

Guatemala

No protection, no justice: killings of women (an update)



At approximately 9:30 pm on 27 July 2005, 20-year-old university student Cristina Hernández¹ was forced into a grey car outside her home by four men. Neighbours witnessed the abduction and immediately alerted her father who later related:

I borrowed a car from a neighbour and my son and I tried to chase them in the car. Then I went to San Juan police station and begged the police to try to stop their car. I begged them to put up road blocks to stop them and catch them. Then after two hours of searching everywhere I went back to the police station to see if they had any news...they claimed I hadn't reported anything and so they'd done nothing. Then my brother-in-law went to the homicide department; and they said nothing could be done. They said many young girls run off with boyfriends; and so they couldn't start a search for 24 hours.²

The next morning her dead body was found. She had been shot four times and bitten all over her body. Instead of being subjected to a forensic examination, all but one item of clothing she was wearing were returned to the family. When the family presented the clothes to the Public Ministry to assist in the investigation, they were reportedly told to burn them or throw them away. Soon after Cristina's murder, in fear for their safety, the family went into hiding where they remain at the time of

¹ The name has been changed to protect the identity of the family.

² Interview with father of Cristina Hernández, BBC This World documentary, *Killer's Paradise*.

writing. Nearly one year on, and despite the existence of critical leads, including witnesses and a potential suspect—no further investigations have been carried out. Her killers remain at large.

In June 2005 Amnesty International published a report *No protection, no justice: killings of women in Guatemala*³ to highlight the murder of women and girls in Guatemala and the state's failure to exercise due diligence in preventing, investigating and punishing these crimes. The report examined the extreme brutality of the killings, which are also frequently characterized by sexual violence, and the serious and persistent shortcomings at every stage of the investigative process. It also looked at the discrimination that lies at the heart of gender-based violence experienced by women in Guatemalan society and some of the laws, and investigative and judicial practices that perpetuate such discrimination.

The organization made 14 key recommendations to President Óscar Berger and other state institutions calling for immediate action in five key areas:

- Immediate, coordinated, full and effective investigations into all cases of abduction and murder of women and girls, ensuring that international standards, in particular in relation

³ AI Index: AMR 34/017/2005, see

<http://web.amnesty.org/library/Index/ENGAMR340172005?open&of=ENG-GTM>

to crime scene investigation and autopsies, are followed;

- Urgent search mechanisms in cases of women and girls reported missing as well as a comprehensive data collection system of women reported missing;
- The incorporation of a gender perspective into the analysis and treatment of violence against women in policing and judicial practice, including the introduction of standard guidelines and procedures to cover all stages of criminal investigations;
- Promotion of a campaign for zero tolerance of acts of violence against women and that those responsible, including members of the security forces and non-state actors, will be brought to justice;
- The removal of discriminatory legislation in line with international standards on violence against women.

Although the government has begun to take action to address some of these issues, these measures have been limited and insufficient to effectively address the scale and severity of the problem.

This report considers developments over the last year and makes a number of recommendations on issues that require urgent attention.

Killings escalate

Since 2001 over 2,200 women and girls have been murdered in Guatemala and the rate of murders is on the increase.⁴ Between 1 January 2006 and 5 May according to police statistics 229 women and girls were killed.⁵ Many of the murders have been characterised by exceptional brutality, with many victims subjected to sexual violence, mutilation and

⁴ According to the Human Rights Ombudsman's Office (*Procuraduría de Derechos Humanos* - PDH) while the killings of men increased by 45% between 2002 and 2005, the number of women killed during this time increased by 63%. *Informe de muertes violentas de mujeres*, PDH, 2005.

⁵ The women's organization *Sobrevivientes* (Survivors) puts the figure at 243 based on press reports and visits to the city's central morgue.

dismemberment.⁶ Despite considerable national and international concern – including two visits and subsequent recommendations by the United Nations and Inter-American Commission special rapporteurs on Women - women and girls continue to be murdered with impunity in Guatemala.⁷ As of June 2006, of the over six hundred cases of women reported murdered in 2005, to Amnesty International's knowledge, only two convictions had taken place.

Relative of murder victim holds a placard during a demonstration on 25 November 2005 in Guatemala City: 1,897 women killed in Guatemala between January 2001 and July 2005 © BBC This World

The alarming number of killings and lack of an effective government response has also caught the attention of the international community and prompted demonstrations across Latin America and hearings in the European Parliament and the US Congress.⁸ Most recently in the US, on 8 May 2006, 117 members of the US Congress signed a letter in which they urged the US State Department to call on the Guatemalan government to take prompt and effective action to address the killings

⁶ For example, on 24 June 2005 Marta Olga Caseros Batres's body was found in zone 6 of Guatemala City. She had been decapitated and her body cut up with a machete. On 6 November 2005, the dismembered parts of an unidentified woman were found in three bin bags in Guatemala City. She had been beheaded and her body cut into 19 pieces. On 1 December 2005 another decapitated woman was found in a tunnel in Guatemala City.

⁷ The UN Special Rapporteur on Violence against Women, Yakin Ertürk, visited Guatemala in February 2004 and issued her subsequent observations and recommendations in February 2005 (see E/CN.4/2005/72/Add.3). The Special Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights visited Guatemala in September 2004 and issued recommendations following her visit (see www.cidh.org/women/20.04.htm).

