. According to the Center for Informative Reports on Guatemala (Centro de reportes informativos sobre Guatemala, CERIGUA), 665 women were murdered in 2005.¹⁴ By May of 2006, the National Civil Police (Policía Nacional Civil, PNC) reported that 230 women had been killed, whereas the

¹² Data is collected by various governmental entities in Guatemala, including the morgues, the National Civil Police (Policía Nacional Civil, PNC), the National Institute of Statistics (Instituto Nacional de Estadística, INE) and the Public Ministry. According to FIDH, most organizations rely on the records kept by the PNC because the morgues use outdated medical technology and lack standards for recording information. But PNC statistics are believed to fall short of actual numbers as well. FIDH reported that official statistics were low because many crimes never came to the attention of the police – either because those victimized didn't see that anything would come of it, or because they feared reprisal. In secluded regions or in indigenous communities, many women killed in acts of domestic violence are buried without their deaths being reported, and others that were reported are falsely characterized as the consequence of an accident. Of those cases that do reach the police, the current system of classification minimizes the deaths of women, such as by labeling them as “crimes of passion” if the killer was a spouse or boyfriend. For this reason, women's and human rights groups seek other means to monitor the deaths, including tracking reports in Guatemalan newspapers. See FIDH report, *supra* note 8, at 30-31.

¹³ *Getting Away with Murder*, *supra* note 2 at 4. In 2002, 317 women were murdered, while in 2004, the number rose to 527.

¹⁴ Center for Informative Reports on Guatemala (Centro de reportes informativos sobre Guatemala, CERIGUA), *SEPREM Presents Commission that will Eradicate Femicide in Guatemala (Seprem presentó comisión que abordará el femicidio en Guatemala)* (March 9, 2006) at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=3591&mode=thread&order=0&thold=0>. See also Olenka Frenkiel, *Murder Mystery In Guatemala*, BBC THIS WORLD (May 3, 2006) at http://news.bbc.co.uk/2/hi/programmes/this_world/4965786.stm. See also Indira A. R. Lakshmanan, *Unsolved Killings Terrorize Women in Guatemala*, BOSTON GLOBE (March 30, 2006).

Mutual Support Group (Grupo de Apoyo Mutuo, GAM) reported up to 290 deaths.¹⁵ In June of 2006, CERIGUA reported 362 killings of women in Guatemala.¹⁶

As mentioned above, the term femicide is used to refer to gender-motivated killings, carried out with extreme brutality. While violence against both men and women has increased in Guatemala in the past year, the murders of women are distinct both for their misogynistic nature, as well as the disproportionate rate at which they are increasing. According to a recent investigation by the Human Rights Institute of the University of San Carlos of Guatemala (Instituto de Derechos Humanos de la Universidad de San Carlos de Guatemala, IDHUSAC), the number of women killed rose 56% between 2002 and 2004, 20% more than the increase in the number of men killed during the same period.¹⁷ While most of the murdered men were killed “with no intimate physical contact between the victim and the perpetrator,” the majority of murders of women were marked by rape, torture, and mutilation.¹⁸ According to Angélica González of Guatemala’s Network to Oppose Violence Against Women, “sexual aggression, the mutilation of body parts like breasts, torture, and the dumping of victims in empty lots are trademarks of the killings.”¹⁹

The gender-based nature of these killings has also been noted with concern by the United Nations Committee on the Elimination of Discrimination Against Women (hereinafter “U.N. Committee on CEDAW”). The Committee, composed of an international panel of experts, monitors country compliance with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).²⁰ Following the

¹⁵ Guatemalan Human Rights Commission, *Guatemalan Human Rights UPDATE*, Volume 18, No. 9 (May 16- May 31, 2006) (hereinafter “May 2006 GHRC Update”).

¹⁶ CERIGUA, *Femicide, Principal Violation of the Human Rights of Guatemalan Women (Femicidio, violación principal a los derechos humanos de las guatemaltecas)* (June 27, 2006) at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=5053&mode=thead&order=0&thold=0>.

¹⁷ Id.

¹⁸ Amnesty International, *Guatemala: No Protection, No Justice: Killings of Women (an update)* (July 2006) (hereinafter “Amnesty Update 2006”) at 3-4 available at <http://www.amnestyusa.org/news/document.do?id=ENGAMR340192006>. See also United States Department of State, *Guatemala: Country Reports on Human Rights Practices, 2005* (Released March 2006) available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61729.htm> (hereinafter “State Department Report 2005”).

¹⁹ Paterson, *supra* note 7.

²⁰ Guatemala ratified CEDAW in 1982.

submission of Guatemala's Sixth Periodic report to this body, and a subsequent hearing in which Guatemalan delegates responded to questions by its members, the Committee concluded that gender-based murders of women remained a grave concern in 2006. The Committee's Concluding Comments of June 2006 emphasized that:

The Committee is deeply concerned about the continuing and increasing cases of disappearances, rape, torture and murders of women, the engrained culture of impunity for such crimes, and the gender-based nature of the crimes committed, which constitute grave and systematic violations of women's human rights. It is concerned about the insufficient efforts to conduct thorough investigations, the absence of protection measures for witnesses, victims and victim's families and the lack of information and data regarding the cases, the causes of violence and the profiles of the victims.²¹

In light of these recent reports and the increasing numbers of murders, it is clear that the danger for Guatemalan women has continued unabated.

