

Crimes Without Punishment: Violence Against Women in Guatemala

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I. INTRODUCTION

When Rody Alvarado's¹ husband, a former soldier in the Guatemalan military, repeatedly battered and brutalized her, he rarely failed to mention that even if he killed her, no one would care.² Unfortunately for Rody, and for the many thousands of Guatemalan women who are the victims of violence, her husband's words accurately describe the situation in that country. In Guatemala, impunity for the battering and killing of women³ is at such levels that perpetrators rightly feel confident that there is no price to pay for their unrestrained violence.⁴ Each year the number of women

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1. Rody Alvarado's case has been widely reported in the press. In court and in news reports, the spelling of her first name has been reported as "Rodi." She recently informed her attorneys the correct spelling is "Rody," and we have incorporated this correction into this report.

2. See Transcript of Hearing, *Matter of Rodí Alvarado Peña*, at 23-4, 27-8 (Oct. 19, 1995); see also *Matter of R-A-*, 22 I&N Dec. 906 (BIA 1999), *vacated*, 22 I&N Dec. 906 (A.G. 2001), *remanded*, 23 I&N Dec. 694 (A.G. 2005), *remanded*, 24 I&N Dec. 629 (A.G. 2008). These citations, as well as the citations provided in footnotes 7 through 13, refer to legal proceedings related to Ms. Alvarado's asylum request in the United States, and not to proceedings within Guatemala.

3. High levels of impunity exist for all crimes in Guatemala, but gender biases and broad acceptance of violence against women characterize the impunity in cases involving femicide.

4. Kristin Svendsen, et al., *Por ser mujer: Limitantes del sistema de justicia ante muertes violentas de mujeres y víctimas de delitos sexuales* [For Being a Woman: Limitations of the Justice System in Responding to the Violent Deaths of Women and Victims of Sex Crimes], *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* Guatemalan Institute for the Comparative Study of Criminal Law ("ICCPG") at

murdered rises precipitously,⁵ and there is general consensus that the impunity enjoyed by those responsible is a significant factor in the escalating numbers of killings in Guatemala.⁶

Rody Alvarado was more fortunate than many of her compatriots — she was able to leave her husband, Francisco Osorio, and her country before she became one more murder statistic. Her decision to flee was not made lightly, as it necessitated leaving her two young children behind. However, she was convinced that if she did not leave she would be killed. Rody only left after she had exhausted every option she could within her country. As recounted in her claims for asylum in the United States, she had gone to the police, who failed to respond.⁷ She had gone in front of a judge, who told her that he did not get involved in domestic disputes.⁸ She had also unsuccessfully attempted to hide from Osorio within Guatemala, only to be hunted down and beaten unconscious by him for her attempt to move away.⁹

After escaping Guatemala, Rody made her way to the United States, where she sought asylum on the basis of the extreme gender-based violence she had suffered in her home country. Her claim for asylum included the graphic details of the brutality she had endured. Osorio had broken windows and mirrors with her head, pistol-whipped and sodomized her, and routinely woke her in the middle of the night to threaten or beat her.¹⁰ The violence escalated over the course of the marriage, and Rody believed death would be her fate if she remained.

Rody Alvarado's request for asylum in the United States subsequently became the bellwether case of domestic abuse as a basis for asylum. She was initially granted asylum in 1996 by an immigration judge in San Francisco.¹¹ That decision was reversed by the nation's highest immigration court, the Board of Immigration Appeals ("BIA").¹² Three successive Attorneys General — Janet Reno, John Ashcroft, and Michael Mukasey — subsequently intervened in her case during the years that it remained pending. All the while, she remained separated from the two

8 (2007) [hereinafter *Por ser mujer*]. The ICCPG is a Guatemala-based academic institution whose focus is on criminal justice policies and human rights and which carries out investigations, trainings, consulting, and publishing to fortify the rule of law and protect human rights. For further information, see <http://www.iccpg.org.gt/>.

5. See *infra*, notes 123-29, Sec. II.

6. See *infra*, note 14, Sec. II, and *infra*, notes 170-84, Sec. III.

7. *Matter of R-A-*, 22 I&N Dec. 906, 909 (BIA 1999).

8. *Id.* Transcript of Hearing, *Matter of Rodí Alvarado Peña*, at 42 (Oct. 19, 1995).

9. *Matter of R-A-*, 22 I&N Dec. 906, 908-909 (BIA 1999); Transcript of Hearing, *Matter of Rodí Alvarado Peña*, at 38-9 (Oct. 19, 1995).

10. *Matter of R-A-*, 22 I&N Dec. 906, 908-909 (BIA 1999); Transcript of Hearing, *Matter of Rodí Alvarado Peña*, at 23, 29 (Oct. 19, 1995).

11. *Matter of R-A-*, 22 I&N Dec. 906, 907 (BIA 1999).

12. *Matter of R-A-*, 22 I&N Dec. at 927.

children she was forced to leave behind in Guatemala.¹³ One of the main factors contributing to the delay in deciding her case was the government's fear of "opening the floodgates," i.e., the belief that violence against women, including domestic violence, is so prevalent around the world that if asylum were to be granted to Rody Alvarado, it would cause a deluge of women fleeing such abuse to come to the United States.¹⁴ With the advent of the Obama administration, the commitment to women's rights overrode the fear of floodgates, and Rody Alvarado was finally granted asylum on December 10, 2009.¹⁵

The fear of floodgates is, for the most part, unfounded.¹⁶ Perhaps more importantly, from an ethical and moral perspective, the fear of floodgates is not a legitimate basis for refusing to provide refugee status to individuals who are otherwise deserving of, and qualify for, such protection. The international refugee protection regime that has been acceded to by the majority of nations came into being after World War II, which was characterized by the shameful failure of the United States and many other countries to provide safety to Jews fleeing the Holocaust. The potential number of refugees who might request relief was not a justifiable basis for refusing protection then, and it is not a legitimate basis for doing so now. A more appropriate response to the fear of floodgates is to identify the human rights violations that cause individuals to flee their home countries — and to develop and implement foreign policies that attempt to remedy them.

Pervasive and systematic violence against women — committed with impunity — is the root cause of asylum claims such as Rody Alvarado's. In Guatemala, this violence has reached epidemic proportions, with alarming increases in the murders of women at rates much higher than those of the murders of men. During the past decade, over 4,000 women and girls have been killed. There have been successful prosecutions in no more than 2% of these cases, meaning that 98 out of 100 killers of women literally get away with murder. This widespread impunity has been identified as a significant factor in the growing numbers of cases of violence against women.

13. See *Matter of R-A-*, 22 I&N Dec. 906 (A.G. 2001); *Matter of R-A-*, I&N Dec. 694 (A.G. 2005); *Matter of R-A-*, 24 I&N Dec. 629 (A.G. 2008). See Susan Sachs, *Reno Voids Denial of Asylum for Guatemalan Battered Wife*, N.Y. TIMES, Jan. 20, 2001, at B4; Bob Egelko, *Ashcroft Will Pass Asylum Case to Successor*, S.F. CHRONICLE, January 22, 2005, at B3; Julia Preston, *Woman's Asylum Case Sent Back to Review Board*, N. Y. TIMES, Sept. 30, 2008.

14. Karen Musalo, *Protecting Victims of Gendered Persecution: Fear of Floodgates or Call to (Principled) Action?*, VA. J. SOC. POL'Y & L. 119, 129-32 (2007).

15. *Matter of R-A-*, A 073-753-922 (Dec. 10, 2009) (San Francisco, Calif.) (DiCostanzo, II).

16. Karen Musalo, *supra* note 14, at 129-32.

Since 2005, the Center for Gender & Refugee Studies (“CGRS”) has undertaken investigations into the problem of femicide¹⁷ in Guatemala; its work has included the publication of two previous reports on the subject.¹⁸ These reports have helped bring attention to a phenomenon that has received very little notice in the mainstream press in the United States.¹⁹ Joining with other human rights organizations, such as Amnesty International (“AI”), Human Rights First,²⁰ and the Washington Office on Latin America (“WOLA”),²¹ CGRS has called on the United States government to condemn the killings and the Guatemalan government’s failure to carry out its obligations to properly investigate these crimes and to prosecute those responsible. As a result of sustained pressure, both the United States House of Representatives²² and the Senate²³ issued resolutions concerning femicide in Guatemala.

These United States Congressional resolutions have not been the only expressions of governmental or institutional concern on the issue of violence against women in Guatemala. The gravity of the situation has been noted by international monitors, including the U.N. Special Rapporteur for Violence Against Women,²⁴ the Special Rapporteur on the

17. As discussed in section B., CGRS uses the term “femicide” to denote a killing that appears to be gender motivated. There is ongoing controversy over the use of this term and its precise meaning, see *infra*, and the lack of agreement on its definition complicates data-gathering and statistical reporting related to the killings.

18. See Angélica Chàzaro & Jennifer Casey, *Getting Away with Murder: Guatemala’s Failure to Protect Women and Rodi Alvarado’s Quest for Safety*, HASTINGS WOMEN’S L.J. 141 (2006) [hereinafter CGRS/Getting Away with Murder]; Katherine Ruhl, *Guatemala’s Femicides and the Ongoing Struggle for Women’s Human Rights: Update to CGRS’s 2005 Report Getting Away with Murder*, 18 HASTINGS WOMEN’S L.J. 199 (2007) [hereinafter Guatemala’s Femicides (CGRS Update)].

19. A 2009 Westlaw search of its NORTHNEWS database (for news articles in North America) on the subject of “femicide in Guatemala” for the past ten years located only nine articles in the United States press.

20. Human Rights First (formerly known as the Lawyers Committee for Human Rights) is a nonprofit, nonpartisan, international human rights organization based in New York and Washington, D.C., which works to build respect for human rights and the rule of law, to help ensure the dignity to which everyone is entitled, and to stem intolerance, tyranny, and violence. For further information, see <http://humanrightsfirst.org/>.

21. The Washington Office on Latin America (“WOLA”) promotes human rights, democracy and social and economic justice in Latin America and the Caribbean through facilitating dialogue, monitoring policies’ and programs’ impact, and promoting alternatives through reporting, education, training, and advocacy. For further information, see <http://www.wola.org/>.

22. H.R. Res. 100, 110th Cong. (2007). [Introduced by Representative Hilda Solis (D-CA)].

23. S. Res. 178, 110th Cong. (2007) [Sponsored by Senator Jeff Bingaman (D-NM)].

24. U.N. Econ. & Soc. Council [ECOSOC], *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*, U.N. Doc. E/CN.4/2005/72/Add.3 (Feb. 10, 2005), at 9, ¶ 27 (prepared by Yakin Ertürk) [hereinafter ECOSOC *Violence Against Women*] (“Violence against women is widespread in Guatemalan society and the impunity enjoyed by the perpetrators of violence sustains parallel and multiple structures of

Rights of Women of the Inter-American Commission on Human Rights (“IACHR”),²⁵ and the U.N. Committee on the Elimination of Discrimination Against Women (“CEDAW”).²⁶

There have been some recent positive developments in Guatemala, perhaps in response to these growing calls for the government to take appropriate action. Most notable among these developments was on April 9, 2008: the enactment of the *Ley contra el Femicidio y otras Formas de Violencia contra la Mujer* [Law Against Femicide and Other Forms of Violence Against Women or “Femicide Law”].²⁷ Although the passage of this law is considered very positive on a symbolic level, there is general consensus in Guatemala that impunity for these crimes continues unabated²⁸ and that the number of femicides this year will exceed those of any previous year.²⁹

This report presents information on the current state of femicide in Guatemala. In Part II, we discuss the meaning of the term “femicide” and place the phenomenon as emerging out of a culture involving pervasive and widespread violence against women. In Part III, we revisit a topic examined in our prior two reports — the theories regarding the causes for the escalating gender-motivated murders of women. In Part IV, we detail the response of the Guatemalan government to rising violence, as well as the efforts and pronouncements of international human rights bodies regarding the femicide. We also examine the efficacy, or lack thereof, of recent developments in Guatemala, as well as the barriers that exist to meaningful change. Finally, in Part V, we discuss recommendations for action by the Guatemalan government, as well as for other significant actors involved in developing a response to this phenomenon, including the United States government.

power, which has resulted in fear and lack of confidence in State apparatuses. The major problem confronting the State is its inability to provide women with legal, judicial[,] and institutional protection from violence.”).

25. Inter-American Commission on Human Rights (“IACHR”), “Access to Justice for Women Victims of Violence in the Americas,” OEA/Ser.L/V/II, doc. 68, at 9, ¶ 20 (2007), available at <http://www.cidh.oas.org/women/Access07/tocaccess.htm> [hereinafter “IACHR Access to Justice”] (“State officials and representatives of civil society said again and again that the administration of justice had failed to provide an effective response to crimes of violence.”).

26. U.N. Committee on the Elimination of Discrimination Against Women, *Concluding Comments on the Elimination of Discrimination Against Women: Guatemala*, ¶ 23, U.N. Doc C/GUA/CO/6 (Jun. 2, 2006).

27. *Ley contra el Femicidio y otras Formas de Violencia contra la Mujer* [Law Against Femicide and Other Forms of Violence Against Women], *Decreto del Congreso* [Congressional Decree] No. 22-2008 (2008) (Guat.) [hereinafter *Ley Contra el Femicidio*].

28. See *infra*, Sec. IV.

29. See *infra*, note 128, Sec. II.

II. FEMICIDE OCCURS WITHIN THE CONTEXT OF PERVASIVE VIOLENCE AGAINST WOMEN

A. VIOLENCE AGAINST WOMEN IN GUATEMALA

Sexual violence against women was widely used as a war strategy during Guatemala's internal armed conflict.³⁰ Although the conflict ended over fourteen years ago, violence against women continues to plague the country. Paradoxically, violence against women has consistently increased since the end of the long-running conflict.³¹ Guatemala is "the most dangerous place for women in all of Latin America[,]"³² and many have commented that no woman is safe because the violence is widespread, cutting across class, age, and ethnicity.³³

This section contextualizes the phenomenon of femicide within this growing trend of other forms of violence against women in Guatemala. It elaborates on the pervasive nature of violence against women overall in Guatemala and discusses how this violence has become so "normalized" that its existence is tolerated and accepted throughout many sectors of society.

1. Violence Against Women in Guatemala Is Pervasive

Expert studies show that one in three women in Guatemala suffer violence in any of its manifestations: physical, psychological, economic, or sexual.³⁴ According to the United States Department of State, violence against women in Guatemala remains a common and serious problem.³⁵ Among the many forms of violence against women in Guatemala, this

30. See *infra*, for discussion of sexual violence during Guatemala's internal armed conflict.

31. *Por ser mujer*, *supra* note 4, at 3.

32. Julie Suarez and Marty Jordan, Guatemala Human Rights Commission/USA, "Three Thousand and Counting: A Report on Violence Against Women in Guatemala," (Sept. 2007), at 1 [hereinafter GHRC/Three Thousand and Counting]. (The Guatemala Human Rights Commission/USA ("GHRC") is a United States-based nonprofit, nonpartisan, humanitarian organization that monitors, documents, and reports on the human rights situation in Guatemala and advocates for survivors of human rights abuses in Guatemala. For further information, see <http://www.ghrc-usa.org/>).

33. Washington Office on Latin America, "Hidden in Plain Sight: Violence Against Women in Mexico and Guatemala," at 2 (Mar. 2007) [hereinafter WOLA/Hidden in Plain Sight].

34. *Comunicación e Información de la Mujer*, A.C. [Women's Communications and Information] (CIMAC), "Guatemala: Acciones ante Asesinatos de Mujeres, Exigen OSC." [Guatemala: Action in Response to the Murders of Women, Demand the OSC] (Feb. 1, 2008).

35. U.S. Department of State ("USDOS"), "Country Report on Human Rights Practices 2008 — Guatemala" (Feb. 25, 2009), available at <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119161.htm> [hereinafter USDOS/Guatemala Country Report 2008].

section focuses on the prevalence of intra-familial violence, rape and other forms of sexual abuse, sexual harassment, and human trafficking.³⁶

a. Intra-familial Violence

In its 2007 report, the *Procurador de los Derechos Humanos* [Human Rights Ombudsman] (*PDH*)³⁷ reported an increase in intra-familial violence against women victims between the age range of fifteen and forty-five.³⁸ The *PDH* attributes this rise to tensions related to traditional gender expectations within families.³⁹ Statistics from the *Ministerio Público* [Public Prosecutor's Office] (*MP*),⁴⁰ which are widely believed to underreport the problem, also demonstrate the prevalence of intra-familial violence and the Guatemalan government's inaction in addressing it. The *MP* reported receiving more than 6,228 complaints of violence within the family directed against women and children during the six month period of January to July 2007.⁴¹ It took some form of action against perpetrators of family violence in 1,768 cases between January and September of 2007, or in approximately less than one-third of the complaints.⁴² Furthermore, only two of the cases opened by the *MP* resulted in convictions.⁴³

36. This report does not discuss more subtle forms of violence against women. For a discussion of the educational, economic, and political representation differences between men and women, see *Comité Latinoamericano y del Caribe para la Defensa de los Derechos de la Mujer* [Latin American and Caribbean Committee for the Defense of Women's Rights] (*CLADEM*), "*Investigación Femicidio, Monitoreo sobre femicidio/femicidio en El Salvador, Guatemala, Honduras, México, Nicaragua y Panamá*" [Femicide Investigation, Monitoring of Femicide/Femicide in El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama] at 65-68 (Mar. 2007) [hereinafter *CLADEM/Investigación Femicidio*] available at <http://www.cladem.org/espanol/regionales/violenciadegenero/Docs/femicidiofin.pdf>; GHRC/Three Thousand and Counting, *supra* note 32, at 5 (indicating the Guatemalan government provides no family planning services nor adequate healthcare for women); and USDOS/Guatemala Country Report 2008, *supra* note 35 (discussing job discrimination against women in the work force). For discussions of the multiple forms of discrimination and marginalization of indigenous women, see WOLA/Hidden in Plain Sight, *supra* note 33, at 4; IACHR Access to Justice, *supra* note 25, at 83, ¶¶ 203, 205; and USDOS/Guatemala Country Report 2008, *supra* note 35.

37. *Procurador de Derechos Humanos* [Human Rights Ombudsman] ("*PDH*") is a position created by the Congress of the Republic of Guatemala to promote human rights as established in the country's constitution, the Universal Declaration of Human Rights, and the internationally accepted treaties and conventions ratified by Guatemala. For further information, see <http://www.PDH.org.gt/>.

38. *PDH, Informe Annual Circunstanciado, Tomo I, 2007*, at 40 [hereinafter *PDH/Tomo I*].

39. *Id.*

40. *Ministerio Público* [Public Prosecutor's Office] (*MP*) is the governmental institution responsible for overseeing the investigation of crimes and conducting criminal prosecutions in Guatemala. For further information, see <http://www.mp.gob.gt/>.

41. U.S. Department of State ("USDOS"), "Country Report on Human Rights Practices 2007 – Guatemala" (Mar. 11, 2008) [hereinafter USDOS/Guatemala Country Report 2007].

42. *Id.*

43. *Id.*

As these statistics demonstrate, domestic violence perpetrators are not prosecuted even when their victims report them to the authorities,⁴⁴ and women continue to be vulnerable to further violence despite their courage to report incidents of violence to the police.⁴⁵ Without assistance from the government, women have limited, if not nonexistent, means to escape the situation.⁴⁶ The European Parliament concluded that domestic violence will continue to flourish in Guatemala.⁴⁷

b. Sexual Violence

The United States Department of State reported that “sexual offenses remained a serious problem” in Guatemala throughout 2008.⁴⁸ Official statistics show that sexual violence is a growing phenomenon.⁴⁹ Reports of rape increased by thirty percent from 2003 to 2007 according to prosecutors from the *Fiscalía de Delitos Contra la Mujer* [Special Prosecutorial Unit for Crimes Against Women].⁵⁰ The number reported does not show the true dimension of the problem; the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* [Guatemalan Institute for the Comparative Study of Criminal Law] (ICCPG) documented that over seventy-five percent of sexual crimes go unreported due to the stigma experienced by female victims of sexual abuse and societal sexist stereotypes.⁵¹ Furthermore, the Inter-American Commission on Human Rights (“IACHR”),⁵² citing a study published in November 2004, reported that less than one third of one percent of the cases in which sex-related

44. See WOLA/Hidden in Plain Sight, *supra* note 33, at 9.

45. See *id.*

46. *Declaración Jurada de Hilda Morales Trujillo* [Sworn Declaration of Hilda Morales Trujillo], at 9 (May 20, 2008) [hereinafter 2008 Declaration of Hilda Morales Trujillo].

47. European Parliament, Background Paper, Joint Public Hearing, *Femicide: The Case of Mexico and Guatemala*, at 12 (Apr. 19, 2006) [hereinafter European Parliament Report], *available at* http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/droi20060419_h_backgroundnote_/droi20060419_h_backgroundnote_en.pdf.

47. European Parliament, Background Paper, Joint Public Hearing, *Femicide: The Case of Mexico and Guatemala*, at 12 (Apr. 19, 2006) [hereinafter European Parliament Report], *available at* http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/droi20060419_h_backgroundnote_/droi20060419_h_backgroundnote_en.pdf.

48. USDOS/Guatemala Country Report 2008, *supra* note 35.

49. *Id.* at 3. See also *Por ser mujer*, *supra* note 4, at 13 (noting multiple motivations for sexual violence and rape, including the use of sexual violence as a means of exercising control, punishing women for not conforming with their traditional roles in the home and relationship, and assuaging feelings of inferiority and hurt masculinity).