⁸ See *Resolución del Parlamento Europeo sobre Guatemala*, P6_TA-PROV(2005)0304, 7 July 2005, See www.acnur.org/biblioteca/pdf/3643.pdf. In April 2006 the European Parliament held a hearing on the killings of women in both Guatemala and Mexico. In October 2005 a hearing was held in the US Congress on the killings of women in Guatemala, during which the Special Rapporteur on the Rights of Women of the Inter-American Commission spoke as did Guatemalan representatives. In November 2005 simultaneous demonstrations calling for an end to the killings were held in nine Latin American countries.

of women and that the State Department provide technical assistance to promote the proper investigation, prosecution and punishment of these crimes. Concern was also expressed over the tendency of the authorities to blame the victims rather than focusing resources on investigating and prosecuting the perpetrators of the killings.

In its concluding comments in regard to Guatemala's sixth periodic report, on 2 June 2006 the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern regarding the insufficient efforts taken by the Guatemalan authorities to end the killings:

The Committee is deeply concerned about the continuing and increasing cases of disappearances, rape, torture and murders of women, the engrained culture of impunity for such crimes, and the gender-based nature of the crimes committed, which constitute grave and systematic violations of women's human rights. It is concerned about the insufficient efforts to conduct thorough investigations, the absence of protection measures for witnesses, victims' families and the lack of information and data regarding the cases, the causes of violence and the profiles of the victims.⁹

It called on the Guatemalan government to:

take without delay all the measures necessary to put an end to the murders and disappearances of women and the impunity of perpetrators.

Concluding comments of the Committee on the Elimination of Discrimination against Women: Guatemala (CEDAW/C/GUA/CO/6).

In common with some other Central American countries, Guatemala experiences high levels of violent crime. State authorities have come under criticism for what many perceive as a failure to control spiralling violence and to provide public security. The murder rate for both men and women has continued to rise, with 23 % more murders in 2005 (5,338 murders) as compared to 2004 (4,346 murders) according to police figures, with 2005 figures representing the highest figures since the end of Guatemala's internal armed conflict (1960-1996). This places Guatemala amongst the countries with the highest murder

⁹www.un.org/womenwatch/daw/cedaw/cedaw35/cc/Guatemala_rev.pdf

rates in Latin America, with approximately 44 murders per 100,000 inhabitants.¹⁰

The precise number of women who have been murdered continues to be disputed with the Public Ministry, the National Civilian Police (PNC) and the Judiciary generating and referring to different statistics.¹¹ Establishing a comprehensive overview of the statistics regarding both the numbers of women killed as well as the identity of the perpetrators is still therefore extremely difficult. According to the police unit charged with the investigation of murders of women in the department of Guatemala, during 2005 there were up to a total of 665 murders of women throughout the country - 246 murders of women in the department of Guatemala alone – a 26 % increase from 2004 (527).¹²

Around 4,800 men were murdered in Guatemala in 2005. These cases also appear not to be investigated effectively with press reports indicating that only four percent of cases end in criminal sentences.¹³ Many of the concerns expressed in this report apply equally to the failure to adequately investigate murders whether of men or women. Unlike the murders of men, however, in cases of women, the gender of the woman is a determining factor in the motive of the crime, the way women are killed (female victims often suffering exceptional brutality before being killed including rape, mutilation and

¹⁰ Based on a population of 12 million, cited in United Nations Development Programme, Human Development Report, 2005. Page 234, available at: <http://hdr.undp.org/2005>

¹¹ In view of the deficiencies in the collection and management of data, the figures provided in this report should not be read as definitive. While different state bodies and non-governmental organizations present different statistics, all statistics indicate that the number of women killed since the launch of *No Protection, no Justice* has increased.

¹² Even within the same unit statistics for murders of women and girls during 2005 have differed. In April 2006 AI was informed that 552 women were murdered during 2005. A previous document from the same unit, however, stated that this figure was 665, of which 195 of the cases were termed as "non-violent" deaths. These "non-violent" deaths included 54 cases where the cause of death was unknown; 39 of the cases were death via suffocation through submersion. Press reports, quoting the PNC, have consistently quoted 640 cases of murdered women during 2005.

¹³ Prensa Libre, 'Jueces y fiscales se inculpan por la falta de fallos condenatorios', 3 March 2006.

dismemberment), and the way in which the authorities respond to the case.

It is difficult to establish a clear picture regarding the extent of the violence perpetrated against women or to draw conclusions regarding the identity or the motives of the perpetrators due to the poor quality of investigations and the absence of documentation regarding gender-based violence suffered by the victim prior to being killed. In the absence of thorough investigations, various non governmental organizations (NGOs) and other groups have presented their own investigations and analysis regarding the reasons behind the killings.¹⁴

According to research carried out by the Human Rights Ombudsman's Office (Procuraduría de Derechos Humanos – PDH) in the majority (80%) of cases of murdered men they are killed using fire arms with no intimate physical contact between the victim and the perpetrator. In the case of women, however, 69% are murdered using a firearm and in 31% of cases the attackers use direct physical violence (knives, blunt objects, strangulation).¹⁵ Many victims are raped, tortured or mutilated before being killed. According to the PDH, “*the difference is that in the case of women they make them suffer more before being killed.*”¹⁶

Continued impunity for killings

“*Claudina was killed by one thing: impunity... Claudina's killer knew that the likelihood of him being found was very remote*” – father of 19-year-old law student Claudina Velásquez Paíz, murdered on 13 August 2005.