Investigations Remain Inadequate and Prosecutions Rare

While the reduction of violence against women in Guatemala will require long-term efforts to promote the social and political inclusion of women in that society, the current wave of brutality requires the immediate end of impunity for its perpetrators. Experts and advocates have remained consistent in making one concrete demand: *investigate and prosecute the crimes*. Recently, the government announced its newly-created National Commission to Address Femicide (Comisión Nacional para el Abordaje del Femicidio) (hereinafter "Commission on Femicide").²² Maria Gabriela Nuñez, Minister of the Presidential

²¹ U.N. Committee on the Elimination of Discrimination Against Women, *Concluding comments of the Committee on the Elimination of Discrimination Against Women: Guatemala*, ¶ 23, U.N. Doc. /C/GUA/CO/6 (June 2, 2006) (Hereinafter "CEDAW 2006 Concluding Comments").

²² In November 2005, the government announced its intention to create a national commission on femicides. The National Commission to Address Femicide was introduced in March of 2006. See CERIGUA, *Government Creates Commission to Address Femicide (Gobierno crea comisión para abordar el femicidio)* (December 20, 2005) at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=2625&mode=thread&order=0&thold=0>, See also CERIGUA, *SEPREM Presents Commission that Will Eradicate Femicide in Guatemala (Seprem Presentó Comisión que abordará el femicidio en Guatemala)* (March 9, 2006) at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=3591&mode=thread&order=0&thold=0>.

Secretariat for Women (La Secretaría Presidencial de la Mujer, SEPREM), stated that the Commission on Femicide's mission is to develop strategies for the government to address the crisis.²³ But while the government has pledged its commitment to this issue, it has devoted scant resources to existing law enforcement and investigative institutions, and has failed to effectively address their systemic failures.²⁴ As noted by Amnesty International, "while the creation of the Commission [on Femicide] needs to be viewed positively, it is unclear how another institutional structure will improve the government response and overcome issues of duplication and official incompetence."²⁵

The failure of the Guatemalan government to seriously investigate the murders of women is clearly demonstrated by the lack of successful prosecutions. Addressing the U.N. Committee on CEDAW in May of 2006, one member of the Guatemalan delegation reported that only fourteen men had been tried and imprisoned in 2006 for the killing of women.²⁶ While she stated that these men had been prosecuted in 2006, the files of the public prosecutor reveal only fourteen successful prosecutions *in total* for the over 1,500 women slain between 2003 and early 2006.²⁷ Guatemala's Network to Oppose Violence Against Women (Red de la No Violencia Contra Las Mujeres) has documented only fifteen sentences handed down for the more than 2,000 femicides in Guatemala during the last six years.²⁸ According to Amnesty International, in 2005, only two of the 665 killings of women

²³ Id.

²⁴ Governmental institutions working towards social inclusion and equality for women include the Presidential Secretariat for Women, the National Office for Women's Affairs, the Indigenous Women's Defense Unit, and the First Lady's Social Work Secretariat. The Guatemalan government has also adopted such strategic plans as the National Policy for the Advancement and Development of Guatemalan Women: Equal Opportunity Plan 2001-2006, and a National Plan for the Prevention and Eradication of Domestic Violence. These institutions, however, were in place at the time of CGRS's initial report, and continue to receive inadequate support. To this end, the U.N. Committee on CEDAW expressed concern that "the national machinery [for the advancement of women] does not have enough human financial resources to carry out its mandate and promote the advancement of women at the national and local levels." CEDAW 2006 Concluding Comments, *supra* note 21 at ¶ 17.

²⁵ Amnesty Update 2006, *supra* note 18 at 12.

²⁶ Press Release, General Assembly, Guatemala's Many Laws, Programs Need to Be Harmonized to Effectively Address Violence, Trafficking, Women's Anti-Discrimination Committee Told, U.N. Doc. WOM/1559 (May 18, 2006) (*hereinafter* "General Assembly Press Release").

²⁷ Lakshmanan, *supra* note 14.

²⁸ Paterson, *supra* note 7.

resulted in convictions, and no arrests were made in 97% of the cases.²⁹ Even accounting for differences in statistics, these numbers reveal almost complete impunity for those who murder women in Guatemala.

Behind these low numbers are inadequate resources and incompetent investigations. As reported in *Getting Away with Murder*, the Public Ministry is not equipped to handle the soaring numbers of violent deaths. But lack of adequate staffing is not the only impediment to prosecution. Recent reports have reiterated the consistent failure of investigators to collect and protect essential evidence from crime scenes. A Guatemalan delegate addressing the U.N. Committee on CEDAW in May of 2006 “admitted that problems did exist in collecting evidence that could be used in court.”³⁰ The clothes of victims – often stained with blood or semen, or containing other evidence – are routinely returned to the families or buried with the victims without safeguarding crucial evidence.³¹ Delays and mishandling have undermined the value of otherwise critical evidence.³² As recently as March of 2006, Renato Durán, from the office of the special homicide prosecutor, said that prosecutors have no material evidence in 95% of cases, due to poor police work and a lack of forensic evidence.³³ Because crime scenes are mishandled from the beginning, even those cases that make it to a prosecutor’s desk have little chance of resulting in a conviction due to a lack of evidence.