50. WOLA/Hidden in Plain Sight, *supra* note 33, at 4.

51. *Por ser mujer*, *supra* note 4, at 3.

52. For information about the IACHR, see <http://www.cidh.oas.org/>.

complaints were made actually went to trial.⁵³ Under these circumstances, women often prefer to be quiet to avoid stigma and possible reprisals.⁵⁴

c. Sexual Harassment

Human rights organizations report that sexual harassment is widespread,⁵⁵ and that it is particularly prevalent in the police force, in the textile and apparel sectors, and in other industries whose work force is primarily composed of women.⁵⁶ No Guatemalan law explicitly prohibits sexual harassment,⁵⁷ although some experts believe recently passed Femicide and Trafficking Laws implicitly prohibit it.

d. Human Trafficking

Despite its illegality, trafficking in women and girls — primarily for the purpose of prostitution — is a broadly recognized problem.⁵⁸ The United States Department of State has reported the Guatemalan government itself acknowledges trafficking is a significant problem.⁵⁹ Guatemala is a source, transit, and destination country for women and girls trafficked for the purposes of sexual exploitation.⁶⁰ Moreover, credible reports exist that the Guatemalan police and immigration services are complicit in human trafficking.⁶¹ According to the European Parliament, with such government complicity, human trafficking enjoys favorable conditions in which to grow.⁶² The Organization of American States has repeatedly expressed concern regarding the trafficking of Guatemalan children for purposes of international adoption.⁶³ As discussed in Section IV, *infra*, on March 16, 2009, the Guatemalan Congress passed the *Ley contra la Violencia Sexual, Explotación y Trata de Personas* [Law Against Sexual Violence, Exploitation, and Human Trafficking or “Trafficking

53. IACHR Access to Justice, *supra* note 25, at 8, ¶ 18.

54. *Por ser mujer*, *supra* note 4, at 3.

55. See USDOS/Guatemala Country Report 2008, *supra* note 35.

56. See USDOS/Guatemala Country Report 2008, *supra* note 35.

57. *Id.* Although both Guatemala’s new *Ley Contra el Femicidio* [Femicide Law] and *Ley de Trata* [Trafficking Law], discussed *infra*, are written broadly enough they could be assumed to outlaw acts constituting sexual harassment, neither law explicitly mentions it. (See Appendices II and III for further details.)

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. European Parliament Report, *supra* note 47, at 12.

63. As recently as November 6, 2009, Inter-American Commission on Human Rights at the Organization of American States held hearings on the issue of Guatemalan adoptions, which rank among the highest in the world; see <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=EN&Session=117>; see also Organization of American States, 2003 Annual Report, Paragraph 40, available at <https://www.cidh.oas.org/annualrep/2003eng/chap.4b.htm>.

Law”],⁶⁴ but it is yet to be seen whether the law will have an impact on this deep-seated problem.

2. Violence Against Women in Guatemala Has Become “Normalized”

Violence against women has become “normalized” in Guatemala and is broadly accepted despite the efforts of human rights and women’s groups to overcome this widespread acquiescence.⁶⁵ The normalcy of abuse of women is reflected throughout Guatemalan society. It manifests on multiple levels — in the home at the hands of an abuser, in society through social attitudes accepting violence against women, and in the government by the unresponsive and ineffective legal system that is unable or unwilling to protect women.⁶⁶

This process of normalization of violence against women was constructed over more than five centuries.⁶⁷ Its origins trace back to colonization and conversion to Christianity. It was reinforced by the Guatemalan state through laws, policies and practices.⁶⁸ It was exacerbated by the long-running internal armed conflict.⁶⁹ These historical roots of violence against women are manifested in societal inequality, and violence is exercised to maintain and reinforce the domination or status quo of women.⁷⁰

3. Violence Against Women in Guatemala Has a Destructive Impact on Society

Gender violence has a destructive impact on Guatemalan society as a whole,⁷¹ leading to increased social violence, public insecurity, and the burdening of Guatemala’s economy.⁷² Absenteeism, decreased

64. *Ley contra la Violencia Sexual, Explotacion y Trata de Personas* [Law Against Sexual Violence, Exploitation and Human Trafficking], *Decreto del Congreso* [Congressional Decree] No. 9-2009 (2009) (Guat.) [hereinafter *Ley de Trata*].

65. See 2008 Declaration of Hilda Morales Trujillo, *supra* note 46, at 9; Sílvia Donoso López, *Institut Català d’Estudis de la Violencia* [Catalan Institute for the Study of Violence] (“ICEV”), *Feminicidio en Guatemala: Las Víctimas de la Impunidad* [Feminicide in Guatemala: Victims of Impunity], *Revista D’Estudis de la Violencia*, N. 4, at 5 (Jan./Mar. 2008) [hereinafter *Víctimas de la Impunidad*]. For further discussion on the topic, see *Por ser mujer*, *supra* note 46, at 3-8.

66. *Id.* at 9.

67. *Por ser mujer*, *supra* note 4, at 8.

68. *Id.*

69. *Id.*

70. *Id.* at 11.

71. For a discussion of the impact of violence in general (i.e., not specifically gender-based violence) on Guatemalan society, see *Programa de Seguridad Ciudadana y Prevención de la Violencia del PNUD Guatemala* [UNDP’s Program for Citizen Security and Prevention of Violence in Guatemala], “*Informe estadístico de la violencia en Guatemala*” [Statistical Report on Violence in Guatemala] 11 (Dec. 2007).

72. See WOLA/Hidden in Plain Sight, *supra* note 33, at 2-3; and *Programa de Seguridad Ciudadana y Prevención de la Violencia del Programa de las Naciones Unidas*

productivity at places of employment, lower earnings, and increased healthcare costs stemming from violence against women all contribute to negative economic effects.⁷³ When society in general and the government in particular condone violence against women, it sends the message that violence is an acceptable form of conflict resolution in other areas as well. This in turn increases violence in society and leads to a less secure public. As discussed at length below, left unchecked, government-condoned violence against women contributes to an overall climate of impunity in which the violent murders of women are increasingly frequent.

B. FEMICIDE IN GUATEMALA

This section focuses on the violent murders of women in Guatemala — often referred to as “femicide” or “feminicide.” As discussed below, the lack of consensus on the meaning of these terms, combined with unreliable data keeping, has made it difficult to measure the true dimensions of the phenomenon. Notwithstanding these obstacles to obtaining accurate data, it is widely recognized that Guatemala has a serious problem regarding the violent deaths of women. According to the *Consejo Centroamericano de Procuradores de Derechos Humanos* [Central American Council of Human Rights Ombudsmen], the mortality rate of women in Guatemala today is among the highest in the world.⁷⁴ Guatemala also reported the highest femicide rate of the forty countries that contributed information to Spain’s *Centro Reina Sofía para el Estudio de Violencia* [Queen Sofia Center for the Study of Violence].⁷⁵

1. Femicide Is at the Extreme End of the Spectrum of Violence Against Women

Violence against women takes many forms. The violent killings of women occupy the extreme end of the continuum of violence.⁷⁶ They are

para el Desarrollo PNUD Guatemala [UNDP’s Program for Citizen Security and Prevention of Violence in Guatemala], *supra* note 71, at 11.

73. WOLA/Hidden in Plain Sight, *supra* note 33, at 2-3.

74. *Consejo Centroamericano de Procuradores de Derechos Humanos (CCPDH)* [Central American Council of Human Rights Ombudsmen] “*Situación y análisis del femicidio en la Región Centroamericana*” [Situation and Analysis of Femicide in the Central American Region] at 58 (Aug. 2006) [hereinafter *CCPDH*].

75. José Sanmartín, “*II Informe Internacional: Violencia contra la mujer en la relaciones de pareja (estadística y legislación)*” [“Second International Report: Partner Violence Against Women (Statistics and Legislation)”] 30-33 (*Centro Reina Sofía*, 2007). (Under the honorary presidency of the Spanish Queen Sofía, the *Centro Reina Sofía para el Estudio de Violencia* [Queen Sofia Center for the Study of Violence] dedicates itself to the study of violence through conducting and promoting research, convening scientific meetings, and publishing books and studies, among other things. For further information, see <http://www.centroreinasofia.es/english/>; <http://www.centroreinasofia.es/english/>).

76. WOLA/Hidden in Plain Sight, *supra* note 33, at 11; CGRS interview with Congresswoman Ana María de Frade, Congress of the Republic of Guatemala, in Guatemala (Sept. 25, 2008), on file at CGRS office [hereinafter Interview with Congresswoman Ana María de Frade]. See also *Víctimas de la Impunidad*, *supra* note 65.

not isolated incidents, but are reflective of the pervasive violence against women in Guatemala.⁷⁷ The current violence has historical precedent⁷⁸ and represents the continuation of a long-standing trend of violence directed at women and girls in Guatemala.⁷⁹

2. Lack of Consensus on the Term 'Femicide'

Guatemala is not the only country to experience a sharp increase in the violent killings of women; these types of murders are occurring in a number of other Latin American countries.⁸⁰ The phenomenon is often referred to as "femicide" (*femicidio*) or alternatively as "feminicide" (*feminicidio*). There is no accepted definition of either term,⁸¹ which has complicated efforts to keep reliable statistics and to evaluate the true dimensions of the problem.⁸²

a. Femicide

The term "femicide" is frequently used by Guatemalan and international academics, researchers, and governmental and nongovernmental organizations.⁸³ Some use the term for its most basic meaning — to denote the killing of a woman, as opposed to a man.⁸⁴ Many

77. WOLA/Hidden in Plain Sight, *supra* note 33, at 11 (according to the U.N. Special Rapporteur for Violence Against Women, the absence of the rule of law fosters a range of violent acts against women that includes rape, domestic violence, sexual harassment, and eventually murder). *See also* Ana Leticia Aguilar, "Femicidio. La pena capital por ser mujer" ["Femicide. The Deadly Struggle of being a Woman"] at 4 (2005), available at http://www.americalatinagenera.org/tematica/cvd-publicacion_detalle.php?IDPublicacion=364 [hereinafter *La Pena Capital*] (stressing femicide is related to a wider pattern of violence against women in Guatemala, in the public and private spheres); and *PDH/Tomo I*, *supra* note 38, at 33 (pointing out the importance of monitoring the violent deaths of women in Guatemala as the maximum expression of violence against women).

78. *Fundación Sobrevivientes* [Survivors' Foundation], "Identificación de patrones existentes en el asesinato de mujeres en Guatemala y similitudes con los crimines del pasado" ["Identification of Existing Patterns in the Murders of Women in Guatemala and Similarities with Past Crimes"], at 14 (Jun. 2005). The *Fundación Sobrevivientes* [Survivors' Foundation] is a Guatemala-based nonprofit and nonpartisan organization made up of survivors of violence against women, which provides legal and social services in cases involving violence and killings of women. For further information, see <http://www.sobrevivientes.org/>.

79. *See id.* at 13-15 (analyzing and comparing murders of women from 1981 to 1984, during the internal armed conflict, as relevant to current trends in femicides).

80. *CLADEM/Investigación Femicidio*, *supra* note 36.

81. *See La Pena Capital*, *supra* note 77. For further discussion of the history of the phenomenon's recognition, *see* European Parliament Report, *supra* note 47, at 3.

82. *See* European Parliament Report, *supra* note 47, at 3.

83. *Programa de Seguridad Ciudadana y Prevención de la Violencia del PNUD Guatemala*, *supra* note 71, at 30 (indicating this term combines the Spanish word "femenino" (female) with "-cidio" (death or killing)).

84. Victoria Sanford, *From Genocide to Femicide: Impunity and Human Rights in Twenty-First Century Guatemala*, 7 J. OF HUM. RTS. 112-13 (2008) [hereinafter *From Genocide to Femicide*]. *See also La Pena Capital*, *supra* note 77, at 6-7; *Comisión*

others use the term not only to describe the gender of the victim, but to indicate the motivation, i.e., a femicide is a gender motivated killing as the victim was killed because she was a woman.⁸⁵ The use of this definition requires some proof that the killing was, in fact, gender-motivated. Often the brutality in which the murder was carried out is used as evidence of gender motivation; the infliction of sexual violence, torture, or mutilation before killing is seen to demonstrate misogyny and to indicate the targeting of a woman for being a woman.⁸⁶ CGRS uses the term femicide,⁸⁷ with this latter definition of a gender-motivated crime⁸⁸ carried out with great brutality.

b. Femicide

The term “femicide” is used to add another element. When academics, researchers, and governmental and nongovernmental organizations want to emphasize that the killings are not only gender motivated, but that they take place in a context in which the State permits near total impunity, this is the term they use. It connotes State complicity. As Victoria Sanford has written, “[f]emicide is a political term” and “encompasses more than femicide because it holds responsible not only the male perpetrators but all the state and judicial structures that normalize misogyny.”⁸⁹

Some individuals and organizations dealing with the issue avoid both the terms “femicide” and “feminicide” and simply refer to the killings as the “violent deaths of women,” “murder of women,” and “homicide.”⁹⁰

para el abordaje del femicidio en Guatemala [Commission to Address Femicide in Guatemala], “*Informe de Avance: Presentado al Doctor Víctor Abramovich Relator para Guatemala y Tema Mujer*” [Progress Report: Presented to Doctor Víctor Abramovich, Special Rapporteur for Guatemala and Women’s Issues] at 8 (Jul. 2006) (Guat.) (expressing the Commission’s preference for the use of the term “femicide”) [hereinafter *Informe de Avance*].

85. *From Genocide to Femicide*, *supra* note 84, at 112.

86. WOLA/Hidden in Plain Sight, *supra* note 33, at 33.

87. See CGRS/Getting Away with Murder, *supra* note 18; Guatemala’s Femicides (CGRS Update), *supra* note 18.

88. The crimes are gender motivated because they often involve rape, other forms of sexual assault, torture, and mutilation of women’s bodies. Guatemala’s Femicides (CGRS Update), *supra* note 18, at 4. See also CGRS/Getting Away with Murder, *supra* note 18, at 1.

89. *From Genocide to Femicide*, *supra* note 84, at 112. For further, and differing, definitions of feminicide, see *Informe de Avance*, *supra* note 84, at 8; European Parliament Report, *supra* note 47, at 3, 8; *Víctimas de la Impunidad*, *supra* note 65, at 8-9.

90. See, e.g., GHRC/Three Thousand and Counting, *supra* note 32, at 1; CGRS interview with Myrna Mack Foundation, in Guatemala (Sept. 24, 2008), on file at CGRS office [hereinafter Interview with Myrna Mack Foundation]; CGRS interview with Claudia Paz, Executive Director, ICCPG, in Guatemala (Sept. 24, 2008), on file at CGRS office [hereinafter Interview with Claudia Paz, ICCPG]; and CGRS interview with Norma Cruz, Director and Founder, *Fundación Sobrevivientes* [Survivors’ Foundation], in Guatemala (Sept. 25, 2008), on file at CGRS office [hereinafter Interview with Norma Cruz, *Fundación Sobrevivientes*].

Yet, the use of these terms may be unhelpful, since they fail in any way to take the factors of gender motivation or State complicity into consideration in defining the crimes.

As noted above, in April 2008, Guatemala enacted the *Ley contra el Femicidio y otras Formas de Violencia contra la Mujer* or Femicide Law.⁹¹ The legislation uses the term “femicide” and set forth a definition of the term.⁹² Unfortunately, the definition in the legislation does not clarify the issue and appears to add a number of elements that are not consistent with the commonly understood meaning of femicide.⁹³ This topic is discussed further in Section IV, *infra*.

3. Lack of Reliable Data Obscures the Magnitude of the Problem

There is broad consensus that the magnitude of the problem has been obscured by the lack of reliable statistics on violence against women in general, and femicide specifically,⁹⁴ and that this is serious.⁹⁵ The existing data does not provide an accurate picture of femicide in Guatemala. This lack of reliable information may shield the Guatemalan government from public scrutiny and criticism,⁹⁶ and it hinders the development of public policies to address the severity and magnitude of the problem.⁹⁷

There are several principal factors contributing to the unreliability of data related to the femicides: high rate of under-reporting, deficient methodologies for the collection and recording of information, and lack of a standardized or centralized system for recording data.⁹⁸ As discussed

91. See *Ley Contra el Femicidio*, *supra* note 27.

92. *Id.* at art. 6.

93. For instance, the law states the murder of a woman is a femicide if it is “committed in the presence of daughters or sons of the victim.” *Ley Contra el Femicidio*, *supra* note 27, at art. 6(g).

94. See IACHR Access to Justice, *supra* note 25, at 78, ¶ 188 (“statistics from every quarter of government grossly underestimate the magnitude of the problem of gender-based violence”).

95. See, e.g., *Centro para la Acción Legal en Derechos Humanos* [Center for Human Rights Legal Action] (CALDH), 2005 at 50; *Boletina: Informe de Denuncias de Violencia Contra las Mujeres en Guatemala el Año 2005* [Bulletin: Statistical Report on Reports of Violence Against Women in Guatemala in 2005], *Grupo Guatemalteco de Mujeres* [Guatemalan Women’s Group], at 4 (Mar. 2006); Interview with Myrna Mack Foundation, *supra* note 90; Interview with Congresswoman Ana María de Frade, *supra* note 76.

95. See, e.g., *Centro para la Acción Legal en Derechos Humanos* [Center for Human Rights Legal Action] (CALDH) (2005) 50; *Boletina: Informe de Denuncias de Violencia Contra las Mujeres en Guatemala el Año 2005* [Bulletin: Statistical Report on Reports of Violence Against Women in Guatemala in 2005], *Grupo Guatemalteco de Mujeres* [Guatemalan Women’s Group] 4 (Mar. 2006); Interview with Myrna Mack Foundation, *supra* note 90; Interview with Congresswoman Ana María de Frade, *supra* note 76.

96. WOLA/Hidden in Plain Sight, *supra* note 33, at 1.

97. IACHR Access to Justice, *supra* note 25, at 79, ¶ 190.

98. In addition, the PDH’s greatest obstacle in investigating violent deaths of women was getting access to the MP’s case files and MP’s unwillingness on behalf of prosecutors and other MP officials to allow case review of these files. *PDH/Tomo 1*, *supra* note 38, at 48.

below, media reporting on femicide cases also contributes to the lack of reliable information by perpetuating gender stereotypes and engaging in tabloid journalism.⁹⁹

a. High Rate of Under-Reporting

There are high rates of under-reporting for all crimes in Guatemala; surveys of victims in Guatemala demonstrate that approximately seventy-five percent of crimes go unreported.¹⁰⁰ The problem is even worse in the case of crimes against women.¹⁰¹ According to the *Red de la No Violencia Contra las Mujeres* [Network of No Violence Against Women], an estimated ninety percent of domestic violence incidents are unreported in Guatemala.¹⁰²

As Carlos Castresana, Commissioner of the *Comisión Internacional Contra la Impunidad en Guatemala* [International Commission Against Impunity in Guatemala] (“CICIG”)¹⁰³ pointed out, under-reporting results from the existence of barriers, not from a lack of will on the part of the victims and their families.¹⁰⁴ Numerous obstacles prevent the reporting of crimes associated with violence against women, including but not limited to a lack of confidence in an effective response from the government, fear of additional violence that may result when an abuser learns the abuse was reported, concerns regarding stigmatization by family and community members, and the prospect of loss of economic support.¹⁰⁵ Unless these

99. CERIGUA, *Investigación en Prensa Escrita sobre Violencia contra las Mujeres* [Investigation into Written Press about Violence Against Women] 18 (2008) [hereinafter *CERIGUA/Investigación en Prensa Escrita*].

100. *Por ser mujer*, *supra* note 4, at 3.

101. See WOLA/Hidden in Plain Sight, *supra* note 33, at 4. See also Talk by Carlos Castresana, *Comisión Internacional contra la Impunidad en Guatemala* [International Commission Against Impunity in Guatemala] (CICIG), *Encuentro Latinoamericano: “No al femicidio”* [Latin American Meeting: “Saying No to Femicide”] in Guatemala (May 22, 2008) [hereinafter Castresana Talk]; CLADEM/*Investigación Femicidio*, *supra* note 36, at 58; and Guatemala’s Femicides (CGRS Update), *supra* note 18, at 8.

102. WOLA/Hidden in Plain Sight, *supra* note 33, at 4.

103. The *Comisión Internacional Contra la Impunidad en Guatemala* [International Commission Against Impunity in Guatemala] (CICIG) was established in December 2006 by an agreement between the United Nations and Guatemala and entered into force in Sept. 2007. CICIG was given an initial two-year mandate to determine the existence of illegal security groups and clandestine security structures, and to collaborate with the Guatemalan government in addressing these problems through investigation, legislative reforms, and strengthening state institutions; that mandate was later extended an additional two years (through September 2011). For further information, see CICIG, “One Year Later,” Guatemala (Sept. 2008) [hereinafter *CICIG/One Year Later*], and CICIG, “*Informe de dos años de actividades, 2007 a 2009 a la Comisión Interamericana de Derechos Humanos*” [“Two-Year Report on Activities, 2007 to 2009, to the Inter-American Human Rights Commission”], Washington (Nov. 2009) [hereinafter *CICIG/Informe de Dos Años*].