¹⁴ For example see *Femicidio en Guatemala: crímenes contra la humanidad*, Unidad Revolucionaria Nacional Guatemalteca (URNG), November 2005, p67-90. (see www.congreso.gob.gt/uploadimg/documentos/n1652.pdf); *Análisis del Femicidio en Guatemala*. Comisión de la Mujer del Congreso de la República. April 2006; *Asesinatos de mujeres: Expresión del Femicidio en Guatemala*, CALDH, December 2005; *Identificación de patrones existentes en el asesinato de mujeres en Guatemala y similitudes con los crímenes del pasado*, Sobrevivientes, December 2005 (see www.sobrevivientes.org).

¹⁵ *Informe de muertes violentas de mujeres 2005*. Human Rights Ombudsman's Office.

¹⁶ Interview with Sergio Morales, Guatemalan Human Rights Ombudsman, *Violencia se ensaña con mujeres en Guatemala*, La Nación, San José, Costa Rica, 4 April 2006.

“Impunity” is the issue relatives often refer to as being one of the major contributing factors to the deaths of their loved ones. The failure of the authorities to identify, detain and bring to justice those responsible for the killings of women and girls sends the message to perpetrators that they will not be held accountable for their actions.

Photographs of women murdered in Guatemala published in a daily newspaper © BBC This World

Judicial authorities do not collect disaggregated statistics for the number of sentences in cases of murdered women and girls, making it difficult to obtain an accurate picture of the number of successful prosecutions at a national level in cases of women killed and whether the number is increasing. To Amnesty International's knowledge convictions for cases of women killed between 2002 and 2004 were secured in 15 cases in 2005.¹⁷ At the time of writing, only two cases of killings in 2005 had resulted in convictions.¹⁸ As noted by the PDH no arrests were made in 97% of cases,¹⁹ more than 70% of the cases have not been investigated and the motive for the killing is unknown.²⁰ The lack of physical or scientific evidence to back up witness testimony means that if cases reach the courts suspects are often acquitted for lack of evidence.

¹⁷ The Prosecutor's Office for Crimes against Life informed AI that during 2005 it secured 11 convictions in cases of murdered women. The remaining four cases are cases from outside the department of Guatemala.

¹⁸ Cases of Maria A. López Camas and Suly Niseyda Leonardo and Maria C. Menchu Tacan.

¹⁹ Quoted in the press: *La Nación*, *Violencia se ensaña con mujeres en Guatemala*, 2 April 2006.

²⁰ See *La Nación*, *Violencia se ensaña con mujeres en Guatemala*, 2 April 2006 and *Femicidio en Guatemala. Crímenes contra la Humanidad*, November 2005, p97.

Of the cases monitored by Amnesty International, there have been only two convictions. In the case of the rape and murder of Oliberta Elizabeth Calel Gómez, on 2 April 2005 former police agent Bartolome Teni Cu was sentenced to 60 years – 50 years for the murder and 10 years for the rape. The friend that was with her at the time but who managed to escape was able to testify against him. In the case of 17-year-old Andrea Fabiola Contreras Bacaro who was raped and murdered in June 2004 in Jocotenango, Sacatepéquez, and who had the word “vengeance” carved into her leg, in February 2005 Otto René Argueta was sentenced to 35 years.

Official statistics continue to mask low prosecution rates. While the Public Ministry’s annual report classifies nearly 42% of the cases attended to by the Special Prosecutor’s Office for Crimes against Life during 2005 as “solved”, in only 3.8% of these cases was a formal accusation presented and in only 1% of cases did a court hearing take place. The majority (23.8%) of cases classified as “solved” were “archivado” (cases where the Public Ministry desisted from the prosecution either because of alleged lack of collaboration from witnesses or family members, at the request of victims’ families or due to lack of evidence), “dismissed” (*desestimaciones y actos conclusorios*) (8.4%), the suspects were cleared (2.6%) or the cases were provisionally closed (2%).²¹

Flawed investigations

*In Guatemala serious deficiencies persist in the organization and functioning of the judicial system, which are due to an inadequate normative framework and certain practices which do not allow an independent, impartial and effective administration of justice based on respect for human rights.*²²

The failure to carry out the most basic investigations, properly process the crime scene and

²¹ See *Memoria de Labores 2005*. Ministerio Público, www.mp.lex.gob.gt/memorias

²² *La Justicia en Guatemala: Un Largo Camino por Recorrer*. International Commission of Jurists (ICJ), December 2005, p 79, see www.ici.org/IMG/pdf/Informe_CIJ_Guatemala.pdf

protect potential evidence remains evident in numerous cases. Francisca López, aged 13, was knifed to death on 2 November 2005 in Guatemala City. Her bloodstained clothes, which may have contained evidence identifying her attackers, were handed back to the family and were buried together with her body.