Despite suggestions by organizations such as Amnesty International, no concrete guidelines have been established for the investigation and prosecution of femicides.³⁴ Such guidelines, accompanied by official oversight and sanctions for failure to comply, are

²⁹ Some reports claim that none of the 665 killings occurring in 2005 had been solved. See Frenkiel, *supra* note 13. However, Amnesty International reported that the 2005 murders of María A. López Camas, Suly Niseyda Leonardo and Maria C. Menchu Taca had resulted in two convictions. See Amnesty Update 2006, *supra* note 18 at 4 n.18.

³⁰ General Assembly Press Release, *supra* note 26.

³¹ In *Killer’s Paradise*, Jairo González, was filmed as he returned home after a period of hiding following his daughter’s murder. He was horrified to find that evidence from the prosecutor’s office had been dumped at his house. Holding up his daughter’s underwear, which was visibly stained with blood, he stated that “it makes me so sad that the clothes of my girl are here,” when they should be held as part of an investigation. *Killer’s Paradise*, *supra* note 9.

³² Amnesty Update 2006, *supra* note 18 at 6.

³³ Lakshmanan *supra* note 14.

³⁴ Interview with Hilda Morales Trujillo, Red de la No Violencia Contra Las Mujeres (July 2006) (*hereinafter* “Morales Interview”).

essential in response to the wholly incompetent manner in which investigations are presently conducted. While one Guatemalan delegate to CEDAW stated that the prosecutor's office and police were currently working to ensure that statistical registers are "harmonized," there is still no central, unified database of murdered or missing women.³⁵ Even in cases in which abductions are witnessed and immediately reported, family members have been unable to convince investigators to take immediate action to find and protect their daughters, sisters, and other female relatives. Consequently, women who are reported as having been abducted are often found dead before the police take any action whatsoever. Despite the repeated recommendations by organizations such as Amnesty International to implement an urgent search mechanism for missing girls and women, none has been created.³⁶

Attitudes Towards Victims and Family Members Indicate a Lack of Will on the Part of Investigators

Underlying the poor investigations of Guatemala's femicides is more than a lack of resources, but a lack of will on the part of investigators. The persistent practice of blaming the victim, and the reported hostility towards family members, are further indications of a lack of commitment to locating and bringing the perpetrators to justice.³⁷ Investigators remain quick to look for signs that a victim is a prostitute or a "nobody"³⁸ in order to legitimate a lack of due diligence in such investigations. Victims's families and their advocates continue to be rebuffed by investigators.³⁹ The U.N. Committee Against Torture recently expressed concern over the lack of investigations of Guatemala's femicides, stating

³⁵Id. See also Amnesty Update 2006, *supra* note 18.

³⁶ Id.

³⁷ Morales Interview, *supra* note 34.

³⁸ The term used in Spanish is "una cualquiera," which is literally translated as "a nobody." However, "una cualquiera" also has a sexual connotation when used in reference to women who are deemed to have loose morals; this term would have the English equivalent of "slut" or "tramp." In the case of Claudia Velasquez, murdered in August of 2005, authorities told the family that they had been reluctant to investigate because her belly ring and sandals indicated that she was "una cualquiera." In the case of an unknown woman, found naked in a river bed, authorities immediately categorized the victim as "una cualquiera" or even a prostitute because she was found wearing red nail polish. See *Killer's Paradise*, *supra* note 9.

³⁹ Lakshmanan, *supra*, note 14.

that “the fact that these acts aren’t investigated exacerbates the suffering of the families that call for justice; furthermore, the families complain that the authorities commit gender discrimination during the investigation and judicial process.”⁴⁰ Families are discouraged from pressing charges with such comments as “if she is already dead, what are you looking for?”⁴¹ Those that demand justice suffer threats and harassment, and many fear for their lives.⁴² As recently acknowledged by a Guatemalan delegate to CEDAW, the protection for witnesses and families of victims is a “significant weakness” in the Guatemalan legal system.⁴³

This mentality – of blaming the victims and assuming that they are prostitutes or affiliated with gang or drug-trafficking activity – is well-illustrated in *Killer’s Paradise*. For example, in one scene, the BBC film crew spoke with Joaquin Calo, Acting Chief of the Women’s Homicide Squad, after American concert pianist Dorothy Ascody was bludgeoned to death with a pickax in late 2005. Rather than search for the car that was stolen during the murder, Officer Calo explained that they were looking into possible links between Ms. Ascody and narco-traffickers, and had inquired into her record on tax payments. There is no indication that there was any reason to have linked Ms. Ascody to criminal activity of any kind. To date, the case remains unsolved.⁴⁴

The practice of blaming the victim for her own death is not limited to individual investigators. As recently as 2004, President Óscar Berger stated that “in the majority of cases, women had links with juvenile gangs and organized crime.”⁴⁵ While in recent public

⁴⁰ U.N. Committee Against Torture, *Evaluation of the Report Presented by States Party to Article 19 of the Convention (Exámen de los Informes Presentados Por Los Estados Partes en Virtud del Artículo 19 de la Convención) Guatemala*, ¶ 16. U.N. Doc. CAT/C/GTM/CO/4 (May 18, 2006) (hereinafter “CAT Report 2006”) (translated from the original by CGRS), available at <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/f582cedbe183258dc12571b9004fd4de?OpenDocument&Highlight=0,CAT%2FC%2FGTM%2FCO%2F4>.

⁴¹ FIDH Report, *supra* note 8 at 36.