104. Castresana Talk, *supra* note 101.

105. See GHRC/Three Thousand and Counting, *supra* note 32, at 4; Talk by Marta Altolaguirre, Ambassador and Vice Minister of External Affairs of Guatemala, past President of the Inter-American Commission on Human Rights, Organization of American

barriers are addressed, under-reporting will continue at the high rate that currently exists.

b. Deficient Methodologies for the Collection, Recording, and Reporting of Information

Government institutions and nonprofit organizations gather, record, and report data without the detail necessary to capture the gender-based nature of the phenomenon.¹⁰⁶ Most do not gather and record data that may be critical to identifying the crime as gender-motivated. Annual reports produced by both the *PDH* and *MP* demonstrate the failure to report information in a manner which allows meaningful interpretation and analysis. Even though women's and human rights organizations have repeatedly identified the need to improve the quality of the information about femicide by providing more specificity, data collection has not improved.¹⁰⁷

c. Lack of a Standardized or Centralized System for Collecting Data

There is no nation-wide, standardized system for collecting data on violence against women or on femicide. Article 20 of the Femicide Law mandates such a system be created, however, a database of statistics regarding femicide or other crimes against women has yet to be established.¹⁰⁸ There are multiple government institutions that have

States, *Encuentro Latinoamericano: "No al femicidio"* [Latin American Meeting: "Saying No to Femicide"] in Guatemala (May 22, 2008); and IACHR Access to Justice, *supra* note 25, at ¶ 173.

106. See *La Pena Capital*, *supra* note 77, at 6; IACHR Access to Justice, *supra* note 25, at 80, ¶¶ 193-94 (official statistics do not always classify data by key variables).

107. *Informe de Seguimiento al Cumplimiento por Parte del Estado de Guatemala de las Recomendaciones de la Relatora Especial de las Naciones Unidas sobre Violencia en Contra de las Mujeres* [Monitoring Report on the State of Guatemala's Fulfillment of the Recommendations of the United Nations Special Rapporteur on Violence Against Women] at 12 (2006).

107. *Informe de Seguimiento al Cumplimiento por Parte del Estado de Guatemala de las Recomendaciones de la Relatora Especial de las Naciones Unidas sobre Violencia en Contra de las Mujeres* [Monitoring Report on the State of Guatemala's Fulfillment of the Recommendations of the United Nations Special Rapporteur on Violence Against Women] at 12 (2006).

108. *Ley Contra el Femicidio* *supra* note 27. See also Guatemala's Femicides (CGRS Update), *supra* note 18, at 8; and Guatemala Human Rights Commission/USA, "Guatemala's Femicide Law: Progress Against Impunity," at 12 (2009) [hereinafter GHRC/Guatemala's Femicide Law]. See also Centro de Investigación, Capacitación y Apoyo a la Mujer ("CICAM") [Center for Women's Research, Training and Support], *Sistematización de los Procesos Penales de Muertes Violentas de Mujeres en Guatemala, Villa Nueva, Mixco, Coban, Jalapa, Quetzaltenango y La Libertad (Peten) del año 2000-2005* [Systematizing the Criminal Processes for the Violent Death of Women in Guatemala, Villa Nueva, Mixco, Coban, Jalapa, Quetzaltenango y La Libertad (Peten) from 2000-2005] at 6 (Jul. 2006) [hereinafter *CICAM/Sistematización de los Procesos Penales*]. *CICAM* is a

independently maintained statistics, including the *Policia Nacional Civil* (“PNC”), the *Ministerio Publico* (“MP”), the *Organismo Judicial* (“OJ”), the *Instituto Nacional de Estadística* (“INE”), the *Ministerio de Gobernación* (“MG”), and the *Procuraduría de Derechos Humanos* (“PDH”).¹⁰⁹ These institutions report contradictory numbers because they do not use the same criteria to gather information and record crimes.¹¹⁰ These inconsistencies not only affect data regarding the incidence of femicide, but extend to statistics and other information regarding the investigation and processing of other crimes.¹¹¹ The IACHR has expressed concern about “disorganized proliferation of state efforts to compile data” and the fact that the various agencies all use different formats.¹¹²

The most complete registry on the incidence of femicide is kept by the PNC, but even within this agency there are differences in data reported.¹¹³ Since other government institutions, such as the PDH, often rely on the PNC’s numbers to compile their own statistics, data problems tend to have a domino effect throughout the government institutions.¹¹⁴ Moreover, the absence of reliable governmental data affects the ability of nongovernmental organizations (“NGOs”) to properly track femicide because they have limited other sources to rely upon besides the government.

d. Media Perpetuation of Gender Stereotypes and Tabloid Journalism

Unfortunately, many of the statistics and much of the information the public receives and some of the information NGOs compile comes from the news media.¹¹⁵ As researchers at the *Centro de Reportes Informativos sobre Guatemala* [Center for Informative Reports About Guatemala]

Guatemala-based organization seeking to enforce women’s human rights. For further information, see <http://www.cicam.org.gt/index.php?ID=1269>.

109. Beyond these government institutions, volunteer firefighters and employees from hospital morgues also gather data and make reports regarding the violent deaths of women. For more information on these institutions, see the “Glossary of Acronyms” at Appendix I, and information contained in footnotes throughout the report.

110. See *Centro para la Accion en Derechos Humanos* [Center for Human Rights Legal Action] (“CALDH”), *Asesinatos de Mujeres: Expresión del Femicidio en Guatemala* [Murders of Women: Expression of Femicide in Guatemala] at 44 (2005) [hereinafter *CALDH/Asesinatos de Mujeres*]; European Parliament Report, *supra* note 47, at 11; and WOLA/Hidden in Plain Sight, *supra* note 33, at 2.

111. As reported by *CICAM*, different areas of the country use different methods to track investigations and trials of femicides, with potentially varying accuracy. See *CICAM/Sistematización de Procesos Penales*, *supra* note 108.

112. IACHR Access to Justice, *supra* note 25, at 80, ¶ 193.

113. For example, one PNC section reported 518 women homicide victims in Guatemala during 2005, whereas a different PNC section reported 665 women homicide victims for the same time period. *CCPDH*, *supra* note 74, at 59.

114. *CICAM/Sistematización de Procesos Penales*, *supra* note 108, at 4.

115. *La Pena Capital*, *supra* note 77, at 6-7.

(“*CERIGUA*”)¹¹⁶ have pointed out, the media is a poor source of information.¹¹⁷ First, the media is unreliable. Journalists often rely on sources such as neighbors and firefighters, and there is little correlation between the number of femicides reported in the press during a certain time period and the number of femicides according to government data during the same time period.¹¹⁸ Second, the media often perpetuates gender stereotypes, frequently characterizing the killings as crimes of passion,¹¹⁹ or blaming the victims for their own murders. Third, the media tends to engage in tabloid or sensationalist journalism, which frequently displays bloody, dehumanizing photographs intended to increase newspaper circulation;¹²⁰ describes the killings of women in particularly brutal terms;¹²¹ and attributes many murders to “personal vengeance.”¹²² This type of coverage does not approach the problem from a social or analytical perspective,¹²³ nor does it contribute to a constructive dialogue and progress in addressing the problem.¹²⁴ As *CERIGUA*'s director has emphasized, this sensationalism along with its accompanying dehumanizing images contributes to the permissibility of violence against women.¹²⁵

4. Femicide Is Escalating

There is widespread consensus that femicide continues to escalate in Guatemala.¹²⁶ Regardless of the definition used in gathering statistics or the source of statistics, all the information available documents that the recorded numbers of violent deaths of women increase every year, and the brutality which accompanies these crimes continues.¹²⁷ In a September 2008 meeting, Dr. Sergio Morales, the head of the *PDH*, commented that the one thing he was certain of was that the number of femicides in 2008 would be higher than that of the previous year.¹²⁸

116. For information about *CERIGUA*, see <http://www.cerigua.info/portal/index.php>.

117. *CERIGUA/Investigación en Prensa Escrita*, *supra* note 99; see also *El Periódico*, “Femicidio y prensa escrita” [“Femicide and the Written Press”], Mar. 3, 2008 (discussing the fact that the Guatemalan press has inadequately covered femicide cases and the full story does not reach the public).

118. *CERIGUA/Investigación en Prensa Escrita*, *supra* note 99, at 7.

119. *CERIGUA/Investigación en Prensa Escrita*, *supra* note 99, at 7.

120. *Id.* at 2.

121. *Id.* at 13.

122. *CERIGUA/Investigación en Prensa Escrita*, *supra* note 99, at 17.

123. *Id.* at 21.

124. *CERIGUA/Investigación en Prensa Escrita*, *supra* note 99, at 21.

125. *Id.*

126. *Por ser mujer*, *supra* note 4, at 3.

127. *Id.* See also *PDH/Tomo I*, *supra* note 38, at 33 (noting the percentage of cases involving homicides of women has considerably increased).

128. CGRS interview with Sergio Morales, Human Rights Ombudsman, Guatemalan Public Prosecutor's Office, in Guatemala (Sept. 25, 2008), on file at CGRS office.

<u>Source/ Year</u>	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<i>PNC</i>	179	213	303 (307)	317	383	509 (527) (531)	552 (665)	603	590	687 (722)

Although *Policía Nacional Civil* [National Civil Police] (“*PNC*”) records vary from office to office and from the reporting source (e.g., yearly figures included in the chart above reflect the lowest figures cited by the *PNC*, followed in some cases by numbers in parentheses, which indicate higher figures provided by the *PNC* cited by other sources), statistics for the past decade demonstrate the number of violent deaths of women and girls in Guatemala has risen each year, with the exception of 2007.¹²⁹

5. Additional Demographic Details

Although potentially unreliable, existing data provides some details regarding general demographics. According to a European Parliament Report, “[s]tudies done by official bodies indicate the murders are concentrated in urban areas such as Guatemala City and Escuintla.”¹³⁰ Statistics kept by the Interior Ministry reveal approximately half of all reported femicide occurs in Guatemala City.¹³¹ Femicide has also increased in the states of Chiquimula and Petén. The *PDH* has commented Guatemala City and Chiquimula are the most dangerous regions for women in the country.¹³²

129. See *Por ser mujer*, *supra* note 4, at 81; *CALDH/Asesinatos de Mujeres*, *supra* note 110, at 46; *Procuraduría de Derechos Humanos* [Office of the Human Rights Ombudsman], *Compendio: Muertes Violentas de Mujeres 2003 a 2005* [Summary: Violent Deaths of Women 2003 to 2005] (2006) at 27 [hereinafter *PDH/Muertes Violentas de Mujeres*]; *Centro para la Acción Legal en Derechos Humanos* [Center for Human Rights Legal Action] (*CALDH*), *Informe de Seguimiento al Cumplimiento por Parte del Estado de Guatemala de las Recomendaciones de la Relatora Especial de las Naciones Unidas sobre la Violencia en Contra de las Mujeres* [Monitoring Report on the Compliance of the State of Guatemala with the Recommendations of the UN’s Special Rapporteur on Violence Against Women] at 10-11 (2006); *Víctimas de la Impunidad*, *supra* note 65, at 13; *USDOS/Guatemala Country Report 2008*, *supra* note 65; and U.N. General Assembly, Human Rights Council, “Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and the Secretary General: Report of the United Nations High Commissioner for Human Rights of Her Office in Guatemala in 2008” at 7 (Feb. 28, 2009), available at <http://www.unhcr.org/refworld/pdfid/49c768892.pdf>.

130. European Parliament Report, *supra* note 47, at 13. See also “*CERIGUA/ Investigación en Prensa Escrita*,” *supra* note 99, at 13-14; and “*PDH/Tomo I*,” *supra* note 38, at 37-40.

131. *Prensa Libre*, “*Violencia intrafamiliar propicia femicidio, dice estudio*” [“Intra-family Violence Brings About Femicide, a Study Says”], Oct. 3, 2008.

132. *PDH/Tomo I*, *supra* note 38, at 38-39.

According to the data, the majority of the victims are between adolescence and the age of thirty,¹³³ and a high percentage of them are young and at a reproductive age.¹³⁴ In its 2007 annual report, the *PDH* emphasized the persistence of murders of young girls and adolescents, as well as the growing trend of these victims bearing signs of torture.¹³⁵ Although the majority of the victims do not work outside the home, a number of the victims are students or professionals.¹³⁶ Notwithstanding the fact that there is a propensity for government officials to identify victims as prostitutes, and to blame them for their “sexual behavior” or promiscuity, *CERIGUA* has reported it found very few cases where victims were sex workers.¹³⁷ In terms of economic status, the majority of victims are poor, but victims have come from higher economic classes.¹³⁸

III. EXPLANATIONS AND THEORIES REGARDING THE KILLINGS

The vast majority of the gender-motivated killings in Guatemala have not been investigated or prosecuted.¹³⁹ Explanations of who is responsible — or what is causing the surge of killings — take the form of theories, rather than a concrete analysis of data regarding the perpetrators and their motives. Many of the published reports and studies on femicide include a discussion of the possible causes or explanations for the escalating killings of women,¹⁴⁰ and there is a remarkable degree of consensus as to the most significant contributing factors. Most often cited as explanations are the legacy of violence from the thirty-six-year internal armed conflict; the deeply entrenched culture of patriarchy, which has manifested in deep inequalities in the culture and its institutions, as well as pervasive violence against women; and a climate of near absolute impunity for crimes committed. In addition to these factors, some reports point to the proliferation of gangs and organized crime as contributing to the violent

133. GHRC/Three Thousand and Counting, *supra* note 32, at 6. *See also* European Parliament Report, *supra* note 47, at 13. For a more detailed age breakdown, *see CERIGUA/Investigación en Prensa Escrita*, *supra* note 99, at 11; and *PDH/Tomo I*, *supra* note 38, at 35.

134. *PDH/Tomo I*, *supra* note 38, at 35.

135. *Id.* at 50.

136. *Informe de Avance*, *supra* note 84; European Parliament Report, *supra* note 47, at 13. *See also CERIGUA/Investigación en Prensa Escrita*, *supra* note 99, for a more detailed analysis of victim's profession.

137. *CERIGUA/Investigación en Prensa Escrita*, *supra* note 99, at 20.

138. *See* GHRC/Three Thousand and Counting, *supra* note 32, at 11; and European Parliament Report, *supra* note 47, at 13.

139. *See infra* notes 175-79; *see also* WOLA/Hidden in Plain Sight, *supra* note 33, at 4.

140. *See* David Zisser, *State of Impunity: Femicide in Guatemala, A Summary, Comparison, and Analysis of the Literature on Femicides* (CGRS Internal Student Reports, 2007); and Rachel Dempsey, *An Update to State of Impunity* (CGRS Internal Student Reports, 2008).

killings of women. Other explanations posited in various reports include the theory that the killings are part of a strategy of clandestine forces, which engage in violence with the purpose of destabilizing society. Another theory posits the killings are a form of social cleansing. In this section, we will review these theories, including a discussion of the bases underlying each of them.

A. THE LEGACY OF VIOLENCE

The thirty-six-year internal armed conflict in Guatemala was one of particular brutality. The Guatemalan military carried out a scorched-earth campaign in which 440 villages were destroyed by state military forces.¹⁴¹ It is estimated anywhere between 200,000 and 250,000 Mayan civilians were killed or disappeared, and up to a million-and-a-half Guatemalans were displaced.¹⁴² Tactics of terror, including disappearances and widespread use of torture and sexual violence, were commonplace. Those responsible for these acts have rarely been prosecuted and punished.¹⁴³ As Yakin Ertürk, the former U.N. Rapporteur on Violence Against Women, emphasized, justice is required not only to recognize the gravity of sexual violence as a weapon of war, but also to serve as a deterrent effect for future acts.¹⁴⁴

Violence against women, including sexual violence, was a strategy of the war. The Guatemalan Army trained its members in the use of sexual violence against women.¹⁴⁵ Acts of violence against women included mass public rapes, gang rapes in detention centers, mutilation of female sexual organs, and publicly exposing mutilated female bodies or those with signs of rape.¹⁴⁶ “Patterns of sexual repression against women reached their maximum expression during the internal armed conflict, when rapes, sexual slavery, forced sexual labor, forced marriages with members of the army,

141. *Comisión para el Esclarecimiento Histórico* [Historical Clarification Commission], *Guatemala: Memoria del Silencio, Conclusiones y recomendaciones del Informe de la Comisión para el Esclarecimiento Histórico* [Guatemala: Memory of Silence, Conclusions and Recommendations from the Report of the Historical Clarification Commission] (1999) ¶¶ 1-79 [hereinafter *CEH/Memoria de Silencio*].

142. *Id.*

143. *From Genocide to Femicide*, *supra* note 84, at 119 (2008).

144. See ECOSOC *Violence Against Women*, *supra* note 24.

145. See ICCPG, *Violencia Contra las Mujeres: Tratamiento por Parte de la Justicia Penal de Guatemala* [Violence Against Women and Its Treatment by the Guatemalan Criminal Justice System] at 16 (2005) [hereinafter *ICCPG Report*]; and *Fundación Sobrevivientes* [Survivors' Foundation], *Identificación de Patrones Existentes en el Asesinato de Mujeres en Guatemala y Similitudes con los Crímenes del Pasado* [Identifying Existing Patterns in the Murders of Women in Guatemala and Similarities with Crimes of the Past] at 2 (2005). See also *CEH/Memoria de Silencio*, *supra* note 141, ¶¶ 29, 30, and 42.

146. *Comisión Específica Para el Abordaje del Femicidio* [Special Commission to Address Femicide], *Estrategia para el Abordaje del Femicidio Una Visión desde el Estado* [Strategy for Addressing Femicide: A Vision from the State] at 18 (2006) [hereinafter *Estrategia para el Abordaje del Femicidio*].

and amputations and mutilations of sexual organs were part of the counterinsurgency strategy.”¹⁴⁷ The conflict made violence culturally acceptable; it led to a nation of people accustomed to extreme brutality,¹⁴⁸ in which “violence is the principal means of resolving conflicts.”¹⁴⁹ Another consequence of the thirty-six-year conflict was the proliferation of arms throughout society.¹⁵⁰

It is widely believed the current wave of violent killings of women in Guatemala is a legacy of the internal armed conflict and its attendant brutality.¹⁵¹ There are many similarities between the crimes during the conflict and the crimes committed now, including patterns of torture, public rapes, gang rapes, and mutilation of genitals. Ertürk, former U.N. Special Rapporteur on Violence against Women, observed the *modus operandi* in the abduction and killing of women is reminiscent of torture methods used in the counterinsurgency.¹⁵² In the same way that bodies were dumped during the armed conflict, victims of femicide are dumped out in the open with no attempts to hide the bodies.¹⁵³

B. DEEP GENDER INEQUALITY — A CULTURE OF PATRIARCHY REFLECTED IN THE LEGAL SYSTEM

Although violence against women may have reached a new height during the internal armed conflict,¹⁵⁴ as mentioned above, it has a long historical context with a culture of patriarchy and deep gender inequalities which go back more than five centuries.¹⁵⁵ Women occupy an inferior

147. *Por ser mujer*, *supra* note 4, at 7.

148. AMNISTÍA INTERNACIONAL [AMNESTY INTERNATIONAL], INFORME DE CRIMENES CONTRA MUJERES EN GUATEMALA [REPORT ON CRIMES AGAINST WOMEN IN GUATEMALA] 1 (2004) [hereinafter AI/Report on Crimes Against Women].

149. ICCPG Report, *supra* note 145, at 14 (“Es importante destacar que los treinta años de conflicto armado interno configuraron en Guatemala una forma específica de relacionamiento en la que la violencia es la principal manera — culturalmente aprendida — de solucionar los conflictos.” [“It is important to emphasize that thirty years of internal armed conflict in Guatemala has created a specific form of relating in which violence is the primary means — culturally learned — of resolving conflicts.”]).

150. *ESTRATEGIA PARA EL ABORDAJE DEL FEMICIDIO*, *supra* note 146, at 4-9.

151. See *PDH/Muertes Violentas de Mujeres*, *supra* note 129, at 12 (“La muerte violenta de mujeres en la actualidad es, entonces, parte de un proceso acumulativo de descomposición social, que se fundamenta en la cultura de la violencia.” [“The violent deaths of women taking place now, then, is part of the cumulative process of social decomposition which is rooted in the culture of violence.”]); *Estrategia para el Abordaje del Femicidio*, *supra* note 146, at 18; U.N. ECON. & SOC. COUNCIL [ECOSOC], Commission on Human Rights, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, U.N. Doc. E/CN.4/2004/66/Add.2 (Mar. 8, 2004), ¶ 5 (*submitted by Yakin Erturk, Special Rapporteur on violence against women, its causes and consequences*).

152. *ECOSOC Violence Against Women*, *supra* note 24, ¶ 30.

153. *Id.* at ¶ 28; see also *From Genocide to Femicide*, *supra* note 84, at 111-12; and *GHRC/Three Thousand and Counting*, *supra* note 32, at 3.

154. *Por ser mujer*, *supra* note 4, at 7.