The heavy case loads, lack of equipment and the continuing severe shortage of police investigators,²³ means that in the majority of cases the initial investigation, in particular the way in which the crime scene and other important evidence is processed, is flawed. As one of the Unit’s police officers told Amnesty International *we don’t have the tools to carry out the work*.²⁴ On many occasions interviews do not take place until months after the crime when witnesses or family members are no longer willing to talk or cooperate, often because they have been threatened.

According to the police Female Homicide Unit by the end of 2005 they had archived 100 cases out of a total of 224 cases of murdered women and girls allegedly due to a lack of evidence because families no longer wanted investigations or witnesses were no longer willing to talk for fear of reprisals.

Vital evidence is often destroyed or contaminated at the scene of the crime © BBC This World

Lack of coordination regarding the respective roles of police investigators and the Public Ministry prosecutors means that many cases do not advance beyond the initial investigation stage.²⁵ As noted by the International Commission of Jurists *one of the main flaws in the criminal investigation is the lack of institutional coordination between the Public Ministry and the PNC*.²⁶ In the case of Cristina Hernández the

²³ See *Policía Nacional Civil busca investigadores*, El Periodico, 6 January 2006.

²⁴ Interview with Female Homicide Unit of the PNC, 6 April 2006.

²⁵ Article 107 of the Procedural Penal Code establishes that the PUBLIC MINISTRY directs criminal investigations. The PNC investigators are obliged to submit two police reports to the PUBLIC MINISTRY, one after 24 hours and the other after 72 hours.

²⁶ Op.Cit; ICJ p47.

police officer charged with the investigation informed Amnesty International that since the days following the murder on 27 July 2005 she had not carried out any further investigations - despite the existence of critical leads - as she had not received any instructions from the Public Ministry.²⁷ Nearly one year after Cristina was abducted and murdered, the Public Ministry has allegedly still not requested the police to carry out a search of a suspect's house or summoned the witnesses to provide information to construct a identikit picture of individuals believed to be responsible for her abduction and subsequent murder.

In the case of the sex worker nicknamed "la mudita", later identified as 25-year-old Silvia Patricia Madrid whose body was found dumped on a roadside on 22 February 2006, the investigation carried out by the Assistant Prosecutor in charge of the case limited itself to establishing the identity of "la mudita". Other basic lines of investigation were not pursued such as seeking witness statements at the hotel where "la mudita" worked.

In the face of chronic deficiencies in the investigation of cases of murdered women and girls, in April 2006 the PDH presented a proposal to the Public Ministry and Judiciary which would allow the PDH to oversee the investigation of cases of murdered women and girls throughout Guatemala.²⁸ Amnesty International understands that both the Public Ministry and Judiciary are yet to formally respond to the PDH's request.

In some cases there have also been allegations of complicity by police investigators in covering up crimes or "misplacing" important evidence.

²⁷ In one of the initial police reports submitted to the Public Ministry the police investigator reportedly suggested that a search be carried out of the property of a man who had previously harassed Cristina and that there were two witnesses who were mugged, apparently by the same individuals who abducted Cristina, but had failed to contribute to the construction of an identikit picture of the suspects. Telephone interview with police investigator, 16 May 2006

²⁸ The PDH had previously requested that the Constitutional Court (CC) issue a resolution which would empower the PDH to oversee the investigation of the cases within the Public Ministry, however, the CC responded that this was not necessary as the PDH, in line with article 275 of the Guatemalan Constitution, are already empowered to do so.

On 22 March 2005, 22-year-old sex worker, "Perla", was murdered in a hotel in the red light district, Cerrito del Carmen in Guatemala City. Her sister, also a sex worker, who witnessed the killing, reportedly informed the Public Ministry that two plain-clothed policemen shot her sister. Uniformed police agents who came to the hotel allegedly removed the spent shells and told the hotel owner to wash away the blood. The spent shells were reportedly never submitted as part of the investigation.

While in some cases family members are able to act as joint parties to the state prosecution (*querellantes adhesivos*) the vast majority of families are unable to afford to pay for a lawyer to help them navigate the complex process of becoming joint parties to the investigation.²⁹ In cases where there are no relatives exerting pressure on the authorities to investigate either because relatives are too afraid to actively pursue investigations or the victim has not been identified, investigations seldom advance. The obligation to investigate and prosecute *all* cases of murders *ex-officio* rarely happens. In the case of 20-year-old Cristina Hernández, killed on 27 July 2005, for example, Amnesty International was informed that the Public Ministry was not actively investigating the case allegedly because the father is no longer collaborating. After Cristina Hernández was murdered in July 2005, her family went into hiding in fear for their safety after they were intimidated.

In the case of 19-year-old university student Claudina Velásquez who was studying to become a lawyer, her dead body was found on 13 August 2005. She had been shot and traces of semen were found on her body. Serious deficiencies were reported in relation to the effectiveness of the investigation. For example, tests on the principal suspects, to ascertain if they had fired a gun, were not carried out. Since the death of his daughter, Claudina's father had repeatedly visited the Public Ministry, suggested lines of investigation and even

²⁹ Article 116 of the Guatemalan Penal Code gives relatives the right to propose avenues of investigation, participate in proceedings, request certain tests or examinations and seek the intervention of a judge if they disagree with a prosecutor's decision not to carry out a particular line of investigation.

carried out independent inquiries. Recognizing the deficiencies in the investigation of the case, in November 2005, the head of the Special Prosecutor's Office on Crimes against Life took over the investigation. Since then investigations have effectively restarted including sending blood samples of the five suspects to Spain for DNA analysis. While the reactivation of investigations is a positive step, it is likely that critical evidence has been lost.