⁴² For instance, the family of Jairo González, featured in *Killer’s Paradise*, was forced to go into hiding after demanding justice for their murdered loved one. Giselle Portenier, the Producer and Director of *Killer’s Paradise*, reports that they continue to live in fear for their lives. According to Angélica González of Guatemala’s Network to Oppose Violence Against Women, investigators “frequently focus their probes on family members of victims rather than examining the bigger picture.” Paterson, *supra* note 7. See also Amnesty Update 2006, *supra* note 18 at 10-11.

⁴³ General Assembly Press Release, *supra* note 26.

⁴⁴ Interview with Giselle Portenier (July 2006).

⁴⁵ Lakshmanan, *supra* note 14.

statements President Berger has indicated that femicides are the product of societal inequalities and discrimination, it is unclear whether he has truly receded from his original position.⁴⁶ Government condemnation of the killing of women and girls, as demonstrated by President Berger's March 8, 2006 statement, must be accompanied by forceful denunciation of any theory which serves to blame the victim. According to advocates, however, government officials continue to publicly allege a connection between women and organized crime or gangs.⁴⁷

As depicted in *Killer's Paradise*, foreign governments have invested in training and have donated forensic equipment to Guatemalan investigators. According to the U.S. State Department, the U.S. has donated such training and equipment, including DNA testing kits, for a new forensic evidence laboratory.⁴⁸ But even with this type of investment, investigations will not improve as long as investigators continue to place low priority on these crimes.⁴⁹ In light of the overwhelming indifference on the part of Guatemalan authorities, the government should invest in the training of investigators, prosecutors, and judges regarding gender-based crimes. The U.N. Special Rapporteur on Violence against Women, Yakin Erturk, recommended that the Guatemalan government "promote training, operational and awareness-raising programmes."⁵⁰ Likewise, Amnesty International recommended that investigators be "provided with the necessary gender training, resources

⁴⁶ CERIGUA, *President Óscar Berger accepts that there is femicide in Guatemala (Presidente Óscar Berger acepta que hay femicidio en Guatemala)* (March 9, 2006), available at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=3596&mode=thread&order=0&thold=0>.

⁴⁷ Morales Interview, *supra* note 34.

⁴⁸ Letter from Jeffrey T. Bergner, Assistant Secretary of Legislative Affairs, U.S. Department of State, Washington D.C. 20520 U.S.A. to the Honorable Barbara Lee, House of Representatives, U.S. Congress, June 1, 2006 (*hereinafter* "State Department Letter").

⁴⁹ *Killer's Paradise* graphically illustrates this problem. In one scene, the film documents the training of investigators in how to safeguard a crime scene and how to collect and protect forensic evidence. The next scene, shot in the same district, depicts investigators arriving at a crime scene where a murdered woman had been found. They arrived after firefighters and the media had already been in the area of the body, and took no measures to safeguard the crime scene. *See supra*, note 38.

⁵⁰ U.N. Economic and Social Council, Commission on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Addendum, Mission to Guatemala*, para. UN. Doc. E/CN.4/2005/72/Add.3 (February 10, 2005) (prepared by Yakin Erturk) (*hereinafter* "Report of the Special Rapporteur").

and technical assistance to fulfill their duties”⁵¹ Stressing its concern with inadequate protection and investigations surrounding the killing of women, as well as the prevalence of domestic violence, the U.N. Committee on CEDAW recommended “gender sensitivity training on violence against women for public officials, particularly law enforcement personnel, the judiciary, teaching personnel and health service providers, so as to ensure that they are sensitized to all forms of violence against women and can adequately respond to it.”⁵²

Since Supreme Court President Beatriz De León was appointed in 2005, there have been attempts to provide training within the judiciary. In response to questions from the U.N. Committee on CEDAW, one Guatemalan delegate stated that “since a woman had assumed the presidency of the Supreme Court, there had been a big effort to train judges on women’s rights,” but also noted that while “training had been conducted with judges and law enforcement officials ... more needed to be done.”⁵³ According to Guatemalan human rights advocate Hilda Morales Trujillo, thirteen such courses have taken place throughout the country, in which some members of the Public Ministry, the PNC, and the Institute of Public Defense participated. But as Ms. Morales pointed out, “they lasted only two days, which is not sufficient for the sensitization to the topic of discrimination and violence against women that is so controversial in Guatemalan society.”⁵⁴ Currently, plans are being made for two courses that will last three months, enabling a more complete educative process.⁵⁵ It is imperative that the Guatemalan government put its full support behind these women’s rights trainings and implement a system by which to evaluate or assess their effectiveness, as well as work to ensure that officials at every level participate.

⁵¹ Amnesty Report 2005, *supra* note 6.

⁵² CEDAW 2006 Concluding Comments, *supra* note 21 at ¶ 23-26.

⁵³ General Assembly Press Release, *supra* note 26.

⁵⁴ Morales interview, *supra* note 34.