155. *Id.* at 8.

position within society and suffer discrimination and exclusion because of their gender.¹⁵⁶ Within this milieu, violence against women is socially accepted, and is seen as normal¹⁵⁷ or even as a “positive” attribute of the *machismo* culture (which exemplifies the central components of the masculine identity’s attributes of toughness, force, and aggression).¹⁵⁸ There is a lack of respect for women in general, as well as for the value of a woman’s life.¹⁵⁹ Against this backdrop, femicide does not constitute a new or baffling phenomenon but can be seen as a manifestation of the long-existing, wider pattern of violence against women.¹⁶⁰

The extreme gender inequalities which permit and perpetuate violence against women have not only existed *de facto*, but were institutionalized through the legal system. For example, until 1998, the Guatemalan Civil Code accorded women a subordinate status to their husbands.¹⁶¹ This attitude continues to be reflected in criminal law provisions; until recently, acts of sexual violence against women were considered “private crimes” permitting the perpetrator to be pardoned upon the women’s agreement,¹⁶² and a man could escape prosecution for rape if he married the victim, even in cases of girls as young as twelve.¹⁶³ While the passage of the *Ley de Trata* [Trafficking Law] in March 2009 has made acts of sexual violence “public crimes” to be prosecuted by government authorities,¹⁶⁴ Article 106 of the Criminal Code (which provides “the forgiveness of the victim will remove the criminal responsibility of the guilty party”) was not specifically modified.

Furthermore, a victim reporting sexual violence had to establish her “honesty,” i.e., that she was not “promiscuous” or involved in sex work, in order to pursue prosecution.¹⁶⁵ This normative legal framework not only legitimized patriarchal norms and attitudes, but contributed to the pervasive impunity for acts of violence against women, including femicide.

156. *Estrategia para el Abordaje del Femicidio*, *supra* note 146, at 14.

157. *Por ser mujer*, *supra* note 4, at 8.

158. European Parliament Report, *supra* note 47, at 4.

159. *Estrategia para el Abordaje del Femicidio*, *supra* note 146, at 14.

160. *La Pena Capital*, *supra* note 77, at 3 (“El Concepto de femicidio . . . sólo es posible porque socialmente existen dispositivos y lógicas culturales que han institucionalizado y reproducen relaciones de poder opresivas entre los sexos.” [“The concept of femicide . . . is only possible because there of the existence of cultural logics and dispositions that have institutionalized and reproduce the oppressive power relations between the sexes.”]).

161. CRGS/Getting Away with Murder, *supra* note 18, at 7-8.

162. 2008 Declaration of Hilda Morales Trujillo, *supra* note 46, ¶ 23.

163. *Id.* Avoidance of prosecution under these circumstances was permitted by Article 200 of the Criminal Code; it was overruled in 2006 by a decree of the Guatemalan Constitutional Court, holding the law to be in conflict with Article 4 of the Constitution which articulates the principle of equality, but — according to Hilda Morales Trujillo — still occurs in practice.

164. See *Ley de Trata*, *supra* note 57.

165. *Estrategia para el Abordaje del Femicidio*, *supra* note 146, at 16.

Notwithstanding the depth of the patriarchy, the internal armed conflict and its aftermath resulted in some changes in traditional gender roles in the country. Some women actively participated in the armed conflict as combatants, as militants opposed to the counterinsurgency regime, as organizers of the communities in resistance, or as leaders of the internally or externally displaced. These actions represented a historical break from tradition.¹⁶⁶ Others widowed during or after the armed conflict had no option but to leave the home to seek gainful employment.¹⁶⁷ A number of scholars and researchers have theorized attempts by women to break out of the patriarchal roles assigned to them have resulted in increased violence by men who feel deeply challenged by changing gender roles,¹⁶⁸ “[i]t could be a violent reaction of the patriarch in the face of changes that have presented themselves in economic and social dynamics, and in the occupation of spaces traditionally assigned to men.”¹⁶⁹

C. IMPUNITY

As discussed above, the existence of impunity for crimes of violence — against both men and women — is an undisputed fact in Guatemala. Although studies vary slightly in the degree of impunity they report, they all place the figure at the extreme high end of the continuum. For example, the authors of *Por ser mujer* reported a ninety-seven percent impunity rate for crimes against life,¹⁷⁰ while the Washington Office on Latin America (“WOLA”) presented figures showing a rate of impunity approaching ninety-nine percent in cases of femicide.¹⁷¹ There is broad consensus that

166. *La Pena Capital*, *supra* note 77, at 4. (“Durante el conflicto armado hubo ejecuciones de mujeres . . . porque las mujeres estuvieron inmersas en el conflicto directamente, como combatientes, militantes de oposición al régimen contrainsurgente, protagonistas de poblaciones en resistencia, líderes del desplazamiento interno y externo, viudas, esposas, madres o parientes de los combatientes” [“During the armed conflict there were executions of women . . . because they were directly immersed in the conflict, as combatants, militants in opposition to the counter-insurgency regime, protagonists of resisting populations, leaders of internal/external displacement, widows, wives, mothers and relatives of combatants”]).

167. CRGS/Getting Away with Murder, *supra* note 18, at 8. (“There is a documented increase in households headed by women, due to widowhood owing to wartime violence, internal displacement, migration of men for work, marital dissolution, and abandonment of the family by men.”)

168. *See, e.g.*, GHRC/Three Thousand and Counting, *supra* note 32, at 4. (“Many men blame their unemployment on the emergence of women in the academic and employment sectors. There is a resentment among men who feel a ‘woman’s place’ is in the home.”).

169. UNIDAD REVOLUCIONARIA NACIONAL GUATEMALTECA [GUATEMALAN NATIONAL REVOLUTIONARY UNITY], CONGRESO DE LA REPUBLICA [CONGRESS OF THE REPUBLIC], FEMINICIDIO EN GUATEMALA: CRIMENES CONTRA LA HUMANIDAD, INVESTIGACIÓN PRELIMINAR [FEMINICIDE IN GUATEMALA: CRIMES AGAINST HUMANITY, PRELIMINARY RESEARCH], at 48 (Nov. 2005) [hereinafter *Feminicide in Guatemala*].

170. *Por ser mujer*, *supra* note 4, at 8.

171. WOLA/Hidden in Plain Sight, *supra* note at 33, at 13. (WOLA reported to its knowledge, “only 20 sentences have been handed down for the more than 2,500 murders [of women] over the last six years.” This statistic calculates to a level of impunity of 98.75%.)

impunity is a major contributing factor to the escalating murders of women.¹⁷²

Many trace the roots of impunity in contemporary Guatemalan society to its brutal internal armed conflict, and the failure to demand justice and accountability in its aftermath. When conflict ended, the individuals and institutions responsible for committing the gross atrocities that characterized the internal armed conflict were not subjected to prosecutions within Guatemala for their role in the violence. Although the U.N.-sponsored *Comisión para el Esclarecimiento Histórico* [Historical Clarification Commission] investigated abuses committed during the conflict and publicly reported its findings, subsequent efforts to purge the various state institutions of individuals identified as human rights violators have largely been ineffective, and countless numbers of victims received no reparations. These factors contributed greatly to the creation and maintenance of a culture of impunity that has continued to the present time.¹⁷³

The weakness of the various state institutions responsible for providing justice and security to its citizenry compounds and aggravates the situation created by the culture of impunity.¹⁷⁴ Countless studies have documented the egregious deficiencies in every Guatemalan institution charged with the investigation and prosecution of crimes¹⁷⁵ through every step of the investigatory process. Police do not immediately respond when the abduction or disappearance of a woman is reported. They routinely wait twenty-four to seventy-two hours to start an investigation into a report of a missing woman,¹⁷⁶ losing the critically important investigative hours following abductions, telling family members that their initial investigations will not begin for twenty-four hours since “many young girls

172. See, e.g., AMNESTY INTERNATIONAL, “NO PROTECTION, NO JUSTICE: KILLING OF WOMEN (AN UPDATE)” 4 (Jul. 18, 2006) [hereinafter AI/No Protection (Update)], available at <http://www.amnesty.org/en/library/asset/AMR34/019/2006/en/970f9ee4-d423-11dd-8743-d305bea2b2c7/amr340192006en.pdf>.

173. See *ECOSOC Violence Against Women*, supra note 24, at 16.

174. *PDH/Muertes Violentas de Mujeres*, supra note 129, at 11-20; *Estrategia para el Abordaje del Femicidio*, supra note 146, at 4-9.

175. See *Por ser mujer*, supra note 4, at 109-30; AI/No Protection (Update), supra note 172, at 4; WOLA/Hidden in Plain Sight, supra note 33, at 11-12; FEMINICIDIO EN AMÉRICA LATINA: DOCUMENTO ELABORADO CON MOTIVO DE LA AUDIENCIA SOBRE “FEMINICIDIO EN AMÉRICA LATINA” ANTE LA COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS (CIDH) [FEMICIDE IN LATIN AMERICA: DOCUMENT PRODUCED DURING THE HEARING ON “FEMICIDE IN LATIN AMERICA” BEFORE THE INTERAMERICAN HUMAN RIGHTS COMMISSION] 7 (2006); see generally INTER-AMERICAN COMMISSION ON WOMEN, “HEMISPHERIC REPORT” (Jun. 2008) [hereinafter Hemispheric Report].

176. WOLA/Hidden in Plain Sight, supra note 33, at 11; WOLA, “Claudina Isabel Velásquez Paiz,” at 1 (Nov. 2006); Amnesty International, GUATEMALA: A SUMMARY OF AMNESTY INTERNATIONAL’S CONCERNS WITH REGARD TO THE GUATEMALAN GOVERNMENT’S IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT 4 (Mar. 31, 2006).

run off with boyfriends.”¹⁷⁷ When investigations begin, crime scenes are not secured and evidence is contaminated.¹⁷⁸ In addition to the barriers posed by institutional deficiencies and lack of competency, corruption within the security forces further exacerbates the situation of widespread impunity.¹⁷⁹

Cases involving female victims experience further adverse treatment as a result of gender biases and stereotypes. Reports of violence against women are not taken seriously, government investigations into femicide are not thorough, and recordkeeping is often incomplete and faulty.¹⁸⁰ Law enforcement personnel demonstrate a persistent pattern of assigning blame to the victims of the crimes, assuming gang involvement or promiscuity in cases that lack any indication that the victims were involved in gangs or the sex trade.¹⁸¹ To government officials, this characterization justifies the failure to investigate. In other words, the deaths of certain women do not merit investigation.

Claudina's case, discussed in note 178, *supra*, demonstrates the extreme form of stereotyping engaged in by Guatemalan authorities. When her body was found, authorities openly commented Claudina was “most likely a prostitute” because of her red nail polish and pierced navel.¹⁸²

The attitude of authorities towards victims spills over into its treatment of their family members. Numerous studies, including *Por ser mujer*, have documented that family members urging investigations into their loved-

177. AI/No Protection (Update), *supra* note 172.

178. WOLA/Hidden in Plain Sight, *supra* note 33, at 11; AMNESTY INTERNATIONAL, NO PROTECTION, NO JUSTICE: KILLINGS OF WOMEN IN GUATEMALA 9 (Jun. 2005) [hereinafter AI/No Protection]. The lack of proper methodology and protocols is illustrated by the investigation of the murder of Claudina Isabel Velasquez Paiz, whose case was discussed in CGRS's first report on femicides, *Getting Away with Murder*, *supra* note 18. Claudina was a nineteen year-old law student at the University of San Carlos, when she was murdered on August 12, 2005. According to the European Parliament Report, *supra* note 47, at 7, “[h]er body was found on August 13, 2005. She had been raped and shot in the head. As with the hundreds of other cases of murdered women, preliminary investigations around the case were unsatisfactory, and authorities failed to pursue important leads. No forensic tests were carried out on her clothes. Instead, they were returned to her family, potentially losing important evidence. No tests were carried out on the main suspects to determine whether they had fired a gun. Potential witnesses and valuable leads were also reportedly not pursued.” For a detailed discussion contrasting the protocol followed with international best practices, see *From Genocide to Femicide*, *supra* note 84, at 114-15.

179. AI/Report on Crimes Against Women, *supra* note 148, at 5.

180. La Pena Capital, *supra* note 77, at 1; WOLA/Hidden in Plain Sight, *supra* note 33, at 11; AI/No Protection, *supra* note 178, at 9; AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2009: THE STATE OF THE WORLD'S HUMAN RIGHTS 159 (2009), available at [http://reliefweb.int/rw/lib.nsf/db900sid/SNAA-7SHE7J/\\$file/AI%20report%202009.pdf](http://reliefweb.int/rw/lib.nsf/db900sid/SNAA-7SHE7J/$file/AI%20report%202009.pdf); AMNESTY INTERNATIONAL, GUATEMALA'S PRESIDENT MUST ACT TO AVERT CRISIS at 1 (Jan. 2009), available at <http://www.amnesty.org/en/news-and-updates/news/guatemalas-president-must-act-avert-crisis-20090112>.

181. CICAM/Sistematización de los Procesos Penales, *supra* note 108, at 64.

182. *Por ser mujer*, *supra* note 4, at 84; *Killer's Paradise* (BBC television broadcast, May 4, 2006).

one's deaths frequently suffer "discrimination and humiliation at the hands of the system for demanding justice."¹⁸³ The authors of *Por ser mujer* underscore the extent of the problem, citing reports by the U.N. Committee against Torture, as well as Amnesty International, decrying the abusive treatment.¹⁸⁴

Another factor contributing to impunity has been the absence of an effective witness protection program, leaving family members or other witnesses vulnerable to severe retaliation, including additional violence or death, should they come forward to pursue justice.¹⁸⁵ Guatemalan women's rights attorney Hilda Morales Trujillo recounted the case of a courageous woman who testified against twelve gang members who had raped a young girl and cut off her ear. One of the gang members threatened the witness at the trial, telling her she was "going to pay" for this. Three months later the witness was murdered.¹⁸⁶

D. GANGS

Gangs have proliferated throughout a number of Latin American countries, including Guatemala.¹⁸⁷ A thorough analysis of the factors

183. *Por ser mujer*, *supra* note 4, at 84.

184. *Id.* ("Según el Comité contra la Tortura en su informe de mayo 2006, ' . . . el hecho de que estos actos no se investiguen exagera el sufrimiento de los familiares que reclaman justicia; además, los familiares se quejan de que las autoridades cometan discriminaciones de género durante la investigación y el proceso judicial.' Amnistía Internacional considera que este sufrimiento causado a los familiares equivale a tratos crueles, inhumanos y degradantes." ["According to the Committee Against Torture in its May 2006 report, ' . . . the fact that these acts are not investigated exacerbates the suffering of the family members demanding justice; furthermore, family members complain the authorities commit gender discrimination during the investigation and judicial process.' Amnesty International considers this suffering inflicted upon family members to be equivalent to cruel, inhumane, and degrading treatment."])

185. Although the Report of the U.N. Secretary General on the International Commission Against Impunity in Guatemala ("CICIG"), indicates during the past two years of its mandate, CICIG has worked to provide technical assistance to the PNC regarding the national witness protection program (training of 48 recent police academy graduates who now comprise a new "personal protection unit") and to the Public Prosecutor's Office (resulting in a new "witness protection regulation" adopted on May 4, 2009), the effects of these changes have not yet overcome the legacy of fear and mistrust victims and witnesses face in Guatemala when making a decision regarding whether to report crimes to authorities. See The Secretary-General, *Guatemala: Report of the U.N. Secretary General on the International Commission Against Impunity in Guatemala*, CICIG (Oct. 29, 2009), available at <http://www.guatemala-times.com/news/guatemala/1236-guatemala-report-of-the-un-secretary-general-on-the-international-commission-against-impunity-in-guatemala-cicig.html>; see also CICIG/Informe de Dos Años, *supra* note 103.

186. CGRS Interview with Hilda Morales Trujillo, member of the 'Oficina Nacional de Mujeres' [National Women's Office] (ONAM) y 'Red de la No Violencia contra la Mujer' [Network of No Violence Against Women], in Guatemala (Sept. 23, 2008), on file at CGRS office [hereinafter Interview with Hilda Morales Trujillo].

187. See, e.g., GHRC/Three Thousand and Counting, *supra* note 32, at 3 ("Gangs first appeared in Guatemala and other parts of Central America in the early 1990s . . . today there are an estimated 130,000-300,000 gang members in Central America and Mexico . . . [m]uch

leading to the growth of gang activity is beyond the scope of this report. However, there is general agreement by those who study gangs that poverty, the fraying of the social fabric due to long years of conflict, and the feeling of hopelessness among youths in urban areas have strongly contributed to the growth of gang activity.¹⁸⁸ The degree to which femicide is linked to gang activity is controversial. While there are studies which assert gangs are a significant cause of femicide,¹⁸⁹ others warn against such conclusions.¹⁹⁰

One theory linking femicide to gang activity begins with the premise that women are the property of male gang members.¹⁹¹ As such, a male gang member may kill a woman if she asserts any autonomy by refusing to become involved in or attempting to leave a relationship. Rival gang members attempting to settle scores may also kill women. As one report notes, their "vulnerability and subordination" makes them a "suitable medium for resolving rivalries between gangs."¹⁹² Some reports have also asserted gangs may also kill women as part of gang-related "Satanic rituals." However, there has been limited documentation of this theory.¹⁹³

like other clandestine operations, street gangs have infiltrated every aspect of Guatemalan society.").

188. See, e.g., AI/Report on Crimes Against Women, *supra* note 148, at 3 ("[u]na maestro de lo grave que es la situación de los jóvenes en dichas organizaciones es que su promedio de vida es 25 años . . . ellos mismos a la vez que son victimarios, son víctimas de un sistema que los excluye." ["An indicator of how serious the situation of youth in these organizations is that their life expectancy is 25 years . . . they themselves are at once victimizers and victims of a system that excludes them."]).

189. See, e.g., Femicide in Guatemala, *supra* note 169, at 76 (citing a representative of the Archbishop's Human Rights Office); and PDH/Muertes Violentas de Mujeres, *supra* note 129, at 16.

190. *Estrategia para el Abordaje del Femicidio*, *supra* note 146, at 4-9 (observing not all gang members are delinquent, and warning against "simplistic explanations or those that reduce the phenomena to one sole cause.").

191. See, e.g., PDH/Muertes Violentas de Mujeres, *supra* note 129, at 15; GHRC/Three Thousand and Counting, *supra* note 32, at 3.

192. Femicide in Guatemala, *supra* note 169, at 76 (" . . . Claudia Ágreda, coordinadora de la Sección de Derechos de la Niñez y la Juventud de la Oficina de Derechos Humanos del Arzobispado (ODHAG), ha explicado que en el interior de estos grupos existe una lucha violenta de poder, en la cual es determinante el nivel de crueldad, que siempre está en ascenso porque cada quien trata de superar los récord anteriores; en esta pugna, las mujeres, por su vulnerabilidad y subordinación, resultan ser un medio idóneo para dirimir estas rivalidades . . .") [" . . . Claudia Ágreda, coordinator of the Department of the Rights of Children and Youth of the Archbishop's Office of Human Rights (ODHAG), has explained within these groups there is a constant violent power-struggle, in which the level of cruelty is the determinant, which is always on the rise because everyone is trying to beat the prior record; in this struggle, women, because of their vulnerability and subordination, become the suitable medium for resolving these rivalries . . ."]. See also GHRC/Three Thousand and Counting, *supra* note 32, at 3. ("In gang culture, women are often seen as property. If a gang member wants to retaliate against another gang member, he kills his enemy's girlfriend as if to destroy his most prized possession.").

193. AI/Report on Crimes Against Women, *supra* note 148, at 3 (reporting the PDH suggested such gang-related Satanic rituals were a factor in the femicides) ("Se habla de muertes de mujeres en ritos satánicos de los mareros, aunque no existe una investigación

E. ORGANIZED CRIME/CLANDESTINE ORGANIZATIONS

Some reports attribute the violent deaths of women to organized crime,¹⁹⁴ which has risen dramatically since the end of the internal armed conflict. As one observer commented, “Guatemala went from war to peace but came out with organized crime and clandestine groups[.]”¹⁹⁵ Organized crime networks are said to have “infiltrated” all aspects of society¹⁹⁶ and are involved in trafficking of drugs, arms and humans, as well as pornography, prostitution and the activities of street gangs.¹⁹⁷

As with the theory regarding the connection between gang activity and femicide, the extent to which organized crime is related to femicide is disputed. Giovana Lemus of the *Grupo Guatemalteco de Mujeres* and Executive Coordinator of the REDNOVI has emphasized her organizations believe “organized crime is behind some of the femicide, but not a significant amount.”¹⁹⁸

Several reports identifying a link between organized crime and femicide theorized the killings are not necessarily committed as an end, in and of themselves, but as a means to divert attention from the other illicit activities of the criminal networks.¹⁹⁹ A secondary but perhaps related notion is that femicide is part of a wider clandestine plan to destabilize the government.²⁰⁰

exhaustiva para comprobar dicha hipótesis.” [“Deaths of women in Satanic rituals of gang members are spoken of, though no thorough investigation exists to confirm this hypothesis.”]).

194. *Estrategia para el Abordaje del Femicidio*, *supra* note 146, at 4-9; PDH/Muertes Violentas de Mujeres, *supra* note 129, at 11-20.

195. GHRC/Three Thousand and Counting, *supra* note 32, at 3.

196. *Id.*

197. See *European Parliament Report Paper*, *supra* note 47, at 7; *Estrategia para el Abordaje del Femicidio*, *supra* note 146, at 4-9; PDH/Muertes Violentas de Mujeres, *supra* note 129, at 20-21.

198. GHRC/Three Thousand and Counting, *supra* note 32, at 3.

199. Femicide in Guatemala, *supra* note 169, at 74-75. (“Nineth Montenegro consideró la posibilidad de que tanto crimen organizado como el narcotráfico estén utilizando estos crímenes como una cortina de humo con el objetivo de desviar la atención . . . expresó la hipótesis de que grupos interesados en crear un ambiente de desestabilización sean los causantes de la violencia imperante.” [“Nineth Montenegro considered the possibility that so much organized crime like drug trafficking is being used as a smokescreen with the aim of deflecting attention . . . expressed the hypothesis that groups interested in creating an environment of instability could be implementers of the prevailing violence.”]).