19-year-old university student Claudina Velásquez shortly before she was murdered. @ Private

Likewise, in the case of María Isabel Franco, who was raped and brutally murdered in December 2001, it was only after significant international attention on the case and after a TV documentary, that in February 2006 the prosecutor agreed to compile a list of leads that have yet to be investigated and to locate the main suspect in the case. Two of the main suspects have reportedly consistently failed to respond to summons calling them to testify and are reportedly fugitives. According to relatives and an NGO supporting the case no effort has been made to locate them.

State negligence in preventing murders

The response by police authorities to reports of missing women or girls, including cases where there are witnesses to their abduction, continues to be inadequate. Amnesty International received many reports of cases where police authorities had failed in their duty to take urgent action to prevent injury to women and girls believed to be at immediate risk. Amnesty International considers that the state's failure to respond appropriately and effectively to emergency calls or reports of missing women engages its responsibility for their subsequent murders. The state must improve the ability of officers to respond to such calls, and those officers who fail to discharge their duties effectively must be held to account.

While Amnesty International was informed that talks are underway within the Commission to Address Femicide to create a database which would

record and cross-reference cases of disappeared women and girls with the discovery of dead bodies, at the time of writing no such mechanism existed. Of the 176 killings of women between 1 January and 26 March 2006, 24 % of the victims were unidentified on the autopsy report. In an apparent effort to improve the ability to identify victims of women who are killed as a result of domestic violence, the Office of Attention to the Victim (*Oficina de Atención a la Víctima* - OAV) has reportedly begun to take finger prints of women who present complaints of domestic violence.

In the case of Cristina Hernández (see first page) the police failed to respond to the desperate pleas of her family despite neighbours having witnessed her abduction. Similarly, neighbours also witnessed the abduction of 18-year-old student Paola Ninet Gil Escobar, by four men in a green car with no number plates and tinted windows close to her home in the municipality of Amatitlán on the outskirts of Guatemala City on 28 March 2006. Her parents called the police immediately as the car drove slowly down the hill towards the main road, but were reportedly told that without more details the police could not take action. The following morning their daughter's dead body was found dumped in a nearby river in Amatitlán, her head covered with a black bag and her hands tied. She had reportedly been raped and strangled.

Police agents are obliged to take immediate action to locate women who have been reported missing or respond to emergency calls where witnesses report that someone has been abducted. To Amnesty International's knowledge in neither of the above cases are the officers who failed to respond to reports of abductions facing any disciplinary measures.

Continued lack of effective protection measures means that in many cases survivors of gender-based violence, their families and witnesses are too afraid to give testimony. Fear of reprisals and lack of available protection were quoted by both the PNC and Public Ministry as one of the main reasons why investigations were archived. As highlighted by the IECCP *"there is no institutionalized policy of protection for victims and other individuals subject to penal cases which*

*directly correlates to a retraction or abandonment [of testimony] during the trial.*³⁰

The murder of 26-year-old Clara Fabiola García, witness to the murder of two sisters, 15-year-old Ana Berta and 18-year-old Elsa Mariela Loarca Hernández on 7 August 2003 in Guatemala City bears testament to the failure of the authorities to guarantee the effective safety of witnesses. The testimony of Clara Fabiola, was key to securing the 100 year prison sentence in February 2005 against gang member Oscar Gabriel Morales Ortiz, alias “Small”. On receiving his sentence “Small” reportedly threatened Clara Fabiola García that she would pay for testifying against him. On 4 July 2005 she was shot at in the town of Chimaltenango together with her aunt, 60-year-old Clara Luz García, who was killed immediately. Clara Fabiola García subsequently died in hospital. As is custom in Guatemala, the protection she was receiving as part of the Public Ministry’s witness protection programme was terminated on the sentencing of “Small” despite the fact that she was still clearly at risk of retaliatory violence.

Invisibility of gender-related violence

Failure to take into account gender-based violence suffered by victims has contributed to the inadequate response of the state. While the PNC collects statistics on complaints of rape, information as to whether the victim experienced sexual violence prior to being killed is not processed, except in cases where the cause of death was the rape itself (which occurred in one case during 2005). Statistics also point towards an under-reporting of violence against women in the family, an important contributing factor to murders of women. Between January and June 2005, 1,442 cases of violence against women in the family were registered in Guatemala but in only two murders of women during 2005 was the motive described as violence against women in the family. While individual autopsy reports may include information as to whether the victim had suffered sexual violence prior to being killed, this information is lost in official statistics from the

³⁰ *Violencia contra las mujeres. Tratamiento por parte de la justicia penal de Guatemala.* IECCP, 2005.

Forensic Investigation Service. Official statistics focus on the cause of death, leaving out data regarding sexual violence, mutilation and dismemberment, rendering invisible the nature, history and dimensions of gender-based violence suffered by many victims. For example, a female victim who has been raped, tortured and suffered a fatal gunshot wound to the head will have these details recorded in the autopsy report, a paper document compiled by hand by a forensic doctor. However, as the data is processed upwards, in order to arrive at wider departmental or national statistics of male and female homicide victims, the female victim will simply be one of those termed “death by gunshot wound”.