⁵⁵ *Id.*

Ending a Culture of Impunity

While the current killings of women are particularly shocking, with their torture, mutilation, and dismemberment, such brutality is not new to the Guatemalan people. Guatemalan society is still coming to terms with an atrocious legacy of state-sponsored violence. From 1960 to 1996, Guatemala suffered a 36-year-long armed conflict in which at least 200,000 people were killed. The conflict was marked by pervasive state-sponsored violence, including: physical, psychological, and sexual torture; disappearances; and massacres of indigenous communities in Guatemala's highlands.⁵⁶ During this period, sexual violence was utilized as a tool of warfare, with women suffering 99% of the sexual attacks.⁵⁷ Numerous investigations have concluded that the vast majority of these human rights violations were conducted by Guatemalan intelligence services.⁵⁸ But while the 1996 Peace Accords provided for the prosecution of war-time atrocities, the majority of offenders have escaped justice.⁵⁹

The U.N. High Commissioner for Human Rights recently stated that the lack of prosecutions of high-level officials has “encouraged the current crime wave sweeping Guatemala.”⁶⁰ In 2005, the Washington Office on Latin America (WOLA) noted that Óscar Berger's Administration had made headway in reducing the size of the military, but noted that significant steps remained to be taken.⁶¹ As recently as May 2006, the U.N. Committee Against Torture expressed concern about the military's participation in police activities, and the prevalence of social cleansing, murders of women, lynchings, and a lack of prosecutions

⁵⁶ The extent of state-sponsored violence has been well-documented. See generally JENNIFER SCHIRMER, *THE GUATEMALAN MILITARY PROJECT: A VIOLENCE CALLED DEMOCRACY* (University of Pennsylvania Press 1998), see also BITTER FRUIT, *supra* note 4.

⁵⁷ *Getting Away with Murder*, *supra* note 2 at 7.

⁵⁸ WOLA Guatemala Project Special Report, *A Long Road: Progress and Challenges in Guatemala's Intelligence Reform*, (October 2005) at 3, available at http://www.wola.org/publications/intelligence_brief_english_oct05.pdf (*hereinafter* “WOLA Intelligence Report 2006”).

⁵⁹ CAT Report 2006, *supra* note 40 at ¶ 15.

⁶⁰ May 2006 GHRC Update, *supra* note 15.

⁶¹ WOLA Intelligence Report 2006, *supra* note 58 at 1.

for war-time massacres.⁶² The Committee recommended that that the Guatemalan government should:

Strictly apply the laws of national reconciliation, which explicitly denied amnesty to the authors of acts of torture and other grave violations of human rights, guarantee the initiation of prompt, efficient, independent and rigorous investigations into acts of torture and other grave violations of human rights committed during the internal armed conflict, and anticipate adequate compensation for the victims.⁶³

Yet despite the many calls to end impunity, the Guatemalan Congress is currently considering a law that would give military courts jurisdiction for all crimes committed by current and former military personnel.⁶⁴ According to the International Commission of Jurists, the law would move Guatemala “back several decades in the struggle against impunity.”⁶⁵ Because impunity is the foundation for the current culture of violence in Guatemala, its Congress should forcefully reject this proposed legislation, and the government as a whole should take steps to ensure the prosecution of human rights abuses committed during the internal conflict.

The problem is more than merely symbolic, as recent reports have added to allegations that private security forces (which include many former military personnel, as well as governmental security forces) are implicated in the femicides. Without dismissing the role of gang violence, FIDH explained in its 2005 report that the killings of women could not be attributed to gang violence alone. The report emphasized allegations that clandestine security operations (CIACS),⁶⁶ private security officers, and the PNC were involved in the killing of women. As noted by FIDH, few of those officers trained in and responsible for state-sponsored violence were brought to justice after the 1996 Peace Accords, and many

⁶² CAT Report 2006, *supra* note 40 at ¶ 16-18.

⁶³ *Id.* at ¶ 15.

⁶⁴ May 2006 GHRC Update, *supra* note 15.

⁶⁵ *Id.*

⁶⁶ These clandestine groups are the remnants of illegal armed groups that operated in cooperation with the military intelligence apparatus during the internal armed conflict. By an agreement with the United Nations in December of 2003, the Guatemalan government sought to establish the Commission for the Investigation of Illegal Armed Groups and Clandestine Security Apparatuses (la Comisión de Investigación de Cuerpos Ilegales y de Aparatos Clandestinos, CICIACS). However, it encountered strong opposition. The Constitutional Court held provisions of the agreement to be unconstitutional, and its ratification was blocked in Congress. *See* WOLA Intelligence Report 2006, *supra* note 54 at 5. *See also* Report of the Special Rapporteur, *supra* note 50 at ¶ 10.

still serve within the government or in private security.⁶⁷ Such private security forces have a dominant presence in Guatemala. There are approximately 120,000 private police who are paid by the government, compared to 300,000 police officers in the PNC.⁶⁸ PNC officers, in turn, have also been implicated in the killings. The FIDH report notes that “the PNC finds itself seriously questioned because many of its members are the same as from the era of the war, who continue using methods and practices outside the law.”⁶⁹ Yakin Erturk, the U.N. Special Rapporteur on Violence against Women, reported that “the *modus operandi* [in the abduction and killing of women] is reminiscent of torture methods used in the counter-insurgency.”⁷⁰ Guatemalan Human Rights Ombudsmen Sergio Morales also commented on the *modus operandi* of the crimes, noting that it is not typical of gangs.⁷¹ Instead, he suggested that the careful planning of the crimes indicated the involvement of organized crime and narco-traffickers.⁷² Organized crime, in turn, has strong ties with various sectors of the government. For example, WOLA reported in October of 2005 that “clandestine groups have been able to maintain their structural relations with the State,” have “developed and strengthened their links to organized criminal networks,” and “operate with complete impunity.”⁷³

Despite the many indications that the femicides are the result of more than gang violence, Guatemalan authorities continue to make unfounded statements that place the responsibility there, and avoid implicating former or current security personnel. A Guatemalan delegate stated to the U.N. Committee on CEDAW in March 2006 that “a link had been made between those murders [of Guatemalan women] and juvenile criminals,” though she admitted that “further information was necessary before that link could be confirmed” and admitted to information gaps.⁷⁴ In actuality, inadequate investigations have

⁶⁷ FIDH report, *supra* note 8, at 32-33.