200. CONSEJO CENTROAMERICANO DE PROCURADORES DE DERECHOS HUMANOS [CENTRAL AMERICAN COUNCIL OF HUMAN RIGHTS OMBUDSMEN], INFORME REGIONAL: SITUACION Y ANALISIS DEL FEMICIDIO EN LA REGION CENTROAMERICANA [REGIONAL REPORT: THE SITUATION AND ANALYSIS OF FEMICIDE IN THE CENTRAL AMERICAN REGION] 68 (2006). (“Son [asesinatos de mujeres] producto de un plan de desestabilización generado por estructuras clandestinas que forman parte de las políticas de terror.”) [“The [murders of women are a] product of a plan to provoke instability, generated by clandestine structures that are part of policies of terror. They {murders of women} are products of a destabilization plan generated by clandestine apparatus that form part of the politics of terror.”].

F. SOCIAL CLEANSING

Social cleansing refers to the elimination of individuals who are considered undesirable. The theory that social cleansing may underlie femicide is based on the concept that women are perceived as being “transgressive” (socially rebellious or criminal) and are killed for this reason. Although the social cleansing theory is not espoused by a broad range of academics or researchers, it does appear as a possible explanation in several studies,²⁰¹ including Professor Victoria Sanford’s research, *From Genocide to Femicide: Impunity and Human Rights in Twenty-First Century Guatemala*.²⁰² In her article, Sanford defines social cleansing as being “systematic” extermination, carried out by the state, or non-state agents acting with state “acquiescence, complicity, support, or toleration[.]”²⁰³ The relationship between the state and the perpetrators “carries an implicit guarantee of impunity[.]”²⁰⁴ Social cleansing is intended to “generate terror” in those of the undesirable class.

Sanford argues the patterns of killings provide strong “indicators of the existence of social cleansing.”²⁰⁵ Femicide in Guatemala is characterized by torture and sexual abuse, which are consistent with social cleansing and its intent to terrorize.²⁰⁶ In a significant number of femicide cases, cadavers are found in a location different from where the killings took place. Sanford observes that because it is not easy to move bodies around “freely and undetected,” this pattern indicates the existence of a “social infrastructure and resources” consistent with social cleansing and its attendant state complicity.²⁰⁷

Sanford rejects the theory that gangs are broadly implicated in femicide, pointing out gangs generally “kill in their own territories” and lack the resources to confine and transport victims to other locations.²⁰⁸ In addition, according to Sanford, gang victims are generally within the narrower age band of sixteen to twenty, while social cleansing victims “fall into a wider age range.”²⁰⁹

201. See *Estrategia para el Abordaje del Femicidio*, *supra* note 146, at 15; and CRGS/Getting Away with Murder, *supra* note 18, at 17. See also U.N. General Assembly, Human Rights Council, Civil and Political Rights, INCLUDING THE QUESTIONS OF DISAPPEARANCES AND SUMMARY: *Addendum: Mission to Guatemala* (Aug. 21 2006) 10-12 (Feb. 19, 2007) (submitted by Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions), available at [http://www.extrajudicialexecutions.org/application/media/\(Guatemala\)%20A_HRC_4_20_Add_2.pdf](http://www.extrajudicialexecutions.org/application/media/(Guatemala)%20A_HRC_4_20_Add_2.pdf) [hereinafter *Report of the Special Rapporteur, Philip Alston*].

202. *From Genocide to Femicide*, *supra* note 84, at 104-22.

203. *Id.* at 110.

204. *Id.*

205. *Id.* at 111.

206. *Id.*

207. *From Genocide to Femicide*, *supra* note 84, at 111.

208. *Id.* at 112.

209. *Id.*

IV. LAWS AND ACTIONS CONCERNING THE GUATEMALAN FEMICIDE

Over the past several years, there have been developments within Guatemala, as well as in international venues, which purport to address violence against women and femicide. This section discusses these initiatives and where possible, evaluates their practical impact in responding to the violence, killings, and existing impunity.

A. DOMESTIC LAWS AND ACTIONS TAKEN BY THE GUATEMALAN GOVERNMENT

While the Guatemalan government has begun taking positive steps to address femicide, its actions have been ineffective in addressing the overall problem.²¹⁰ In many instances, the government's response has failed to address the root causes of violence against women, such as impunity and patriarchal attitudes. Positive pledges by the government to address the brutal murders of women²¹¹ have at times been undermined by statements by public officials characterizing the victims as criminals and attributing blame to them for their own deaths.²¹² Most importantly, investigations of femicide continue to be plagued with deficiencies, and consequently, successful prosecutions of those responsible for the killings rarely occur.²¹³

Unfortunately, neither the killings of women nor the state of insecurity in which Guatemalan women and girls are forced to live has decreased.²¹⁴ Guatemala continues to foster a wide gap between its international obligations and their implementation under CEDAW, the Convention Against Torture ("CAT"), and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention of Belém do Pará").²¹⁵ Due to the Guatemalan state's failure to prevent, investigate, and prosecute the murders of women and to adopt reforms that meaningfully address the problem, Guatemalan women and girls continue to be in as much peril as ever.²¹⁶

210. *See, e.g.*, Guatemala's Femicides (CGRS Update), *supra* note 18, at 7 (the Guatemalan state has "failed to confront the depth and seriousness" of the femicide crisis).

211. *Id.* (These pledges included statements by Guatemalan President Óscar Berger, Supreme Court President and Magistrate Beatriz de León Reyes, and members of the Guatemalan Congress.).

212. *Id.* at 7, 15.

213. *Id.* at 7-10.

214. Guatemala's Femicides (CGRS Update), *supra* note 18, at 7-10.

215. WOLA/Hidden in Plain Sight, *supra* note 33, at 7. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention of Belém do Pará") was adopted at the Twenty-Fourth Session of the General Assembly to the OAS in Belém do Para, Brazil, on Sept. 6, 1994, and entered into force on May 3, 1995. For further discussion of this topic *see infra* notes 250-94, discussing barriers that prevent Guatemala from addressing the problem.

216. *Id.*

1. Legislative Changes

a. The Guatemalan Civil Code

Up until reforms enacted in 1998 and 1999,²¹⁷ Guatemala's *Código Civil* [Civil Code] reinforced stereotypical gender roles and legally codified inequality in the marital relationship. The Code provided: (1) 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; (2) the husband could legally object to his wife working outside the home; (3) the husband alone was the legal representative of the married couple, as well as the sole administrator of the household financial resources and the family's assets; and (4) the father was the sole legal representative of his children and the administrator of their assets even when parents had joint custody.²¹⁸ Amendments to the Code in 1998 and 1999 eliminated these provisions, although many Guatemalans are unaware that a husband no longer has the right to object to his wife's working outside the home.²¹⁹ Even with the 1998 and 1999 changes to the Code, current provisions allowing girls to marry at age fourteen, while boys must wait until they are sixteen years old, perpetuates inequality. Article 89 of the Code also requires women to wait at least 300 days from the date of divorce or nullity before remarrying, although no such requirement is imposed upon men.²²⁰ It should be noted although CEDAW has repeatedly urged Guatemala to repeal these provisions, it has failed to do so.²²¹

b. The Guatemalan Criminal Code

The Guatemalan *Código Penal* [Criminal Code] also reflects outmoded sexist norms that contribute to impunity.²²² This continues to be the case notwithstanding efforts to eliminate antiquated legal provisions through passage of the April 2008 Femicide Law and the March 2009 Trafficking Law. As an example of discriminatory norms, Article 176 of the

217. See CRGS/Getting Away with Murder, *supra* note 18, at 7-8.

218. *Id.*

219. *Id.* at 8.

220. Interview with Hilda Morales Trujillo, *supra* note 186.

221. Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], U.N. Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Guatemala* at 3 (Feb. 2009), available at <http://www.unhcr.org/refworld/pdfid/49e83edd2.pdf>; Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], U.N. Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Guatemala* at 3 (Jun. 2006), available at: <http://www.unhcr.org/refworld/docid/453778420.html>.

222. See *Ley de Trata*, *supra* note 57; Guatemala's Femicides (CGRS Update), *supra* note 18, at 22. For further discussion of discriminatory norms within the Criminal Code generally, see *Por ser mujer*, *supra* note 4, at 33-49; *CLADEM/Investigación Femicidio*, *supra* note 36, at 62-65.

Guatemalan Criminal Code criminalizes sexual intercourse with a minor only if the girl is proven to be “honest.”²²³ Drafters of the Femicide and Trafficking Laws clearly intended to eliminate such provisions in that they place responsibility on the State to prosecute gender crimes, without reference to the alleged moral character of the victim.²²⁴ However, the reality is that Article 176 of the Criminal Code has not been repealed or amended, and as such, it continues in force.²²⁵

Many of the Criminal Code’s provisions fail to take into account unequal power relations and feelings of vulnerability and terror which victims of sexual crimes endure.²²⁶ In cases of rape and sexual violence, the Trafficking Law at long last placed responsibility on the government (and no longer leaves it up to a victim) to initiate prosecutions in cases involving sexual violence.²²⁷ However, it remains unclear whether the *MP* or other offices have initiated or vigorously pursued prosecutions without the full participation of the victims who are vulnerable to repercussions from their assailants,²²⁸ especially given the high level of insecurity and impunity which prevails. Furthermore, Article 106 of the Criminal Code allows a victim to pardon her attacker; as a consequence, women suffer intense pressure not to press charges.²²⁹

Until it was struck down by Guatemala’s Constitutional Court in 2005,²³⁰ Article 200 of the Criminal Code allowed a rapist to escape prosecution if he married his victim.²³¹ This Article continues to apply to cases initiated prior to December 2005.²³² According to Hilda Morales Trujillo, it remains in effect in practice even though it was officially

223. For further discussion of the inadequacies of the Guatemalan Criminal Code, see HILDA MORALES TRUJILLO, *DELITOS CONTRA MUJERES — UNA NUEVA VISIÓN: PROPUESTA PARA MODIFICAR EL CÓDIGO PENAL [CRIMES AGAINST WOMEN — A NEW VISION: A PROPOSAL TO MODIFY THE CRIMINAL CODE]* (Apr. 2002).

224. Further indication the Femicide Law and the Trafficking Law intended to eliminate discriminatory norms is found in Article 27 of the Femicide Law which provides “[a]ll laws or regulations that would hamper or contravene the rules contained in this Act are repealed,” and Article 2(d) of the Trafficking Law which states, “[i]n all actions taken on behalf of minors, the superior interest of the boy or girl should be the main consideration.”

225. *Getting Away with Murder*, *supra* note 18, at 10.

226. 2008 Declaration of Hilda Morales Trujillo, *supra* note 46, at 6, ¶ 23.

227. *Ley de Trata*, *supra* note 57 at Title III, art. 8.

228. *Id.*

229. *Id.* (“In cases of sexual violence, the ‘opportunity criteria’ applies and the perpetrator can be pardoned if the woman agrees The woman is induced to arrive at a settlement that terminates the criminal process and allows the man to go free. This system fails to take into account the unequal power relations and the feelings of vulnerability and terror in which a raped woman lives as a result of post-traumatic stress.”)

230. See, e.g., *Por ser mujer*, *supra* note 4, at 75; Guatemala’s Femicides (CGRS Update), *supra* note 18, at 22.

231. 2008 Declaration of Hilda Morales Trujillo, *supra* note 46, at 6, ¶ 23.

232. *Id.*

eliminated from the Code.²³³ Many of these provisions and the attitudes they represent are in conflict with Guatemala's new Femicide Law. It remains to be seen how the Criminal Code and the Femicide Law will be reconciled.

c. Special Laws²³⁴

The term "special law" refers to laws enacted as stand-alone provisions, rather than amendments or additions to the existing Civil or Criminal Codes in Guatemala. The 1996 *Ley para prevenir, sancionar, y eradicar la violencia intrafamiliar* [Law to Prevent, Sanction, and Eradicate Intra-Family Violence or "1996 Law"]²³⁵ and the April 2008 Femicide Law (discussed *infra*) are both "special laws."

i. *The 1996 Law to Prevent, Sanction, and Eradicate Intra-Family Violence*

Although the 1996 Intra-Family Violence Law was intended to address domestic violence, it did not modify or become part of the Criminal Code, criminalize domestic violence, or include punishment or enforcement provisions.²³⁶ (The 2008 Femicide Law has explicitly criminalized domestic violence, but did not modify provisions of the Criminal Code, and much confusion has resulted over its drafting and how the law should be applied in situations where its provisions conflict with other laws.²³⁷)

The 1996 Law includes provisions through which domestic violence victims can request restraining orders (including orders that can remove an

233. *DECLARACIÓN JURADA DE LA EXPERTA DE GUATEMALA HILDA MORALES TRUJILLO* [SWORN DECLARATION OF GUATEMALA EXPERT HILDA MORALES TRUJILLO] 16 (Aug. 6, 2009) [hereinafter 2009 Declaration of Hilda Morales Trujillo]; *see also* 2008 Declaration of Hilda Morales Trujillo, *supra* note 46, at 7, ¶ 23.

234. This report focuses on special laws regarding violence against women and femicides. As noted above, in March 2009, the Guatemalan Congress approved the *Ley de Trata*, *supra* note 55; the *Ley de Trata* is also a "special law," but one that specifically modifies some provisions of the Criminal Code, while leaving others unchanged. CGRS interviews acknowledged the positive steps related to the passage of these special laws, but also highlighted their problems. *See* 2009 Declaration of Hilda Morales Trujillo, *supra* note 233, at 27; Interview with Hilda Morales Trujillo, *supra* note 46, at 42; CGRS Interview with Handy Barco, Instituto de Estudios Comparados en Ciencias Penales de Guatemala, Co-Author of *Por Ser Mujer*, (Sept. 24, 2008), on file at CGRS office [hereinafter Interview with Handi Barco]; and CGRS Interview with Annabethsy Leonardo, attorney, Secretaría Presidencial de la Mujer (SEPREM) [Presidential Secretary of Women], in Guatemala (Sept. 26, 2008), on file at CGRS office.

235. *Ley para prevenir, sancionar, y eradicar la violencia intrafamiliar* [Law to Prevent, Sanction, and Eradicate Intra-Family Violence], Decreto numero [Decree number] 97-1996, Congreso de la Republica de Guatemala [Guatemalan Congress] (Nov. 28, 1996) [hereinafter 1996 Ley de la violencia intrafamiliar]; *see* CGRS/Getting Away with Murder, *supra* note 18, at 10.

236. *See* CGRS/Getting Away with Murder, *supra* note 18, at 10; 2008 Declaration of Hilda Morales Trujillo, *supra* note 46, at 4-6; GHRC/Three Thousand and Counting, *supra* note 32, at 6 (acts of domestic violence are not specifically named as crimes).

237. *See* 2009 Declaration of Hilda Morales Trujillo, *supra* note 233, at 12.

abuser from the home for a specified period), as well as police protection for victims, and requires *PNC* intervention in violent situations in the home.²³⁸ Women's rights experts, however, have observed that police, prosecutors, and judges are generally unaware of the 1996 Law or are reluctant to apply its provisions.²³⁹ Judges often justify refusals to enforce the provisions of the 1996 Law by saying either they violate property rights, are unconstitutional, are in conflict with other existing laws, or disregard judicial process.²⁴⁰ Over a decade since the passage of the 1996 Law, the government has done virtually nothing to educate those involved in the judicial system or the public about the law, and few women seeking protection have succeeded in removing abusers from their homes, even in cases where the domestic violence resulted in injuries.²⁴¹

ii. The 2008 Law Against Femicide and Other Forms of Violence Against Women

The preamble to the Femicide Law states its objective is to guarantee the life, liberty, integrity, dignity, protection, and equality of all women, and to promote and implement laws to eradicate physical, psychological, sexual, or any other type of coercion against women.²⁴² As discussed below, the fact that the Femicide Law is not part of the Civil or Criminal Codes has led to confusion as to how it relates to other "special laws" and to the Civil and Criminal Codes, and has also raised questions as to which courts have jurisdiction to apply its provisions.²⁴³

The Femicide Law applies when a woman's right to a life free of violence is violated in the public as well as in the private sphere.²⁴⁴ It defines a range of acts as crimes, from gender-motivated killings (i.e., femicide),²⁴⁵ to violence against women,²⁴⁶ to "economic violence."²⁴⁷ The

238. 1996 Ley de la violencia intrafamiliar, *supra* note 235, art. 7.

239. 2008 Declaration of Hilda Morales Trujillo, *supra* note 46, at 4-6; 2009 Declaration of Hilda Morales Trujillo, *supra* note 233, at 12-13; CRGS/Getting Away with Murder, *supra* note 18, at 10; Interview with Magistrate Amada Victoria Guzmán Godínez, Magistrada, Sala Cuarta de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos Contra el Ambiente [Fourth Hall of the Court of Criminal Appeals, Drug-trafficking and Environmental Crimes], in Guatemala (Sept. 23, 2008), on file at CGRS office; Natalie Jo Valasco, *The Guatemalan Femicide: An Epidemic of Impunity*, 14 LAW & BUS. REV. AM. 397, 413 (2008). For example, some judges do not apply security measures in the law and *PNC* officers often fail to respond to requests for assistance related to domestic violence. (The Guatemalan women's groups with whom we met also commented few *PNC* officers had domestic violence or victim assistance training.)

240. 2008 Declaration of Hilda Morales Trujillo, *supra* note 46, at 4-6.

241. *Id.* at ¶ 18 (" . . . less than a dozen lawyers in the entire country even try to use the 1996 Law . . .").

242. *Ley Contra el Femicidio*, *supra* note 27, at art. 1.

243. 2009 Declaration of Hilda Morales Trujillo, *supra* note 233, at 12.

244. *Ley Contra el Femicidio*, *supra* note 27, at art. 2.

245. *Id.* at art. 6. "Femicide" is defined as: ". . . when, in the framework of unequal power relations between men and women, someone kills a woman, because she is a woman," under any of the following circumstances:

law prohibits the invocation of “cultural or religious customs, traditions or beliefs” as justifying acts of violence.²⁴⁸ It provides the State of Guatemala, “in keeping with international commitments signed and ratified

Having tried unsuccessfully to establish or reestablish a partnership or intimate relationship with the victim.

At the time act is perpetrated, maintaining or having maintained family relations, marriage, live-in partnership, dating, intimacy, friendship, companionship, or an employment relationship with the victim.

A result of the repeated perpetration of violence against the victim.

A result of group rituals, using or not using weapons of any kind.

Degradation of the body of the victim for the satisfaction of sexual instincts, or committing acts of genital mutilation or any other form of mutilation.

Out of misogyny.

If the act is committed in the presence of the victim's children.

Coinciding with any of the circumstances or qualifications referred to in Article 132 of the Criminal Code.

Coinciding with any of the circumstances or qualifications referred to in Article 132 of the Criminal Code.

The person responsible for this crime will be punished with imprisonment of twenty-five to fifty years, and will not be granted a reduced sentence for any reason. The people prosecuted for committing this crime may not be granted any alternative measure.

246. *Id.* at art. 7. “Violence against women” is defined, in relevant part, as:
 . . . exercising physical, sexual, or psychological violence in public or private, under to the following circumstances:
 (a) Having tried unsuccessfully, repeatedly or continually, to establish or reestablish a partnership or intimate relationship with the victim.
 (b) Maintaining or having maintained at the time the act was perpetrated a family, marital, cohabitant, intimate, romantic, friendship or companionship relationship or professional, educational or religious relations with the victim...
 (e) Out of Misogyny.
 Punishments for committing the crime of violence against women include five to twelve year prison sentences for physical or sexual violence and a five to eight year prison sentences for psychological violence.
247. *Id.* at art. 8. “Economic violence” is defined as follows:
 a. Infringing upon, limiting or restricting the free disposal of a woman's property, property rights or labor.
 b. Forcing a woman to endorse documents that affect, limit, restrict or put their assets at risk, or relieve/absolve financial, criminal, civil or any other responsibility.
 c. Destroying or hiding documents, personal identification, property, personal items, or work tools that are necessary to carry out routine activities.
 d. Subjugating the will of a woman through economic abuse of failing to meet her basic needs or those of her children.
 e. Exercising psychological physical or sexual violence against a woman, in order to control the flow of income or monetary resources coming into the home.
 e. Exercising psychological physical or sexual violence against a woman, in order to control the flow of income or monetary resources coming into the home.
 The person responsible for this crime will be sentenced to five to eight years of imprisonment.
248. *Id.* at art. 9.

on the issue,” is responsible for taking measures to prevent violence against women. In addition, the law requires the government to implement the law through the coordination and monitoring of various public policy initiatives.²⁴⁹ It also breaks new ground in providing for possible victim reparations proportionate to the harm caused to the victim and the perpetrator’s level of culpability.²⁵⁰

The Femicide Law sets forth clear State obligations,²⁵¹ which include strengthening entities responsible for criminal investigation, creating specialized twenty-four hour courts, establishing accessible support centers for survivors of violence against women, strengthening the *Coordinadora Nacional para prevenir y eradicar violencia intrafamiliar* [National Coordinating Body to Prevent, Punish, and Eradicate Domestic Violence] (“*CONAPREVT*”) (a government institution which coordinates public policies to reduce violence), training government officials, providing legal assistance to victims, and establishing a national information system on violence against women. The law recognizes these efforts require additional resources, and it provides the “Ministry of Finance” is to “allocate resources . . . for compliance with the law[.]”²⁵²

In September 2008, five months after the Femicide Law went into effect, CGRS conducted interviews with key government officials and NGO representatives in Guatemala to attempt a preliminary evaluation of attitudes towards the law and any perceived impact. Our trip was not intended as a formal qualitative or quantitative study, but it allowed us to observe the attitudes expressed in the immediate aftermath of its passage, which are indicative of the social context in which it was passed and the significant barriers to its success. CGRS has continued to monitor the implementation of the law through ongoing communication with legal experts in Guatemala in the months since our trip. The resultant findings, presented below, describe those realities and perceptions regarding the Guatemalan Femicide Law.