Commenting on the extent to which the nature and magnitude of gender-related violence is reflected in official documents the PDH remarked “*the topic has hardly been touched upon in state institutions. A more aggressive method must be implemented without delay as without a gender perspective the investigation into the killing of a woman is contaminated. It is critical (determinante) in the questions witnesses and family members are asked, in the way the investigation is carried out and in the position in which the victim is found – as a victim or as the instigator of her own death.*”³¹

According to information received by Amnesty International forensic specialists receive no training in relation to the documentation of sexual violence and it is not common practice for forensic experts to refer to international standards on the practice of forensic investigation which includes specific information not only on carrying out effective forensic investigations but also how to detect and investigate cases of sexual violence.³²

- Persistence of discriminatory legislation

While there has been some progress in relation to gender-sensitive law reform, the persistence of discriminatory legislation continues to mean that many forms of gender-based violence against women – in particular violence against women in the family and sexual harassment - go undetected.

³¹ Interview with PDH, 5 April 2006.

³² Interview with head of the Central morgue, 5 April 2006.

It also perpetuates violence against women and fosters a climate of impunity for crimes committed against women and girls.

On 8 March 2006, three Congressional Commissions issued a joint favourable opinion to a draft amendment which proposes the reform of the Guatemalan Penal Code in relation to violence against women.³³ The opinion includes the proposal to criminalize violence against women in the family (*violencia intrafamiliar*), to remove the legal provision that it is only a criminal offence to have sexual relations with a minor as long as the victim is considered “honest” (*una mujer honesta*),³⁴ to abolish Article 200 - which waives criminal responsibility for rape and certain other crimes of sexual violence (if the victim is more than 12 years old) upon the perpetrator’s marriage with the victim - and to extend the definition of rape, including by making marital rape a criminal offence.

Amnesty International welcomes these proposals as a critical step towards the removal of legislation that is discriminatory towards women. The organization is concerned, however, that four years after the original reform proposal was presented to Congress, and after two previous favourable opinions, without the necessary political will and momentum, these reforms may yet again stall at the approval stage in Congress.³⁵ While some individual deputies and the Congressional Commission on Women have demonstrated political will to remove discriminatory legislation, Congress at large has thus far failed to legislate to remove such legislation.³⁶ As noted by CEDAW in relation to the consideration of Guatemala’s sixth periodic report, *implementation of legal measures to protect women’s rights and promote women’s empowerment*

³³ Draft law no. 2630, see

www.congreso.gob.gt/gt/ver_iniciativa.asp?id=348

³⁴ Article 180 applies to articles 176 and 177 (*estupro*, sexual activity with a minor) that state that the honesty of the woman – or in this case – a minor is a basic requirement for establishing the existence of a crime.

³⁵ The draft law was first presented in March 2002.

³⁶ For example on 25 November, International Day for the Elimination of Violence against Women, at the initiative of the Congressional Commission on Women, the Guatemalan Congress passed resolution 20-2005 in which it committed itself to taking steps to eradicate violence against women in Guatemala, in particular to legislate against discriminatory legislation.

*would not be easy as much of Guatemala’s male-dominated Congress had been reluctant to approve draft legislation in that regard and that the existing imbalance among the three branches of the State, (which) results in the resistance to adopt and modify legislation aimed at protecting women’s human rights.*³⁷

In addition, certain other key proposals are not included in the opinion, such as the proposal to criminalize sexual harassment.³⁸ Furthermore, while the recent Congressional Commission’s opinion proposes amending Article 106 of the Penal Code, the provision which allows the victim to pardon the perpetrator in cases that are not prosecutable *ex-officio*, including cases of rape and other sexual crime, still remains, making victims vulnerable to pressure not to file complaints.³⁹

In December 2005, Article 200 was temporarily suspended, after the PDH challenged its constitutionality. Pending the final decision as to the legal validity of the Article, in cases of rape of minors (over 12 years old), criminal responsibility cannot be waived with the marriage of the rape victim and her rapist.⁴⁰ In cases that occurred prior to December 2005, however, Article 200 can still apply.

Obligations towards victims and their families

- Blaming the victim

The investigator said they thought Claudina was a nobody because she was wearing sandals and a belly button ring.
Father of Claudina Velásquez Paíz.

³⁷ See

www.un.org/News/Press/docs//2006/wom1559.doc.htm and

www.un.org/womenwatch/daw/cedaw/cedaw35/cc/Guatemala_rev.pdf

³⁸ A draft bill on sexual harassment in the workplace was sent to Congress in 2002.

³⁹ The draft amendment only proposes to eliminate this provision in cases where there are no medidas sustitutivas, the crime is incommutable and is committed against minors or individuals with mental disorders.

⁴⁰ At the time of writing to Amnesty International’s knowledge, the Public Ministry has still not responded to the Constitutional Court’s request for a hearing, during which the Public Ministry would give its judgement regarding the appeal.