⁶⁸ *Id.* at 34.

⁶⁹ *Id.*

⁷⁰ Report of the Special Rapporteur, *supra* note 50 at ¶30.

⁷¹ FIDH report, *supra* note 8, at 34.

⁷² *Id.*

⁷³ See WOLA Intelligence Report 2006, *supra* note 58 at 5.

⁷⁴ General Assembly Press Release, *supra* note 26.

left the government with no concrete information on which to base such assertions. According to the Center for Informative Reports on Guatemala (Centro de reportes informativos sobre Guatemala), the government has failed to complete a full-scale investigation and therefore has no real knowledge of who is committing the crimes and why.⁷⁵ For its part, FIDH raised the concern that the disproportionate focus placed on gangs may “result from an intention to cover up the responsibility of those in power in these acts.”⁷⁶ Rather than continue to make unfounded assertions, the government should acknowledge the many and varied theories as to who might be behind the killings, and investigate the leads in each and every individual case.

Reforming the Legal Code

Underlying a culture of violence against Guatemalan women is a legal system that sanctions gender-based discrimination. In *Getting Away with Murder*, CGRS joined Amnesty International in recommending that the Guatemalan government bring its legislation in line with international standards on violence against women, emphasizing the need to establish criminal penalties for domestic violence, including marital rape.⁷⁷ According to FIDH, the concerted effort of the few women serving in Congress, along with advocacy groups, to facilitate such reform has fallen on deaf ears.⁷⁸ Despite some advances, the report notes that what “principally remains in the penal code is a series of anachronistic provisions that reflect the persistence of discrimination against women.”⁷⁹ Similarly, in its 2006 Concluding Remarks, the U.N. Committee on CEDAW expressed its concern that “in spite of the recommendations it addressed to the State party ... [from 1994 through 2002] the domestic legislation is still not in conformity with the Convention.”⁸⁰ A Guatemalan delegate

⁷⁵ *Femicides on the Rise: Governments of Both Countries Demonstrate the Incapacity and Lack of Interest in Preventing Female Genocide*, LATIN AMERICAN PRESS (PERU), May 10, 2006.

⁷⁶ FIDH Report, *supra* note 8 at 35.

⁷⁷ *Getting Away With Murder*, *supra* note 2 at 18.

⁷⁸ FIDH report, *supra* note 6, at 28.

⁷⁹ *Id.*

⁸⁰ CEDAW 2006 Concluding Comments, *supra* note 21 at ¶ 13.

reported to the Committee that “there were some gaps, indeed large gaps, especially in the legislative sphere, particularly with regard to violence against women,” and that “implementation of legal measures to protect women’s rights and promote women’s empowerment would not be easy as much of Guatemala’s male-dominated Congress had been reluctant to approve draft legislation in that regard.”⁸¹

Among the “gaps” in the Guatemalan Penal Code are provisions to effectively prevent and punish domestic violence. As reported in *Getting Away with Murder*, one-third of all murders of women are believed to be the consequence of domestic violence.⁸² While Guatemala’s Minister of National Security recently affirmed the connection between the femicides and domestic violence,⁸³ the Guatemalan Penal Code still treats domestic violence as a minor offense. Although the law prohibits intra-family violence, it still does not provide for criminal penalties for abusers.⁸⁴ Instead, the law provides for social services for victims, and restraining orders against abusers. In the face of impunity, however, such restraining orders are often entirely ineffective.⁸⁵ Advocates point to cases where women, protective orders literally in hand, were killed by their husbands.⁸⁶ The U.S. State Department, in its 2005 Country Report on Human Rights Practices, noted that while Guatemalan law provides for police protection and intervention in cases of violence in the home “in practice ... the PNC often failed to respond to requests for assistance related to domestic violence” and that, while there were social services for domestic violence victims, “there were insufficient funds for this purpose.”⁸⁷ FIDH also criticized the use of alternate methods of dispute resolution in cases of domestic violence and violence against women. “Mechanisms such as

⁸¹ General Assembly Press Release, *supra* note 26.

⁸² *Getting Away with Murder*, *supra* note 2 at 8.

⁸³ Morales interview, *supra* note 34.

⁸⁴ Abusers can receive significant criminal sentences if they are charged with assault, a separate legal offense, but only if bruises remain visible for at least 10 days. See State Department Report 2005, *supra* note 18. According to Hilda Morales Trujillo, the existence of a family or spousal relationship is not an aggravating factor in sentencing and is not an element of the crime. She also explained that, if abusers are charged, they are often charged only with a minor offense, which is punishable by a prison sentence of about 10 days or a fine. Morales Interview, *supra* note 32.

⁸⁵ FIDH report, *supra* note 8, at 28.