A. ENACTMENT OF THE FEMICIDE LAW WAS AN IMPORTANT SYMBOLIC VICTORY

The government officials and NGO representatives with whom CGRS met widely agreed the Femicide Law was a symbolic success as well as a political victory for women’s rights.²⁵³ They also believed it will bring

249. *Ley Contra el Femicidio*, *supra* note 27, at art. 4.

250. *Id.* at art. 11.

251. *See id.* at art. 14-20.

251. *See id.* at art. 14-20.

252. *Id.* at art. 21.

253. *See* Interview with Angélica Valenzuela, Executive Director, Centro de Investigación y Capacitación a la Mujer, in Guatemala (Sept. 25, 2008), on file at CGRS office. Valenzuela stressed the Guatemalan women’s movement had fulfilled its political agenda in the passing of the law.

more attention to violence against women and femicide in Guatemala.²⁵⁴ While some celebrated the passage of the law, there were many who observed Guatemala did not lack laws criminalizing the killings of women, and therefore it did not need a new law but rather the political will to enforce existing laws.

A representative from *CONAPREVI* emphasized the passage of the law alone was not sufficient to change the situation of violence that threatens women in Guatemalan society.²⁵⁵ This sentiment was repeated numerous times. Congresswoman Ana María de Frade, one of the supporters of the law, and a member of the congressional Women's Commission, reiterated the problem of femicide and other violence against women would not be solved by the mere categorization of the crime of femicide. She observed impunity does not stem from a lack of laws, but rather from a lack of political will, and as such, the enactment of additional laws will not resolve the problem.²⁵⁶

The Femicide Law constitutes a challenge to the State and its institutions to comply with the law.²⁵⁷ At the time CGRS conducted in-country interviews in Guatemala in September 2008, few concrete measures to implement the law had been adopted.²⁵⁸ The government had not yet fulfilled its obligations to create specialized bodies; the *MP* had not launched a new office to investigate crimes defined in the Femicide Law;²⁵⁹ the *Organismo Judicial* (Judicial Body or "*OJ*") had not created the specialized courts familiar with the law and accessible around the clock;²⁶⁰ and the *INE* (the National Statistics Institute)²⁶¹ had not developed and implemented a national information system on violence against women.²⁶²

253. See Interview with Angélica Valenzuela, Executive Director, Centro de Investigación y Capacitación a la Mujer, in Guatemala (Sept. 25, 2008), on file at CGRS office. Valenzuela stressed the Guatemalan women's movement had fulfilled its political agenda in the passing of the law.

254. Interview with Claudia Paz, *supra* note 90; and Interview with Magistrate Amada Victoria Guzmán Godínez, *supra* note 239.

255. COORDINADORA NACIONAL PARA LA PREVENCIÓN DE LA VIOLENCIA INTRAFAMILIAR Y CONTRA LAS MUJERES (*CONAPREVI*) [NATIONAL COORDINATOR FOR THE PREVENTION OF INTRA-FAMILIAR VIOLENCE AND VIOLENCE AGAINST WOMEN], "LEY CONTRA EL FEMICIDIO Y OTRAS FORMAS DE VIOLENCIA CONTRA LA MUJER" PRESENTACIÓN [PRESENTATION ON THE "LAW AGAINST FEMICIDES AND OTHER FORMS OF VIOLENCE AGAINST WOMEN"] (May 2008).

256. Interview with Congresswoman Ana María de Frade, *supra* note 76.

257. *Id.*

258. Interview with Hilda Morales Trujillo, *supra* note 186. (Annabethsy Leonardo also pointed out there is no information available as to how many femicide cases have been filed, and Magistrate Amada Guzmán Godínez had yet to see any sentences under the Femicide Law come up on appeal. See Interview with Annabethsy Leonardo, *supra* note 231, and Interview with Magistrate Amada Victoria Guzmán Godínez, *supra* note 239.)

259. *Ley Contra el Femicidio*, *supra* note 27, at art.14.

260. See *id.* at art. 15.

261. The *INE* is a part of *CONAPREVI*.

262. See *Ley Contra el Femicidio*, *supra* note 27, Art. 20. (Hilda Morales Trujillo recently confirmed as of the end of Jul. 2009, that with the exception of some progress made in

Some trainings reportedly had been held regarding passage of the Femicide Law, but they seemed to raise more questions than they answered.²⁶³

B. THE “SPECIAL LAW” STATUS OF THE FEMICIDE LAW HAS IMPEDED ITS IMPLEMENTATION

Many individuals from both the government and nonprofit sectors emphasized the “special law” status of the Femicide Law has resulted in confusion and resistance among those who are responsible for applying it.²⁶⁴ There is uncertainty as to how it relates to other “special laws,” as well as to the Civil and Criminal Codes.²⁶⁵ For instance, during a training on the Femicide Law, one prosecutor from the Special Prosecutor’s Office for Crimes Against Life said she did not understand why the Femicide Law had been created if there is a Criminal Code. She also indicated she would refuse to apply the Femicide Law in the future.²⁶⁶ This resistance on the part of prosecutors appeared to be somewhat common.²⁶⁷

There was also reluctance on the part of courts to take jurisdiction to apply its provisions.²⁶⁸ Although the Supreme Court issued a resolution that gave all Guatemalan courts the power and the obligation to apply the Femicide Law, family law judges say the law is for criminal law judges, and criminal law judges say it is for family law judges.²⁶⁹ One knowledgeable and well-placed jurist commented judges have resisted taking responsibility for femicide cases because they do not want to apply the law. One reason for this resistance may be that there are no criteria or legal doctrines for interpretation and application of the Femicide Law.²⁷⁰ This lack of doctrine also leaves judges with significant discretion in applying it.²⁷¹

establishing a nation-wide statistical database at the *INE*, none of these measures have been implemented.).

263. See 2009 Declaration of Hilda Morales Trujillo, *supra* note 233, at 15-16.

264. See Interview with Angélica Valenzuela, *supra* note 253; see also Interview with Magistrate Amada Victoria Guzmán Godínez, *supra* note 236.

265. Interview with Angélica Valenzuela, *supra* note 253. (Angélica Valenzuela highlighted the difficulty of coordinating the Femicide Law’s implementation with other laws. She also noted due to these concerns, a meeting was scheduled for the end of September 2008 so the directors of the 20 Special Prosecutors’ Offices for Crimes Against Life could discuss how the Femicide Law relates to the Civil and Criminal Codes and how the Femicide and Domestic Violence laws work together.).

266. *Id.*

267. Interview with Annabethsy Leonardo, *supra* note 234.

268. Interview with Angélica Valenzuela, *supra* note 253; Interview with Claudia Paz, *ICCPG*, *supra* note 88.

269. Interview with Claudia Paz, *supra* note 90; Interview with Beatriz de León Reyes, Magistrada [Magistrate], Corte Suprema de Justicia [Supreme Court], in Guatemala (Sept. 24th, 2008), on file at CGRS office.

270. Interview with Magistrate Amada Victoria Guzmán Godínez, *supra* note 236; and Interview with Claudia Paz, *supra* note 90.

271. Interview with Claudia Paz, *supra* note 90.

C. CRITICISMS OF THE FEMICIDE LAW

The Femicide Law has been subject to criticisms, even by those who generally support its enactment. One frequently repeated criticism is that it is poorly drafted in terms of its definition of offenses,²⁷² and as a result it is difficult for prosecutors to prove the crimes elaborated in the law.²⁷³ Norma Cruz, director of *Fundación Sobrevivientes*, attributed poor drafting to the fact that the language was influenced more by feminist theory and politics than by criminology.²⁷⁴ As discussed *supra*, the law defines a femicide as a killing that occurs in the context of unequal power relations, under a number of circumstances, including “misogyny.”²⁷⁵ As an example of feminism and politics trumping criminology, Norma Cruz asks: How is it possible for one to “investigate, prosecute, and prove misogyny?”²⁷⁶ Norma Cruz’s point was echoed by Annabethsy Leonardo, who observed prosecutors do not understand the concept of misogyny, and view other concepts intrinsic to the law as constituting an attack on their cultural attitudes regarding a woman’s place in the world.²⁷⁷

Women’s rights advocates have also criticized certain aspects of the law as potentially harmful to women’s rights. For example, the Femicide Law does not provide for the death penalty, while the Criminal Code does, which has led to the criticism that the Femicide Law is lenient and even favors aggressors.²⁷⁸

Another provision that is seen as inconsistent with protection of women’s rights is Article 19, which requires the government to provide a public defender to represent *victims* of crimes enumerated in the Femicide Law. Norma Cruz was quite vocal in her opposition to this provision, pointing out the *Instituto de la Defensa Pública Penal* [Public Criminal Defense Institute] (“IDPP”) represents aggressors of violence against women and the institution’s representation of both aggressors and victims presents ethical problems.²⁷⁹ She observed victims of violence and their families do not need a “defense” attorney but free legal assistance,²⁸⁰ and the provision undermines the victim because it implies she or her family

272. During a training conducted by ICCPG, Claudia Paz overheard judges’ private comments, saying things such as: “Look how poorly done this law is.” Interview with Claudia Paz, *supra* note 90.

273. Interview with Claudia Paz, *supra* note 90.

274. Interview with Norma Cruz, *supra* note 90.

275. *Id.*

276. *Id.*

277. Interview with Annabethsy Leonardo, *supra* note 234.

278. Interview with Norma Cruz, *supra* note 90; Interview with Annabethsy Leonardo, *supra* note 231; Interview with Handi Barco, *supra* note 234; and Interview with Hilda Morales Trujillo, *supra* note 186.

279. Interview with Norma Cruz, *supra* note 90.

280. *Id.*

need to be *defended*, as opposed to *represented*, in the prosecution of the crime's perpetrators.²⁸¹

D. SOCIETAL RESISTANCE TO THE FEMICIDE LAW

There has been strong societal resistance to the Femicide Law, not only from the general public but also by justice system officials and members of Congress. At some junctures, resistance has manifested in public statements ridiculing the law and its proponents.

Prosecutors and judges have made negative comments about the law and about women's rights during trainings on the Femicide Law.²⁸² Some prosecutors have commented the law is unconstitutional,²⁸³ intrudes on the privacy of the home, and should never have been passed.²⁸⁴ Other prosecutors reportedly asked, "Where are the men's rights?" Hilda Morales Trujillo observed throughout CONAPREVI-sponsored trainings on the Femicide Law, many prosecutors had misconceptions about domestic violence, thinking it only occurs in poor and indigenous communities.²⁸⁵ Morales Trujillo's opinion is that prosecutors do not want to see the reality of the problem.²⁸⁶

Many judges share negative attitudes held by prosecutors, and indicated their belief that the law is unconstitutional,²⁸⁷ while others consider the law to be overly harsh.²⁸⁸ A comment, overheard during one training, which expressed that society would be lost if women did not remain in their traditional roles demonstrates patriarchal attitudes that may underlie much of this resistance.²⁸⁹ In another training, judges got up and left when the speaker began to explain the concept of "gender perspective."²⁹⁰

Those involved in advocating for passage of the Femicide Law in Congress recounted disparaging remarks about the law, and resistance during the process, as well as renewed statements of opposition to any new women's initiatives in Congress.²⁹¹ Supreme Court Justice Beatriz de León and women's rights attorney Hilda Morales Trujillo described radio commentaries that ridiculed the Femicide Law.²⁹² One radio commenter

281. *Id.*

282. Interview with Hilda Morales Trujillo, *supra* note 186.

283. Interview with Annabethsy Leonardo, *supra* note 234. Private litigators are preparing a challenge against the Femicide Law in court.

284. Interview with Annabethsy Leonardo, *supra* note 234.

285. Interview with Hilda Morales Trujillo, *supra* note 186.

286. *Id.*

287. Interview with Handy Barco, *supra* note 234.

288. Interview with Claudia Paz, *supra* note 90.

289. Interview with Handy Barco, *supra* note 234.

290. Interview with Annabethsy Leonardo, *supra* note 234.

291. Interview with Congresswoman Ana María de Frade, *supra* note 76.

292. Interview with Magistrate Beatriz León Reyes, *supra* note 269; Interview with Hilda Morales Trujillo, *supra* note 184.

stated now that Guatemala has a law on femicide, it will next pass a law on “*perrocides*” — i.e., the killing of dogs — and “*gatocides*,” the killing of cats. These types of comments denigrate women,²⁹³ contribute to the difficulty in combating violence,²⁹⁴ and are an expression of patriarchal beliefs that refuse to acknowledge the dimension of the problem of violence against women.

*E. CONSTRUCTIVE STRATEGIES RELATING TO
IMPLEMENTATION OF THE FEMICIDE LAW*

In-country interviews yielded a number of concrete suggestions to improve implementation of the Femicide Law. Many favor amendments that address legitimate criticisms of the law's key definitions.²⁹⁵ Others identify the need for better training of relevant government officials, such as police, prosecutors, and judges. As of the end of 2008, there had been no systematic trainings, and the majority of the trainings that had taken place had been limited to the capital and had been conducted by NGOs, leaving participants with the impression there is a lack of government support for the Femicide Law.²⁹⁶

It was also recommended government institutions and civil society coordinate to prevent duplication of efforts in implementing the Femicide Law.²⁹⁷ Congressmember Ana María de Frade suggested a commission be formed to monitor the law's implementation and to supervise involved institutions and organizations.²⁹⁸ The allocation of necessary resources is critical, so budgets need to be approved to facilitate implementation of the law's provisions.²⁹⁹ Some concern was expressed that Congress will not provide adequate funding for implementation.³⁰⁰

293. Interview with Magistrate Beatriz de León Reyes, *supra* note 266.

294. *Id.* De León also indicated the Supreme Court is very worried about the response to the passage of the law.

295. Interview with Claudia Paz, *ICCPG supra* note 90; Interview with Norma Cruz, *Fundación Sobrevivientes, supra* note 90.

296. Interview with Angélica Valenzuela, *CICAM, supra* note 253.

297. Interview with Annabethy Leonardo, *SEPREM, supra* note 234. *SEPREM* and *CONAPREVI* are coordinating their efforts regarding the implementation of the Femicide Law, but stressed better coordination is needed.

298. Interview with Ana María de Frade, *supra* note 76. De Frade mentioned at the end of September 2008 there were plans for meetings between the Congressional Women's Commission and the *OJ* to support implementation of the Femicide Law, as well as a meeting scheduled for the beginning of October 2008 between the *OJ*, *PNC*, *MP*, the Interior Ministry, and the *INE* to discuss detailed procedures which should apply from the point a crime is committed.

299. Interview with Beatriz de León Reyes, *supra* note 269.

300. *Id.* There are concerns that even if funds are allocated for necessary measures, such as the specialized courts, there will be other barriers impeding proper implementation of the law. Hilda Morales Trujillo has commented the courts want to assign *jueces de paz* [justices of the peace] to the specialized courts are to handle cases involving violence against women, but indicated these judges do not have adequate background or training to handle such cases.

Beyond these technical issues, there is the strong feeling there needs to be increased public education regarding the Femicide Law and renewed strategies to bring about cultural change to combat sexist attitudes.³⁰¹

2. Initiatives, Commissions, and Institutions

The Guatemalan government has launched a number of initiatives to address violence against women, including femicide. Each of these initiatives has been limited or ineffective in some respects. As described below, *SEPREM*, the Presidential Secretariat for Women, created a commission to investigate the femicides. Shortly after the commission released a study critical of the government, however, it was disbanded. The government also created joint NGO/governmental bodies, *CONAPREVI* — a coalition comprised of members of *SEPREM*, members of the Executive Branch, the Public Prosecutor's Office, the Judicial Body, and nongovernmental organizations — and *PLANOVI* (*Plan Nacional de Prevención y Erradicación de la Violencia Intrafamiliar y contra las Mujeres*, National Plan to Prevent and Eradicate Domestic Violence and Violence Against Women) — a program focusing on domestic violence with aims to end violence against women in Guatemala by 2014. These bodies have been hampered by very limited resources provided by the government. There have been femicide-related initiatives within the *INE* (the National Statistics Institute) and the *INACIF* (*Instituto Nacional de Ciencias Forenses de Guatemala*, Guatemalan National Institute for Forensic Sciences), the governmental entities directly charged with keeping data, and the investigation and prosecution of crimes. The role of the *INE* is to keep track of national statistics on femicides, domestic violence, sexual assault, and other crimes, but it has a very poor track record. The same can be said of *INACIF*, created in late 2006 to assist government prosecutors in the analysis of forensic evidence, which had no in-country DNA lab facilities in which to process evidence at the time of our trip in late 2008. Perhaps the most significant criticisms have been leveled at the two governmental bodies with responsibilities most closely tied to investigation and prosecution — the *PNC* and the *MP*. The *PNC* responds to initial reports of crime and initiates investigations in coordination with the *MP*. The *MP* supervises investigations initiated by the *PNC* and coordinates the subsequent prosecution of crimes. Both the *PNC* and the *MP* have been harshly criticized for coordination-related failures and corruption. They have also been hampered by a lack of resources. Finally, the *OJ* — the federal entity responsible for the administration of the courts — has also received repeated criticism for its ineffective response to violence against women and femicide. This section provides an overview

301. Interview with Amada Victoria Guzmán Godínez, *supra* note 239.

of these bodies and the initiatives within them, as well as a brief evaluation of their impact on these deeply entrenched social problems.

a. The Work of the Secretaría Presidencial de la Mujer

The *Secretaría Presidencial de la Mujer* [Presidential Secretariat for Women] (“*SEPREM*”)³⁰² was instituted in 2000. Its stated role is to coordinate policies for women’s advancement and promote compliance with Guatemala’s domestic and international obligations regarding women’s rights.³⁰³ As of September 2008, *SEPREM* was reported to be in the process of coordinating a commission to institutionalize groups working on issues of violence against women.³⁰⁴

In November 2005, under the aegis of *SEPREM*, the *Comisión Específica para el Abordaje del Femicidio* [Special Commission to Address Femicide] (hereinafter Femicide Commission) came into existence.³⁰⁵ According to *SEPREM*’s minister, the Femicide Commission’s mission was “to develop strategies for the government to address the crisis.”³⁰⁶ The Femicide Commission was charged with developing a diagnostic study, improving coordination between government institutions,³⁰⁷ standardizing criteria for murders of women, and identifying gender-motivated murders.³⁰⁸ In 2006, the Femicide Commission published a report that was critical of the Guatemalan government and provided recommendations for addressing the crisis.³⁰⁹ This commission ceased functioning in 2007.

b. The Work of the *CONAPREVI* and *PLANovi*

In response to advocacy by women’s rights organizations, in 2001, the Guatemalan government initiated the establishment of a joint governmental/NGO body, *CONAPREVI*.³¹⁰ *CONAPREVI*’s goal is to develop and advise on policies to address violence against women,³¹¹ and it

302. *CLADEM/Investigación Femicidio*, *supra* note 36, at 70.

303. *CLADEM/Investigación Femicidio*, *supra* note 36, at 70.

304. Interview with Ana Gladis Ollas, *Defensora de los Derechos de la Mujer* [Women’s Rights Attorney], *Defensoría de la Mujer* [Women’s Rights Section, Human Rights Ombudsman’s Office (*PDH*)], in Guatemala (Sep. 25, 2008), on file at CGRS office [hereinafter Interview with Ana Gladis Ollas].

305. *AI/No Protection*, *supra* note 178, at 5 (Mar. 2006). The Femicide Commission is made up of representatives from eighteen institutions. See *Información Pública de Oficio de la Secretaría de Comunicación social de la Presidencia*, 2009, available at <http://www.scspr.gob.gt>.

306. Ruhl *supra* note 18, at 10-11.

307. *WOLA/Hidden in Plain Sight*, *supra* note 33, at 13.

308. *GHRC/Three Thousand and Counting*, *supra* note 32, at 7.