The ongoing suffering of hundreds of relatives seeking justice for women and girls who have been brutally killed, is exacerbated by the indifference and discrimination they face when they seek help from the authorities. Of particular importance is the tendency to discredit the victims by placing the blame for their deaths on their conduct or background. Amnesty International believes that this suffering caused to relatives often amounts to cruel, inhumane and degrading treatment.⁴¹ In May 2006 the Committee against Torture (CAT) published its concluding observations following the consideration of Guatemala's fourth periodic report. It expressed its deep concern regarding the "increase in the number of cases of women brutally murdered, often with sexual violence, mutilations and torture. The fact that these killings are not investigated exacerbates the suffering of family members seeking justice; furthermore, family members complain that during the investigative and judicial process the authorities discriminate on the grounds of gender."⁴²

Such attitudes are evident in public statements by government officials. On 5 May 2006, for example, the Chief of Police stated publicly that in order to prevent the murders of women it is necessary to "ask them not to get involved in street gangs and to avoid violence within the family, which we as police cannot do" and attributed more than 60% of the cases to these causes.⁴³ The perception that women are to blame for their own deaths influences the subsequent investigatory and prosecutory process and places the responsibility of prevention on women themselves, rather than with government authorities responsible for the prevention of violence against women. To Amnesty International's knowledge no steps have been taken to change the perception that many women are in some way to blame for their own deaths or to sanction officials that make such statements.

⁴¹ See *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*. AI Index: AMR 34/013/2006.

⁴² See CAT/C/GTM/CO/4, 18 May 2006, www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.GTM.CO.4.pdf

⁴³ *Nueve capturas por 90 feminicidios*, Siglo XXI, 5 May 2006.

One example of the manner in which family members are treated by government officials is the case of Rosa Franco, mother of María Isabel Franco, abducted and murdered in December 2001:

August 2005 was the last time I went to the prosecutor's office no. 5 in Mixco, as after that I didn't feel like going. The Assistant Prosecutor who was the one who processed the crime scene in the case of my daughter ...told me that my daughter was killed because she was a nobody, a prostitute...she began to laugh at me and I began to cry and her boss didn't say anything".

Rosa Franco talking to Amnesty International in April 2006.

Relatives of a number of victims have complained that state investigators have been quick to classify their family members as gang members, prostitutes or involved in drug trafficking and in so doing, relate their death to suspected stereotypical behaviour. A number of relatives have also complained about having to prove that their family member was "respectable" or that she had not been involved in any crime before the authorities would take their complaint seriously.

The struggle for justice

Fear of reprisals stops many families from seeking justice for the killing of their loved ones. However, with the support of women's NGOs some families have become increasingly vocal in their pursuit for justice.

Women demonstrating against the killings of women and girls in June 2005 in Guatemala City. © Carlos Reyes-Manzo/Andes Press Agency

On the International Day for the Elimination of Violence against Women, 25 November 2005, numerous families took part in demonstrations in the capital, calling on the authorities to put an end to the impunity enjoyed by the perpetrators of violence against women. Following the demonstration, several relatives were reportedly threatened in apparent reprisal for public calls for investigations into violence against women. The family of Cristina Hernández took part in the demonstration, carrying a banner with a photo of

Cristina and appearing in the media. On 7 December 2005, unidentified individuals went to Cristina's father's work place claiming they had a parcel to deliver from Miami and needed his home address, but refusing to identify themselves. Subsequent calls to the delivery agencies established that no such parcel existed.

Women's organizations that assist families of murder victims, give legal assistance in cases of sexual violence, or who have condemned the killings of women have also been subject to threats and attacks. For example, on 5 June 2006 both the offices of the Women's Sector (*Sector de Mujeres*), a group of non-governmental women's organizations, and the National Union of Guatemalan Women (*Unión Nacional de Mujeres Guatemaltecas*) were broken into.⁴⁴ It was the third time the offices of the Women's Sector had been broken into. Mobile phones and a fax machine were stolen and files containing sensitive information about their work were searched. Local human rights organisations believe the break-in was linked to the prominent role played by the Women's Sector in calling for an end to violence against women in Guatemala.

Since the launch of the report *No protection, no justice* Rosa Franco, mother of María Isabel Franco, has reported experiencing increased acts of harassment and intimidation, including unidentified individuals coming to her home and work place and anonymous calls in which the caller told her that she and her children were going to die. After repeated requests, including by the Inter-American Commission on Human Rights, in February 2006 one police officer was finally stationed outside her home during the day from Monday to Friday.

María Elena Peralta - the sister of Nancy Peralta - has also experienced harassment as a result of her actions to draw attention not only to the case of her sister but also to the plight of other murdered women in Guatemala. On her return from a lobbying trip to the Netherlands in March 2006 the family received numerous anonymous telephone calls to their home.

⁴⁴ See Urgent Action, AI Index AMR 34/017/2006, 8 June 2006.

Conclusion

Expectations have been raised, again and again, but results have rarely followed. Insecurity and inequality prevail, and a history of failed opportunities has created disenchantment in a population eager for change.

UN High Commissioner for Human Rights following her visit to Guatemala, 27 May 2006.⁴⁵

Recommendations, including by the UN and the Inter-American Commission on Human Rights, to address the range of serious failings and shortcomings in relation to the killing of women and girls were first made to the Guatemalan authorities several years ago. Amnesty International concurs with other national and international experts that the steps taken by government authorities since have been wholly insufficient to address the scale of the problem.