⁸⁶ *Id.*

⁸⁷ State Department Report 2005, *supra* note 18.

reconciliation ... communicate to society that the mistreatment of women, children, and the elderly is not grave conduct.”⁸⁸

The Guatemalan Penal Code also offers insufficient protection to victims of sexual crimes. Despite significant momentum to eliminate them, laws allowing sexual predators to evade justice remain in force. In December 2005, Article 200, which allows a rapist to escape prosecution if he marries his victim, was temporarily suspended.⁸⁹ However, the action came not from Congress, but from the Constitutional Court, after the Human Rights Ombudsman’s Office (Procuraduría de Derechos Humanos, PDH) challenged the constitutionality of the Article. Pending review by the Public Ministry, Article 200 continues to apply to cases that were initiated prior to December of 2005. Furthermore, the responsibility to initiate prosecutions in cases of rape and sexual violence remains with victims rather than the Public Ministry. Because Article 106 allows a victim to pardon her attacker, women suffer intense pressure not to press charges.⁹⁰ Article 176, which criminalizes sexual intercourse with a minor only if the girl is “honest,” also remains good law.⁹¹ Articles 81 and 89, which allow for women to marry at age fourteen, have not been amended despite repeated urgings by the U.N. Committee on CEDAW.⁹² Emphasizing that the Guatemalan government has had twelve years since its first report to the Committee in which to make this reform, one member of the CEDAW Committee “pleaded” the case of young girls and “urged” the Guatemalan Government to finally take legislative action.⁹³

⁸⁸ FIDH report, *supra* note 8, at 29.

⁸⁹ See CERIGUA, *An advance in women’s favor in the search for justice (Un avance en la búsqueda de la justicia a favor de las mujeres)* (December 6, 2005) at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=2411&mode=thread&order=0&thold=0>

⁹⁰ Sexual violence cannot be investigated by public action, but requires the victim to file a complaint. Thus a public prosecutor cannot pursue a case without the active participation of the victim. See FIDH Report, *supra* note 8 at 28, see also Amnesty Update 2006, *supra* note 18 at 9.

⁹¹ CERIGUA, *Laws should be modified in favor of women (Leyes deben ser modificadas a favor de las mujeres)* (July 3, 2006), available at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=5133&mode=thread&order=0&thold=0>.

⁹² CERIGUA, *Arguments against seven articles of the Civil Code and in favor of women (Argumentan contra siete artículos del Código Civil y a favor de las mujeres)* (March 8, 2006), available at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=3566&mode=thread&order=0&thold=0>. See also General Assembly Press Release, *supra* note 26.

⁹³ General Assembly Press Release, *supra* note 26.

These “gaps” are largely the result of a legislature that refuses to recognize crimes against women, particularly domestic violence, as serious crimes. While some members of Congress have striven to enact reforms, the legislative body as a whole has prevented the concerted efforts of advocates from resulting in effective gains. According to FIDH, the Congressional Commission of Women, which has been working since 1998 to reform the legal code to protect the rights of women, has assumed femicides as its top priority.⁹⁴ However, the Commission does not receive respect from male congressmembers, and the Congress as a whole has given a minimum of attention to the problem.⁹⁵ The chair of the Congressional Commission of Women, serving as a Guatemalan delegate to the U.N. Committee on CEDAW in May of 2006, explained that there “were only 13 women in official positions compared to 158 men, making it difficult to implement some women’s policies.” According to another delegate, draft laws to address inter-family violence do not include clauses to cover domestic violence because it is “a difficult subject for Congress to swallow.”⁹⁶ Furthermore, the U.N. Committee on CEDAW stated that it was “concerned about the lack of awareness about women’s human rights among members of the legislature, which may be obstructing the adoption of required legislative reforms, in particular with regard to violence against women.”⁹⁷

In light of congressional inaction, Guatemalan women’s groups have also appealed to the courts, challenging the constitutionality of several provisions that perpetuate a culture of violence against women, including the above referenced Articles 81, 89, and 176.⁹⁸ While the work of women’s groups to reform the Civil Code is encouraging, the Guatemalan

⁹⁴ FIDH report, *supra* note 8, at 29.

⁹⁵ FIDH explained that the commission “has not received the position it deserves.” *Id.*

⁹⁶ General Assembly Press Release, *supra* note 26. The law, as written, currently refers to “intra-family” violence, rather than using the term that is common in many countries, “domestic violence.”

⁹⁷ CEDAW 2006 Concluding Comments, *supra* note 21 at ¶ 13.

⁹⁸ CERIGUA, *Gender: Women’s organizations take action against the marriage of girls (Género: Mujeres organizadas accionan contra matrimonio de niñas)* (March 7, 2006), available at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=3553&mode=thread&order=0&thold=0>, CERIGUA, *Acting against a civil code that incites patriarchal stereotypes (Código Civil fomenta estereotipos patriarcales, accionan en su contra)* (March 9, 2006), available at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=3582&mode=thead&order=0&thold=0>, CERIGUA, *Gender: Laws should be modified in favor of women (Género: Leyes deben ser modificados a favor de las mujeres)* (July 3, 2006), *supra* note 86.

government, particularly the Congress, should take primary responsibility to reform the Civil and Penal Codes. The U.N. Committee on CEDAW, for instance, welcomed “the active roles played by the women’s movement to achieve progress in the realization of gender equality,” but remained concerned that the State was “delegating some of its responsibilities” and “encouraged [the Guatemalan government] to assume clear responsibility for implementing all its obligations under the Convention.”⁹⁹

A prime opportunity is currently in front of Guatemala’s Congress. In March of 2006, several congressional commissions issued favorable opinions on a draft law that would criminalize intra-family violence, make marital rape a criminal offense, remove Article 200, and remove the provision that requires a victim to be “honest” before sexual relations with a minor can be punished.¹⁰⁰ Furthermore, in June of 2006, the political party National Unity of Hope (Unidad Nacional de Esperanza) presented a bill in Congress that would directly address the femicides. Among its provisions, the bill would make femicide a specific criminal offense and would increase funding for prosecutions.¹⁰¹ While expressing hope that it is not just “political show,” advocates have recognized positive potential in the draft legislation.¹⁰²

Conclusion and Recommendations

In June 2006, the U.S. State Department addressed congressional concerns about femicide in Guatemala.¹⁰³ In response to the letter signed by 115 members of the U.S. House of Representatives, the State Department assured Congress that it was “engaged in the highest levels of the Guatemalan government and civil society to find solutions” to the

⁹⁹ CEDAW 2006 Concluding Comments, *supra* note 21 at ¶ 19-20.