309. See *Estrategia para el Abordaje del Femicidio*, *supra* note 146.

310. See *CGRS/Getting Away with Murder*, *supra* note 18, at 13; Suarez & Jordan, *supra* note 30, at 7.

311. *GHRC/Three Thousand and Counting*, *supra* note 32, at 7.

is composed of representatives from the government³¹² and civil society.³¹³ *CONAPREVI* has also been involved in research, training, and consulting with various sectors of the government.³¹⁴

In 2004, *CONAPREVI* launched *PLANOVI*, a ten-year nation-wide plan for the prevention and eradication of violence against women.³¹⁵ *PLANOVI* is premised upon the principle that all state institutions are responsible for ending violence against women,³¹⁶ and its stated goal is to end violence against women in Guatemala by 2014.³¹⁷ The government provides funding to *CONAPREVI*, which works with civil society organizations to provide services to women.³¹⁸ The amount of funding provided, however, has been inadequate to meet the need, and *CONAPREVI* has often had to rely upon foreign assistance from countries such as Holland and Spain in an attempt to meet the need for support centers and shelters. For example, there are currently only five support centers in the entire country. Some of these centers also have shelters. Ideally, shelters should not be located at centers, which have known locations and are therefore easily identifiable and accessible to abusers searching for partners who have fled their abuse.³¹⁹

c. The *INE* and *INACIF*

The Guatemalan government has also asked for two other governmental institutions, the *Instituto Nacional de Estadística* [National Statistics Institute] ("*INE*") and the *Instituto Nacional de Ciencias Forenses de Guatemala* [Guatemalan National Institute for Forensic Sciences] ("*INACIF*"), to maintain and provide statistics related to crimes involving violence against women and the violent deaths of women and girls and to perform forensic investigations into the killings. Although these agencies are not devoted exclusively to femicide, efforts to improve

312. *Id.* *SEPREM*, the *OJ*, and the *MP* are government participants.

313. GHRC/Three Thousand and Counting, *supra* note 32, at 7. The No Violence Against Women Network ("*REDNOVI*") is one of the civil society participants.

314. *See* Interview with Claudia Paz, *supra* note 88; *see also* Interview with Hilda Morales Trujillo, *supra* note 184. For example, in August 2008, the *PDH* contracted with *CONAPREVI* to conduct conferences on, and strategize about, solutions to Guatemala's epidemic of violence against women. *CONAPREVI* is involved in trainings of prosecutors to sensitize them with a gender perspective, starting in Guatemala City with the specialized prosecutor's offices. It is also in the process of reviewing investigation protocols and the lack of coordination between the *PNC* and other government institutions.

315. CGRS/Getting Away with Murder, *supra* note 18, at 13.

316. *Id.*

317. GHRC/Three Thousand and Counting, *supra* note 32, at 7.

318. *See* Interview with Claudia Paz, *supra* note 90; Interview with Hilda Morales Trujillo, *supra* note 186. The Guatemalan Congress approved \$8 million *quetzales* (approximately \$1,013,754 U.S. dollars), for the Interior Ministry for violence against women prevention, and the Interior Ministry then gave this funding to *CONAPREVI* to fund comprehensive support centers.

319. *See* sources cited *supra* note 318.

data collection and the maintenance of accurate statistics, and endeavors to strengthen forensic investigations are relevant to addressing gender-motivated killings.

The *INE* is responsible for maintaining and providing femicide statistics, in collaboration with other government institutions. Under Article 20 of the Femicide Law, *INE* is also charged with developing a national database of information on violence against women.³²⁰ *INE* has had a very poor track record,³²¹ although there are some recent indications *INE* is attempting to establish the centralized database on femicides and other violent crimes against women which was mandated in the Femicide Law.³²² Historically, it has been criticized as failing to disaggregate data by ethnicity, gender, age, and type of crime,³²³ and for not maintaining up to date statistics.³²⁴ Some believe *INE* personnel are resistant to complying with their obligations.³²⁵

INACIF was established in November 2006. Criticisms have been made of *INACIF* on a number of levels, including its failure to have basic and necessary capacity, such as the ability to analyze DNA samples.³²⁶ It has also been faulted for failure to properly coordinate with other relevant governmental offices, such as the *MP*, which is responsible for carrying out investigations. Prosecutor Dinorah Moreno has criticized procedures that have been instituted since *INACIF* was established. Before *INACIF* began its work, forensic doctors working with the *MP*'s office would go to the crime scene. Now they no longer do so, and prosecutors are required to fill out a form requesting that *INACIF* carry out certain tests. Moreno stated the form prosecutors fill out to request autopsies from *INACIF* is deficient.³²⁷ It does not have a place to list the time when a body was found, it has little space to write information, and there is no list of potential tests that forensic doctors can conduct.³²⁸ More troubling to some is the fact that with the advent of *INACIF*, forensic doctors no longer go to

320. See *Ley Contra el Femicidio*, *supra* note 27, art. 20.

321. *CLADEM/Investigación Femicidio*, *supra* note 36, at 58.

322. Email from Hilda Morales Trujillo, member of the '*Oficina Nacional de Mujeres*' [National Women's Office] [*ONAM*] y '*Red de la No Violencia contra la Mujer*' [Network of No Violence Against Women], to Karen Musalo, Clinical Professor of Law, Hastings College of the Law (Aug. 3, 2009, 11:00 PM CST) (on file with author).

323. Interview with Annabethsy Leonardo, *supra* note 234.

324. Interview with Ana Gladis Ollas, *supra* note 304. Ollas stated when she requested statistics for May of 2008 from *INE*, she learned *INE* still did not have statistics for all of 2007.

325. Interview with Hilda Morales Trujillo, *supra* note 186.

326. *Id.* See also Interview with Dinorah Moreno, *Fiscal* [Prosecutor], *Fiscalía de Delitos Contra La Vida* [Public Prosecutor for Crimes Against Life], *Ministerio Público* [Public Prosecutor's Office], in Guatemala (Sep. 26, 2008), on file at CGRS office; interview with Ana María de Frade, *supra* note 76.

327. Interview with Dinorah Moreno, *supra* note 322.

328. *Id.*

the crime scene, and in their opinion, the same doctor that conducts the autopsy should be present at the crime scene.³²⁹

3. Structural and Personnel Changes Within the *PNC*, *MP* and *OJ*

During the past few years, in response to concerns regarding violence against women in Guatemala, the Guatemalan government instituted structural and personnel changes within the *PNC*, *MP*, and *OJ*.³³⁰ Nonetheless, as described below, as with other reforms, these limited changes have not effectively addressed the root causes of these institutions' inability to successfully respond to the growing number of reported cases involving violence against women, including femicide.

a. The *PNC*

In mid-2004, following an official visit to Guatemala by the Inter-American Commission on Human Rights Rapporteur on Women's Rights, Dr. Susana Villarán, the *PNC* created an elite unit within its criminal investigation division to exclusively address the murders of women.³³¹ However, this unit was given few resources with which to function,³³² and it was subsequently reported each officer in this squad had been assigned twenty-three cases, and "[a]ll twenty-two officers shared one cell phone and one car."³³³ The transfer of seventeen of its twenty-two investigators to the general murder unit further weakened this elite unit in 2005.³³⁴ Justifying this move, the head of the *PNC* stated more men are murdered than women and the general murder unit would investigate "without regard to gender."³³⁵ Suspected involvement of *PNC* officers themselves in some murders of women and criticisms of the *PNC* for its institutionalized corruption and infiltration of organized crime further compromised the potential impact of this unit; it is unclear whether this unit will continue, since it has obtained no positive results.³³⁶

In September 2008, the first woman to hold this position in Guatemalan history, Marlene Blanco, was appointed the director of the *PNC*.³³⁷

329. *Id.* See also Interview with Angélica Valenzuela, *supra* note 253.

330. See USDOS/Guatemala Country Report 2007, *supra* note 41. According to the U.S. Department of State, beyond instituting the structural changes to the institutions discussed here, the *IDPP* also launched a pilot project in November of 2007 to provide free legal, medical, and psychological assistance to victims of domestic violence.

331. See CGRS/Getting Away with Murder, *supra* note 18, at 11; WOLA/Hidden in Plain Sight, *supra* note 33, at 13.

332. CGRS/Getting Away with Murder, *supra* note 18, at 11.

333. *Id.*

334. *Id.*

335. CGRS/Getting Away with Murder, *supra* note 18, at 11-12.

336. See *id.* at 12 (including a critique of the Office for the Special Prosecutor for Crimes Against Women).

337. See Interview with Amada Victoria Guzmán Godínez, *supra* note 239; see also Interview with Ana María de Frade, *supra* note 76; see also interview with Hilda Morales Trujillo, *supra* note 186.

Although this appointment represented significant progress, the public statement of Guatemala's Archbishop Rodolfo Quezada Toruño may have expressed the attitudes of many. He stated a woman could not undertake such a role and the appointment would not work.³³⁸

At the time of CGRS's visit to Guatemala, we were told the biggest challenge Marlene Blanco faced was the deeply entrenched corruption and lack of professionalism within the *PNC*. Some of her first acts in office demonstrated an attempt to deal with these issues. Shortly after her appointment, Blanco fired all of the top *PNC* officials in an attempt to begin a process of institutional purification.³³⁹ Corruption is said to be so pervasive in the *PNC*,³⁴⁰ however, that this purification process was seen by some as a nightmare with no end in sight.³⁴¹ CGRS was told that given the *PNC*'s insufficient education, training, and supervision, among other things,³⁴² the new top *PNC* officials would likely fall in the corrupt and patriarchal footsteps of their predecessors.³⁴³

As widely reported in the Guatemalan press, by mid-June 2009, Blanco was summarily dismissed from her position as head of the *PNC* and replaced by Porfirio Perez Paniagua, a retired officer who was previously with the National Police in the early 1980s, during the internal armed conflict. In turn, on August 7, 2009, Perez Paniagua was dismissed along with two of his high-ranking deputies, accused of having organized the theft of at least 119 kilos (approximately 261 pounds) of cocaine. The new director of the *PNC* is Baltazar Gomez Barrios, the former head of the *División de Análisis e Información Antinarcótica* (the Division of Anti-Narcotrafficking Analysis and Information) and the fourth person to head the *PNC* during the last year.

Even before these most recent developments, civil society's view of the *PNC* was said to be deeply negative,³⁴⁴ especially due to repeated and credible allegations that *PNC* officers are involved in criminal activities themselves, including acts involving violence against women.³⁴⁵ Furthermore, *PNC* officials continue to express patriarchal attitudes characteristic of Guatemalan society. When women victims report violence, officers reportedly frequently tell them their domestic-violence related injuries cannot be categorized as "crimes."³⁴⁶ In this way, *PNC*

338. Interview with Hilda Morales Trujillo, *supra* note 186.

339. Interview with Ana María de Frade, *supra* note 76.

340. One well-informed source interviewed by CGRS who asked to remain anonymous estimated the levels of corruption within the *PNC* to be as high as 50%.

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

officials continue to devalue and disrespect victims who have the courage to report crimes.³⁴⁷

b. The *MP*

Similar to the *PNC*, the *MP* (described *infra* at footnote 40), which is responsible for the supervision of criminal investigations as well as prosecution of crimes, has also been criticized for suffering from corruption and a lack of resources. Under pressure from *CICIG*, the former Attorney General, Juan Luis Florido, was replaced in mid-2008 by Jose Amilcar Velasquez Zarate.³⁴⁸ After his appointment, Attorney General Velasquez appeared to be engaged in a process of purification,³⁴⁹ removing various prosecutors and high-level *MP* personnel.³⁵⁰

In September 2004, the responsibility for investigating and prosecuting murders of women shifted from the *MP*'s *Fiscalía de delitos contra la mujer* [Office of the Prosecutor for Crimes Against Women]³⁵¹ to designated offices within the *Fiscalía de delitos contra la vida* [Prosecutor's Office for Crimes Against Life].³⁵² The *Fiscalía de delitos contra la vida* exists only in the Department of Guatemala,³⁵³ and contains twenty sections, four of which are dedicated solely to crimes against women.³⁵⁴ In March of 2005, the *Fiscalía de delitos contra la vida* announced it could not manage the number of complaints it received daily.³⁵⁵

In April 2008, the *MP* instituted a new twenty-four-hour victim attention program.³⁵⁶ If the program operates as designed, it allows a female victim to report a crime at the *MP*, receive psychological attention, and have physical injuries seen by a doctor from *INACIF*.³⁵⁷ At this same visit, the *MP* must immediately request protective measures against the perpetrator from a judge by email or fax³⁵⁸ and must pass on protective

347. *Id.*

348. Interview with Hilda Morales Trujillo, *supra* note 186.

349. Interview with Ana María de Frade, *supra* note 76.

350. *Id.*

351. Interview with Ana María de Frade, *supra* note 76.

352. See CGRS/Getting Away with Murder, *supra* note 18, at 12; Interview with Dinorah Moreno, *supra* note 326; WOLA/Hidden in Plain Sight, *supra* note 33, at 13; and CLADEM, *supra* note 36, at 59.

353. Guatemala is divided up into 22 departments; the Department of Guatemala includes the capital city and its environs.

354. WOLA/Hidden in Plain Sight, *supra* note 33, at 13.

355. CGRS/Getting Away with Murder, *supra* note 18, at 12 (footnote omitted). One prosecutor within an agency dedicated to women also highlighted many other problems plague this special office. See Interview with Dinorah Moreno, *supra* note 326.

356. This program is initially limited geographically to the Guatemala City area.

357. See Interview with Ana Gladis Ollas, *supra* note 304; see also Interview with Hilda Morales Trujillo, *supra* note 186; see also Interview with Beatriz de León Reyes, *supra* note 269.

358. Interview with Beatriz de León Reyes, *supra* note 269.

measures to the *PNC*, who are to provide security for the woman.³⁵⁹ If it functioned as designed under this new program, women would no longer have to go to the courthouse to request protective measures,³⁶⁰ and protective measures could be granted immediately.³⁶¹ Presently, there has been no assessment to determine whether this program is being implemented, and if so, if its implementation is effective.

Knowledgeable individuals have identified flaws in the conception and execution of this program.³⁶² For example, many woman report crimes at places other than the *MP*, such as *centros integrales* [comprehensive support centers] and other government institutions, such as the *PDH* and the Interior Ministry.³⁶³ Regardless of what is required of the officials involved in the twenty-four-hour victim attention program, there are still officials and judges who tell a woman to “come back tomorrow,” or, who try to refuse jurisdiction, saying “this is better for another judge.”³⁶⁴ At the root of such behavior is official resistance to providing assistance to women victims of violence.³⁶⁵

In light of this ongoing culture of insensitivity, there is the need for additional training. WOLA reported the *MP*'s Training Department, as well as its Victim Attention Office, engaged in developing new trainings on violence against women.³⁶⁶ However, WOLA observed the training was minimal, and it lacked the “necessary accompanying changes to institutional policies, procedures, resources and monitoring” to really make a difference.³⁶⁷

c. The Judicial Body

Corruption and deeply-entrenched patriarchy also characterize the *Organismo Judicial* [Judicial Body or “*OJ*”]. There have been some developments in training and accessibility of court services to women victims of violence, but these are generally seen as inadequate to bring about required changes. The trainings were intended to address

359. *Id.*

360. *Id.*

361. *Id.*

362. See interview with Ana Gladis Ollas, *supra* note 304; see also Interview with Hilda Morales Trujillo, *supra* note 186 and Interview with Beatriz de León Reyes, *supra* note 269.

363. Interview with Ana Gladis Ollas, *supra* note 304.

364. Interview with Hilda Morales Trujillo, *supra* note 186.

365. Interview with Beatriz de León Reyes, *supra* note 269.

366. WOLA/Hidden in Plain Sight, *supra* note 33, at 8-13. (Beyond the changes discussed here, WOLA has also reported the *MP* also now has a unit dedicated to developing case theories and evidence analysis that is available at the request of prosecutors, and GHRC reported a representative of the Human Rights Division of the *MP* told them personal belongings are now being kept as evidence, whereas before such evidence used to be buried with victims or returned to the victims' families.) See also Suarez & Jordan, *supra* note 30, at 6. (No one CGRS interviewed in its September 2008 fact-finding visit mentioned such changes.)

367. WOLA/Hidden in Plain Sight, *supra* note 33, at 8-9.

discriminatory attitudes against women that pervade the court system, and began to be instituted in 2005 when Beatriz de León was appointed the president of the Supreme Court.³⁶⁸ In 2006, the *OJ* created the *Unidad de Mujer* [Women's Unit].³⁶⁹ According to Appellate Magistrate Amada Guzmán, the unit's mission is to sensitize Guatemalan judges with a gender perspective and to provide materials and training support for the *Escuela de Estudios Judiciales* [School of Judicial Studies] and others institutions.³⁷⁰ The Women's Unit exists only in Guatemala City. As experts such as Hilda Morales Trujillo and the Guatemalan delegate to the U.N. Committee on CEDAW have commented, the quantity and frequency of the trainings throughout the *OJ* have been insufficient to tackle the problem.³⁷¹

The *OJ* also initiated the *Juzgados de Turno* [rotating or "on-call" courts] program³⁷² in an attempt to provide a round-the-clock venue for women to report acts of violence.³⁷³ Participating judges are supposed to immediately issue a protective order that the *PNC* would have the responsibility to enforce in the area where the victim lives. This program has limited geographical scope, existing in Guatemala City, Villa Nueva, and Mixco.³⁷⁴ The *Juzgados de Turno* program often does not operate as it should.³⁷⁵ One of the criticisms is that some judges ask to see a marriage certificate because they will only address problems between a husband and wife.³⁷⁶ Other judges urge mediation and reconciliation, rather than seeking to protect the domestic violence victims.

In an attempt to reach more women, the *OJ* has also proposed a *Juzgado Mobil* [Mobile Court] program,³⁷⁷ by which judges could go to remote areas where it is difficult for women to access justice.³⁷⁸ At present these Mobile Courts exist in the capital and in Quezaltenango.³⁷⁹

B. INTERNATIONAL RECOGNITION OF FEMICIDE IN GUATEMALA

Since the first investigations into these issues in 2001, the phenomenon of femicide in Guatemala has received heightened attention worldwide.³⁸⁰ This section focuses on various investigations, statements, reports, and

368. Guatemala's Femicides (CGRS Update), *supra* note 18, at 16.

369. Interview with Beatriz de León Reyes, *supra* note 266; Interview with Amada Victoria Guzmán Godínez, *supra* note 239.

370. Interview with Amada Victoria Guzmán Godínez, *supra* note 239.

371. *See* Ruhl, *supra* note 18, at 16.

372. Interview with Beatriz de León Reyes, *supra* note 269.

373. *Id.*

374. *Id.*

375. *Id.*

376. *Id.*

377. Interview with Beatriz de León Reyes, *supra* note 269.

378. *Id.*

379. Interview with Hilda Morales Trujillo, member of the 'Oficina Nacional de Mujeres' [National Women's Office] [ONAM] y 'Red de la No Violencia contra la Mujer' [Network of No Violence Against Women], in San Francisco (Apr. 2009), on file at the CGRS office.

380. Ruhl, *supra* note 18, at 6.

other coverage of Guatemalan femicide by international bodies, such as the United Nations and Organization of American States, as well as from the United States.³⁸¹ As briefly detailed, none of these measures have substantively had an impact on the incidence of violence and the existing impunity.

1. The International Commission Against Impunity in Guatemala

The International Commission Against Impunity in Guatemala (“*CICIG*”) was established pursuant to an agreement between the U.N. and the Guatemalan government in August 2007.³⁸² Its mission is to help break the culture of impunity by investigating the influence of illegal and clandestine forces on governmental bodies. Also key to its mission is strengthening governmental bodies charged with the investigation and prosecution of crimes.³⁸³ U.N. Secretary General Ban Ki Moon appointed the Spanish Prosecutor Carlos Castresana to head *CICIG*.³⁸⁴ As of November 2009, *CICIG* had a total of 172 staff members.³⁸⁵ In its first year report, *CICIG* noted its interest in, and intent to monitor, certain patterns of killings, including femicide.³⁸⁶ In addition, *CICIG*'s work on femicide will purportedly determine whether there is an adequate legal definition of the term “femicide” and identify deficiencies in the institutions responsible for eradicating problems in the judicial system.³⁸⁷

Castresana has made several public statements regarding femicide. He has characterized femicide as a gender-motivated crime, describing it as the

381. A discussion of international funding as a form of response is beyond the scope of this report.

382. *PDH/Tomo I*, *supra* note 38, at 195. The Dutch Ambassador, Teunis Kamper, called Guatemala “a paradise for organized crime” and contributed \$2.7 million on behalf of the Dutch government to *CICIG*. *Seeking Justice in Guatemala* (BBC television broadcast, Mar. 11, 2008), available at <http://news.bbc.co.uk/2/hi/americas/7284036.stm>. See also *CICIG/One Year Later*, *supra* note 101, and *CICIG/Informe de Dos Años*, *supra* note 101.

383. *PDH/Tomo I*, *supra* note 38, at 195.

384. *Seeking Justice in Guatemala*, *supra* note 382.

385. *CICIG/Informe de Dos Años*, *supra* note 103.

386. *CICIG/One Year Later*, *supra* note 103, at 4. The *CICIG* report observes, “In its first year of operation, the Commission received 64 complaints. It is now investigating 15 high-impact individual cases, most in coordination with the Office of the Public Prosecutor. With respect to the other complaints, those concerning similar cases have been clustered and the Commission is monitoring them as situations, particularly those involving femicide, the killing of bus drivers, human trafficking and attacks on and killings of trade unionists and human rights activists.”