While some initiatives have been taken over the past year, these have yet to have any real impact on the numbers of women killed, or the ability of police and prosecutors to effectively investigate and bring to justice those responsible. Despite increased technical resources given to crime scene investigation, the quality of investigations, including the collection and preservation of forensic evidence, continues to be woefully inadequate, with many reports of evidence being lost or damaged and the failure to follow leads.

On 25 November 2005 the government announced the creation of the *Comisión para el Abordaje del Femicidio*, the National Commission to Address Femicide, which aims to develop a diagnostic of the situation from a government perspective and improve coordination between state institutions responsible for the prevention, investigation and prosecution of killings of women and girls.

While the creation of the Commission needs to be viewed positively, it is unclear how another institutional structure will improve the government response and overcome issues of duplication and official incompetence.

⁴⁵ www.unhcr.ch/hurricane/hurricane.nsf/view01/C7F2A41A172BC438C125717D0056605A?opendocument

The level of coordination and cooperation, in particular, between the PNC and the Public Ministry continues to be extremely poor. Contradictory and incomplete data relating to the killings of women and girls, including the near total invisibility of gender-based violence in official reports and analysis, continues to prevent the authorities from determining both the extent and the gender-based nature of the violence suffered by the victims. Amnesty International believes that collection of and reference to such data is a necessary requirement for the development of sound policies to combat gender-based violence.

The continued vulnerability of women and girls reported missing is also symptomatic of the failure to recognize the killings as a public security issue and to undertake measures to ensure an immediate response to cases where women and girls are in immediate danger. Despite recommendations made by Amnesty International and others, no urgent search mechanisms or comprehensive data collection system of women and girls reported missing have yet been created.

Although some senior government officials have publicly recognized the seriousness of the killings, Amnesty International is concerned that individual officials, including those at the highest levels of the PNC, still place the blame on the victim and have also made unfair and unsubstantiated generalizations as to the identity of the victim. Such attitudes coupled with the lack of genuine sanctions for officials who fail to take action to prevent violence against women continues to perpetuate the idea that female victims are to blame for their own deaths and that violence against women is acceptable rather than a violation of girls' and women's fundamental human rights. In addition, widespread impunity, including a low conviction rate, sends the message to perpetrators that crimes against women go unpunished.

Recommendations

Amnesty International offers the following set of recommendations to complement and reinforce those previously made and those of other national and international experts. Relevant state institutions should coordinate their actions to

ensure that these are fully implemented and appropriately assessed with agreed timelines and benchmarks.

Zero tolerance

- The Guatemalan government should state that gender-based violence is unacceptable and will not be tolerated. Officials that make unfounded public statements discrediting the serious nature of crimes committed against women should be dealt with appropriately.
- Impeding investigations or failing to take immediate action to prevent injury to women and girls believed to be at immediate risk should be the subject of disciplinary action.
- Acts of harassment and intimidation against relatives of murdered girls and women, witnesses or members of organizations who support them should be thoroughly investigated and the perpetrators brought to justice.

Level of coordination and quality of investigations

- Efforts underway to improve the quality of criminal investigations and to improve the coordination and cooperation between state agencies should be fully coordinated and given sufficient political support and resources.
- The Public Ministry and Judiciary should sign the agreement – in line with article 275 of the Guatemalan Constitution – without further delay, to empower the PDH to monitor the investigation of cases of murdered women and girls by the Public Ministry.
- The cooperation and coordination between police investigators and public prosecutors should be strengthened to ensure immediate, coordinated and effective investigations into all cases of abduction and murder of women and girls.
- The Public Ministry's Witness Protection Programme should be strengthened to guarantee the safety of both witnesses and family members. This should also include the period following a conviction when individuals are still at risk of retaliatory violence.

- Steps need to be taken to guarantee the independence, and availability of adequate human and financial resources of the recently established National Forensic Institute.

Missing women and girls

- An urgent search mechanism for missing women and girls should be created without further delay.

Gender perspective

- All police investigators, crime scene investigation officials and forensic experts should receive intensive and ongoing training in investigative techniques, particularly in the collection and preservation of forensic evidence in relation to gender-based violence. Such training should refer to international standards and expertise including on how to detect, document and investigate cases of gender-based violence.

Discriminatory legislation

- Congress should approve the draft law to criminalize sexual harassment and the draft law (no. 2630) which proposes the abolition of certain discriminatory provisions and the criminalization of other acts of violence against women, without further delay.
- Article 106 which allows for the pardoning by the victim in certain crimes, should be reformed to not be applicable in cases of rape, violence against women in the family and other sexual crimes.
- The Constitutional Court should permanently remove Article 200 from the Guatemalan Penal Code in line with its international obligations regarding violence against women and Article 46 of the Guatemalan Constitution which provides that international human rights treaties take precedence over internal law.

Collection of data on violence against women

- The necessary resources should be provided to implement a standard system for collecting data and compiling statistics on violence against women and girls for use by Law and Justice

Sector agencies and other relevant bodies. Such a system should ensure that data is not just collected but also routinely collated, widely published and used to inform targeted government planning and policies. Such a system should also be used to measure the impact of any measures adopted by the Government to address violence against women and girls.