¹⁰⁰ Amnesty Update 2006, *supra* note 18 at 9.

¹⁰¹ Guatemalan Human Rights Commission, *Guatemalan Human Rights UPDATE*, Volume 18, No. 12 (June 29-July 13, 2006) (*hereinafter* “June 2006 GHRC Update”). See also CERIGUA, *Women politicians present initiative against femicides (Mujeres políticas presentan iniciativa contra los femicidios)* (July 1, 2006), available at <http://www.cerigua.org/portal/modules.php?op=modload&name=News&file=article&sid=5118&mode=thread&order=0&thold=0>

¹⁰² According to Hilda Morales, opponents have already defeated a provision that sought to establish criminal penalties for sexual assault.

¹⁰³ U.S. State Department Letter, *supra* note 48.

“increasing level of violent murders of women.”¹⁰⁴ However, in light of the information provided in this report, CGRS remains concerned that within Guatemala, the concrete measures needed to seriously address the problem have yet to be undertaken. Though the Guatemalan government has made some limited progress towards implementing the recommendations in *Getting Away with Murder*, as well as in Amnesty International’s 2005 report, significant shortcomings remain. Therefore, we recommend that the Guatemalan government implement CGRS’s initial recommendations, as follows:

Publicly Condemn the Abductions and Murder of Women and Girls

- Government officials, including President Óscar Berger and Supreme Court President Beatriz de León, have made public statements regarding the need to eradicate femicides. While this is an important first step, it must be matched by concrete action. Furthermore, public statements should not contain unfounded assertions that serve to blame the victims or explain them as the result of juvenile or gang violence.

Establish Concrete Guidelines and Procedures for All Steps of Criminal Investigation into Reports of Violence Against Women

- The Guatemalan government must implement concrete and uniform guidelines for the investigation of femicides. Considering the consistent failure of officials to investigate these crimes, a system of oversight should be implemented, and disciplinary actions established for impeding or failing to undertake investigations.

Adequately Fund, Monitor, and Utilize the Newly Created National Forensic Institute

- While U.S. funding supports the newly created National Forensic Institute, the Guatemalan government must ensure that this resource is properly utilized. Investigators must be trained in the accepted methods of collecting, protecting, and processing forensic evidence and a system of oversight should be implemented for all investigations. CGRS also joins Amnesty International in recommending

¹⁰⁴ The letter speaks in general terms of training and support provided by the U.S. to the National Civil Police, the Public Ministry, the Special Prosecutor for Crimes Against Women, and the Special Prosecutor for Human Rights.

adequate human and financial resources for the Institute, and for steps to ensure its independence.

Establish a Central, Unified Database of Missing Persons

- In addition to recommending the use of a central, unified database of missing girls and women, CGRS joins Amnesty International in recommending an urgent search mechanism for missing women and girls.

Bring Legislation in Line with International Standards on Violence against Women and Establish Criminal Penalties for Domestic Violence, Including Marital Rape

- The Guatemalan Congress as a whole should cooperate with groups working towards reform of the Civil and Penal Codes. Without delay, Congress should adopt draft legislation that would establish criminal penalties for domestic violence and marital rape, eliminate Article 200, and eliminate the requirement of “honesty” in cases of sexual relations with a minor. CGRS also recommends the adoption of legislation that would specifically address femicide within the Penal Code and would increase resources for the prosecution of murders of women.

Train Judges, Prosecutors, Investigators, and other Officials in Matters Related to Violence Against Women

- In light of the pervasive discrimination against victims and their families, and the lack of will on behalf of officials to investigate and prosecute violence against women, current efforts to train judicial personnel should be supported and expanded. CGRS also joins Amnesty International in recommending “intensive and ongoing” training for all police investigators, crime scene investigation officials, and forensic experts in investigative techniques related to gender-based violence.

Reform and Rebuild the State to End the General Climate of Impunity that Exists in Guatemala

- CGRS is concerned that, rather than taking steps to end impunity for human rights abuses carried out during the internal armed conflict, the Guatemalan government is moving in the wrong direction. The Guatemalan Congress should reject draft legislation to transfer jurisdiction to military courts for crimes by current and former

military personnel, and instead, establish a mechanism by which to investigate and address the problems posed by CIACS and private security forces, as well as work to prosecute crimes committed during the internal conflict.

Implement all of Amnesty International's Updated Recommendations Including:

- Zero tolerance for gender-based violence and disciplinary action for officials who: make unfounded public statements; impede investigations; fail to take immediate action to prevent injury to women and girls at risk; and who harass or intimidate family members, witnesses, or organizations who support them.
- Increased coordination and cooperation between state agencies;
- An urgent search mechanism for missing women and girls;
- A gender perspective in investigations; and
- A standard system for collecting data on violence against women.