387. *CERIGUA, Estados latinoamericanos, incapaces de erradicar el femicidio* [Latin American States, Unable to Eradicate Femicide] (May 22, 2008), available at http://cerigua.info/portal/index2.php?option=com_content&do_pdf=1&id=68 [hereinafter *CERIGUA/Estados incapaces*]. (“[L]a *CICIG* trabaja en una investigación que determinará se en Guatemala existe el marco legal adecuado para combatir este tipo de crímenes[.]” [“*CICIG* is working on an investigation that will determine if in Guatemala these exists an adequate legal definition to combat this type of crime.”]); see also *CICIG/One Year Later*, *supra* note 103, at 4, 5.

killing of women because they are women.³⁸⁸ He has said that femicide in Guatemala is a problem of epidemic proportions,³⁸⁹ and impunity is a result of deficiencies in the judicial system overall.³⁹⁰ Finally, he has focused on prevention, observing there are no prevention efforts against femicide and attacks against women.³⁹¹ *CICIG*'s most recent report, issued in November 2009, provides an overview of 18 cases investigated by *CIGIG* for which information could be made public, and includes only one case identified as a femicide. The general text of the report does not discuss femicide or sex-related crimes, giving rise to concern that *CICIG* has not made significant progress in its investigations into femicide-related cases.³⁹²

2. The United Nations

The U.N. Committee on the Elimination of Discrimination Against Women ("U.N. Committee on CEDAW"), the U.N. Committee Against Torture, and the U.N. Special Rapporteur on Extrajudicial Killings have all expressed concern about femicide in Guatemala. When the U.N. Committee on CEDAW examined Guatemala's Sixth Periodic Report in May of 2006, the Committee expressed deep concern 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."³⁹³ The Committee added it was also concerned about "the insufficient efforts to conduct thorough investigations, the absence of protection measures for witnesses, victims and victims' families and the lack of information and data regarding cases, causes of violence and profiles of the victims."³⁹⁴ The U.N. Committee Against Torture also expressed concern over the lack of investigations of Guatemala's violent deaths of women in May of 2006.³⁹⁵

In August of 2006, the U.N. Special Rapporteur on Extrajudicial Executions, Philip Alston, conducted a country visit to Guatemala and released a corresponding report in February of 2007.³⁹⁶ This report contains a section entitled "The unexplained surge in murders of

388. *CICIG ve impunidad en casos de femicidio* [*CICIG Sees Impunity in Femicide Cases*], *PRENSA LIBRE*,] May 23, 2008 [hereinafter *Prensa Libre/CICIG ve impunidad*].

389. *Id.*

390. *CERIGUA/Estados incapaces*, *supra* note 387.

391. *Prensa Libre/CICIG ve impunidad*, *supra* note 388.

392. *CICIG/Informe de Dos Años*, *supra* note 103.

393. CEDAW, *Concluding comments of the Committee on the Elimination of Discrimination Against Women: Guatemala* 4, ¶ 23, (Jun. 2, 2006), available at <http://www.unhcr.org/refworld/docid/453778420.html>; <http://www1.umn.edu/humanrts/cedaw/cedaw-Guatemala.htm>. See also Guatemala's Femicides (CGRS Update), *supra* note 18, at 9-10.

394. CEDAW, CONCLUDING COMMENTS OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN: GUATEMALA, at 4, ¶ 23 (Jun. 2, 2006), available at <http://www.unhcr.org/refworld/docid/453778420.html>.

395. See Guatemala's Femicides (CGRS Update), *supra* note 18, at 13-14.

396. *Report of the Special Rapporteur, Philip Alston*, *supra* note 201.

women,”³⁹⁷ which highlights the high increase in murders of women over the last six years³⁹⁸ and addresses theories regarding causes of femicide.³⁹⁹ The report notes the Guatemalan state is responsible under international human rights law for the widespread killings of women, among others, regardless of the extent to which Guatemalan government agents may be involved.⁴⁰⁰ Special Rapporteur Alston emphasized: “Guatemala is a good place to commit a murder, because you will almost certainly get away with it.”⁴⁰¹ The report also provides conclusions and recommendations, although it notes Guatemala has already received extensive recommendations so “[t]he question today is less what should be done than whether Guatemala has the will to do so.”⁴⁰²

3. The Inter-American System

In March 2006, delegates from countries across Latin America met in Washington, D.C., for a special hearing on femicide held at the Inter-American Commission on Human Rights (“IACHR”).⁴⁰³ The delegates presented a report to the IACHR commissioners that documented the presence of femicide in countries like Argentina, Bolivia, Guatemala, Mexico, and Peru. The report showed widespread violence against women from multiple causes including “rampant failures in the procurement of justice for victims and relatives, the prevalence of impunity, and the absence of standard statistical gathering and record-keeping methods to document gender violence.”⁴⁰⁴ The delegates delivered the femicide report as a piece of a campaign aimed at making “the problem more visible in the region.”⁴⁰⁵ Overall, the delegates appealed to the IACHR to follow up on previous recommendations it had made about eradicating femicide, and

397. *Id.* at ¶¶ 22-26.

398. *Id.* at ¶ 22.

399. *Id.* at ¶ 23.

400. *See id.* at ¶ 9.

401. *Report of the Special Rapporteur, Philip Alston, supra* note 201, ¶ 42.

402. *Id.* at ¶ 63. For recent reports on this topic by the United Nations, *see* U.N. General Assembly, Human Rights Council, Report of the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, Philip Alston: Addendum: Follow-Up to Country Recommendations – Guatemala (May 4, 2009), *available at* <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.7.pdf>; *see* CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Guatemala 37 (Feb. 12, 2009) *available at* <http://www.unhcr.org/refworld/pdfid/49e83edd2.pdf>; *see* U.N. General Assembly, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and the Secretary General: Report of the United Nations High Commissioner for Human Rights on the Activities of Her Office in Guatemala in 2008 7-8 (Feb. 28, 2009), *available at* <http://www.unhcr.org/refworld/pdfid/49c768892.pdf>.

403. Guatemala’s Femicides (CGRS Update), *supra* note 18, at 6.

404. Kent Patterson, *Americas Program Report: Femicide on the Rise in Latin America*, IRC Americas, Mar. 8, 2006, *available at* <http://americas.irc-online.org/am/3142>.

405. *Id.*

generally the delegates considered the Washington hearing a positive step.⁴⁰⁶ The issue of women's rights and femicide have also been addressed through other measures within the Inter-American system, as discussed below.

a. Petitions Filed at the Inter-American Commission of Human Rights

A petition on behalf of femicide victim María Isabel Véliz Franco was filed with the IACHR on January 26, 2004.⁴⁰⁷ The petition indicated Véliz Franco disappeared on December 17, 2001, and was found dead the following day in Guatemala City. Her family members filed a petition at the IACHR, with support from the Center for Justice and International Law ("CEJIL") and the *Red de No Violencia Contra Mujeres en Guatemala* [Network of No Violence Against Women], claiming the State's subsequent handling of the case violated Articles 4, 8(1), 11, 19, 24, and 25 of the American Convention on Human Rights, including the right to equal protection and the right to judicial protection. The petitioners submitted evidence pointing to "gaps and irregularities in the investigation of the facts related to the disappearance and subsequent death of [the victim]."⁴⁰⁸ The IACHR found the petition admissible on October 21, 2006;⁴⁰⁹ its decision on admissibility noted a pattern of violence against women in Guatemala which the State had failed to properly investigate or prosecute.

b. Inter-American Commission on Human Rights Access to Justice Report

On January 20, 2007, the IACHR released a report on "Access to Justice for Women Victims of Violence in the Americas."⁴¹⁰ This report examines the major obstacles women encounter when they seek effective judicial protection to redress acts of violence.⁴¹¹ The report addresses international provisions and standards that apply to the right of women to access adequate and effective remedies when they are victims of violence, as well as states' due diligence obligations in responding to human rights violations of women. The IACHR report makes regional-wide

406. *Id.*

407. Inter-American Commission on Human Rights (IACHR), *Admissibility — María Isabel Véliz Franco*, Petition 95-04, Guatemala (Oct. 21, 2006), available at <http://www.cidh.oas.org/annualrep/2006eng/GUATEMALA.95.04eng.htm>. Petitions related to the femicides in Ciudad Juárez, Mexico, have also been found admissible by the Inter-American Commission of Human Rights.

408. Inter-American Commission on Human Rights (IACHR), *Admissibility — María Isabel Véliz Franco*, Petition 95-04, Guatemala (Oct. 21, 2006), available at <http://www.cidh.oas.org/annualrep/2006eng/GUATEMALA.95.04eng.htm>.

409. *Id.* at ¶ 56.

409. *Id.* at ¶ 56.

410. IACHR Access to Justice, *supra* note 25.

411. *Id.* at ¶ 2.

observations about the significant gaps between the availability of remedies and their application.⁴¹²

The sections of the report on Guatemala underscore serious failings in the judicial system. The “authorities in charge of investigations into incidents of violence against women” were “neither competent nor impartial.”⁴¹³ At each step of the process, authorities do not do what is necessary and required. When women are reported missing or disappeared, the relevant government officials “fail to launch an immediate search for the victim, and . . . they blame the victim for what happened, thereby implying that the missing woman is somehow undeserving of state efforts to locate and protect her.”⁴¹⁴

These flaws affect the collection of evidence; “the majority of evidence-collection efforts related to acts of violence against women focus on physical and testimonial evidence, neglecting other types of evidence that can be crucial to establishing facts, such as that of scientific and psychological nature.”⁴¹⁵ Prosecutors do not take into account the “vulnerability or defenselessness of women victims of violence” or “the fact that women who are raped or subjected to other forms of violence may feel compelled to remain silent because they fear their assailant’s reprisals and/or community ostracism.”⁴¹⁶ The percentage of sexual offenses that go to trial is extremely small.⁴¹⁷ Prosecutors also expressed the view that women victims of violence who are the beneficiaries of judicial protective measures are themselves responsible for ensuring the protective measures’ effectiveness when the police fail to do so, and judges do not effectively monitor their enforcement.⁴¹⁸ The overall situation is exacerbated by “shortages in human, financial[,] and technical resources. . . [which] seriously affect the investigation, prosecution[,] and punishment of cases of violence against women.”⁴¹⁹

c. Inter-American Commission on Women’s Hemispheric Report

412. *See id.* at ¶ 7-8. (The report notes governments lack comprehensive policies to prevent, prosecute, and punish acts of violence against women, and there are inadequate resources available for all stages of the judicial proceedings. Socio-cultural attitudes and the inadequacy of the system force women to face secondary victimization in seeking justice, and multiple forms of discrimination based on gender, ethnic origin or race, and socio-economic status. The IACHR finds impunity perpetuates the social acceptance of violence against women and states fail to comply with their due diligence obligations when they do not prosecute and punish acts of violence against women.)

413. *Id.* at ¶ 130.

414. IACHR Access to Justice, *supra* note 25, ¶ 135.

415. *Id.* at ¶ 136.

416. *Id.* at ¶ 145.

417. *Id.* at ¶ 146.

418. IACHR Access to Justice, *supra* note 25, at 70-71, ¶ 170. In 2004, the Rapporteur on Women’s Rights reported “31% of the women murdered had been threatened beforehand.”

419. IACHR Access to Justice, *supra* note 25, at 76, ¶ 185.

The Inter-American Commission of Women (“*CIM*”) is a specialized organization within the Organization of American States whose focus is violence against women in the hemisphere. The *CIM* prepared the draft convention that ultimately became the Convention of Belém do Pará. This Convention entered into force on March 5, 1995, and Guatemala became a party in 2005.⁴²⁰

Due to the fact that many of the objectives of the Convention were not being met, *CIM* later created a follow-up mechanism to monitor implementation of the Convention by ratifying countries.⁴²¹ Pursuant to the follow-up mechanism, a Committee of Experts on Violence (“*CEVI*”) gathers and analyzes information and issues its findings. In July 2008, *CEVI* released its first Hemispheric Report.⁴²²

The *CEVI* Hemispheric Report’s rating of Guatemala finds it to be lacking in numerous respects in terms of its obligations under the Convention of Belém do Pará and its implementation of these obligations. It reported there are inadequate policies to address the killings of women, violence against women is under-reported,⁴²³ and there are no government programs to punish officials who do not abide by the law.⁴²⁴ Guatemala also does not have a mechanism or body to follow-up on the implementation of the Convention of Belém do Pará.⁴²⁵

4. The United States⁴²⁶

The United States House of Representatives and Senate have passed resolutions that condemn “ongoing abductions of murders of women and girls in Guatemala which have been occurring with increasing brutality and frequency.”⁴²⁷ The House of Representatives approved Resolution 100 on May 1, 2007,⁴²⁸ and the Senate unanimously passed Resolution 178 on March 11, 2008, in commemoration of International Women’s Day.⁴²⁹ The resolutions note “continuing impunity for the crime of murder is a threat to

420. See, e.g., WOLA/Hidden in Plain Sight, *supra* note 33, at 7, and *supra*, note 215.

421. Interview with Hilda Morales Trujillo, *supra* note 186. See also Inter-American Commission of Women, *Follow Up Mechanism to the Convention of Belém do Pará (MESCEVI)*, 2007, <http://www.oas.org/cim/english/MESECVI.Index.htm>.

422. Hemispheric Report, *supra* note 175, at 19.

423. *Id.* at 36.

424. *Id.* at 8-9.

425. *Id.* at 12.

426. This report does not address United States’ involvement in efforts related to the rule of law and women’s rights in Guatemala. For more on that subject, see CRGS/Getting Away with Murder, *supra* note 18, at 14; and Guatemala’s Femicides (CGRS Update), *supra* note 18, at 5, 15.

427. H.R. Res. 100, 110th Cong. (2007), *supra* note 22; and 110th Cong. (2007), *supra* note 22.

428. 428. H.R. Res. 100, 110th Cong. (2007), *supra* note 22.

429. S. Res. 178, 110th Cong. (2007), *supra* note 21.

the rule of law, democracy, and stability in Guatemala.”⁴³⁰ Among other things, they also urge the Guatemala government to:

. . . act with due diligence in order to investigate promptly the killings of women and girls, prosecute those responsible, and eliminate the tolerance of violence against women; . . . hold accountable those law enforcement and judicial officials whose failure to investigate and prosecute the murders adequately, whether through negligence, omission, or abuse, has led to impunity for these crimes; [and] . . . [t]ake measures to ensure that the special Guatemalan police and prosecutorial units have an adequate number of appropriately trained personnel with sufficient resources to conduct thorough and proper investigations and prosecutions that reflect the gravity and magnitude of this national security crisis[.]⁴³¹

V. RECOMMENDATIONS AND CONCLUSION

By any measure, violence against women and the violent killings of women are on the rise in Guatemala. International recognition — as evidenced by resolutions in both houses of the United States Congress, and statements or actions at the United Nations and the Organization of American States — is a positive development. At the same time, activists in Guatemala have successfully advocated for the passage of laws aimed at eliminating gender-discriminatory provisions in the Criminal and Civil Codes, as well as the creation of State institutions and coordinating bodies responsible for addressing the epidemic levels of violence against women in the country. Followup evaluations of the implementation of the laws are needed at regular intervals. The Guatemala Human Rights Commission USA produced one report on the Femicide Law, in mid 2009, but additional analyses are needed. There has yet to be any measurable reduction in violence against women, and in the high levels of impunity enjoyed by those who batter, rape and kill women, or any discernable increase in successful prosecutions or punishment of those responsible for these crimes.

The conditions giving rise to gender-based violence in Guatemala have been constructed over more than five-hundred years, in norms and practices dating back to the Colonial period. These historical conditions were exacerbated by the brutal abuses against women and girls which took place during years of the internal armed conflict. Although the conflict ended with the signing of the Peace Accords in December 1996, there has been nearly total impunity in the country for those responsible for these crimes.

430. H.R. Res. 100, 110th Cong. (2007), *supra* note 20; S. Res. 178, 110th Cong. (2007), *supra* note 23.

431. H.R. Res. 100, 110th Cong. (2007), *supra* note 22.

It is unrealistic to expect rapid changes in attitudes and behaviors — within the judicial system and society in general. However, it is certain that no changes will occur without sustained and serious efforts on the part of the Guatemalan government to assure laws enacted on paper become a reality in their implementation and enforcement.

Previous reports on femicide in Guatemala by the U.N. Special Rapporteur on Violence Against Women,⁴³² Amnesty International USA,⁴³³ the Washington Office on Latin America,⁴³⁴ and the Guatemala Human Rights Commission/USA,⁴³⁵ have contained specific recommendations to the Guatemalan government regarding steps that should be taken in response to the femicides. We join with those international bodies and key NGOs in calling for the full and effective implementation of provisions of the new Femicide and Trafficking laws, as well as for the adoption of measures necessary for the professional, competent, and effective investigation and prosecution of crimes. At a minimum, such measures would include:

- The effective identification of gender-based crimes and reliable statistical gathering through the establishment of a database to track femicides and other crimes against women. This should be coordinated through the *INE* (as mandated by Article 20 of the Femicide Law).⁴³⁶ Reliable data-keeping would require the clear definition and consistent use of terms such as “femicide,” as well as improved coordination within and between government entities responsible for gathering statistics, to avoid problems related to contradictory numbers on the violent deaths of women and girls which have historically been provided by the *PNC*, the *MP*, etc.
- The improvement of crime scene investigation, chain of custody controls, training and coordination of police, investigators, prosecutors and judicial officials,⁴³⁷ developing systems that will enable authorities to respond more quickly and effectively to crimes against women, prevent contamination of valuable evidence, and

432. See, e.g., ECOSOC *Violence Against Women*, *supra* note 24, at 18-22.

433. See, e.g., AI/No Protection, *supra* note 178; and AI/No Protection (Update), *supra* note 172.

434. See, e.g., WOLA/Hidden in Plain Sight, *supra* note 33, at 14-17.

435. See, e.g., GHRC/Guatemala’s Femicide Law, *supra* note 108, at 10-14.

436. See, e.g., AI/No Protection (Update), *supra* note 172, at 15; ECOSOC *Violence Against Women*, *supra* note 24, at 20; GHRC/Guatemala’s Femicide Law, *supra* note 108, at 12; *Por ser mujer*, *supra* note 4, at 267-70, and WOLA/Hidden in Plain Sight, *supra* note 33, at 15.

437. See, e.g., AI/No Protection, *supra* note 178, at 3; AI/No Protection (Update), *supra* note 172, at 16; ECOSOC *Violence Against Women*, *supra* note 24, at 18, 21; GHRC/Guatemala’s Femicide Law, *supra* note 108, at 12; *Por ser mujer*, *supra* note 4, at 270-273; and WOLA/Hidden in Plain Sight, *supra* note 33, at 15.

facilitate needed follow-up that multiple sources in Guatemala indicated was lacking.

- The development of forensic crime laboratories and programs that train forensic specialists regarding evidence-gathering in femicide and other gender-related criminal cases, including the collection, processing, and preservation of DNA-related evidence.⁴³⁸ There is no operational DNA laboratory within Guatemala, and DNA tests sent outside the country for processing have been rejected by judges due to chain-of-custody related concerns. The collection and preservation of DNA evidence will facilitate the immediate identification and prosecution of perpetrators, as well as preserve evidence for the future if required.
- The creation of enforcement mechanisms to ensure institutional accountability during investigation of cases involving femicide or other violence against women, and the prosecution of all responsible parties to reduce the likelihood that such crimes be repeated in the future.⁴³⁹ These enforcement mechanisms should monitor the performance of police, prosecutors, and judges responsible for the handling of these cases, and should provide for disciplinary measures or sanctions to be imposed against officials who fail to carry out their responsibilities as required by law, or who themselves engage in acts constituting violence against women or corruption. These mechanisms could be created internally, within existing government entities, or externally through existing mechanisms such as *CICIG*, particularly in view of serious allegations that some of the killings of women are linked to organized crime and the security forces, including the *PNC*.

In addition to these recommendations aimed at improving the investigation and prosecution of gender-related crimes, measures are needed to bring Guatemalan law into compliance with international standards on discrimination and violence against women. Progress towards this end could be made by modifying or removing remaining legal provisions that are discriminatory (e.g., the legal age to marry; waiting periods for remarriage), as well as by clarifying the legality of “special

438. See, e.g., AI/No Protection (Update), *supra* note 172, at 16, GHRC/Guatemala's Femicide Law, *supra* note 108, at 12; and WOLA/Hidden in Plain Sight, *supra* note 33, at 15.

439. See, e.g., AI/No Protection (Update), *supra* note 172, at 16; ECOSOC *Violence Against Women*, *supra* note 24, at 19; GHRC/Guatemala's Femicide Law, *supra* note 108, at 12; *Por ser mujer*, *supra* note 4, at 270-73; and WOLA/Hidden in Plain Sight, *supra* note 33, at 15.

laws,” and facilitating their consistency with overall codes and laws. Most importantly, the Guatemalan government must undertake steps to ensure that relevant laws are implemented and enforced.⁴⁴⁰

The United States government can also play a part in bringing about these changes by requiring that future United States aid to Guatemala be conditioned upon a credible showing that the authorities are taking concrete steps towards addressing the impunity that has long existed for the commission of crimes of violence against women. United States funding should also support public education campaigns throughout Guatemala aimed at raising awareness of women’s rights, gender equality, and the provisions of the new Femicide Law outlawing acts constituting violence against women. Consideration should be given to conditioning future aid to Guatemala on a credible showing the authorities are following key recommendations, maintaining reliable statistics on femicides and other violent crimes against women, undertaking effective prosecutions against the perpetrators of these crimes, and meeting established benchmarks for improvement in human rights.

440. See, e.g., AI/No Protection, *supra* note 178, at 3; AI/No Protection (Update), *supra* note 172, at 16; ECOSOC *Violence Against Women*, *supra* note 24, at 18; *Por ser mujer*, *supra* note 4, at 266, 269; and WOLA/Hidden in Plain Sight, *supra* note 33, at 15.