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# Guatemala

## No protection, no justice: killings of women in Guatemala



### Introduction

*“My 15-year-old daughter María Isabel was a student and worked in a shop in the holidays. On the night of 15 December 2001, she was kidnapped in the capital. Her body was found shortly before Christmas. She had been raped, her hands and feet had been tied with barbed wire, she had been stabbed and strangled and put in a bag. Her face was disfigured from being punched, her body was punctured with small holes, there was a rope around her neck and her nails were bent back. When her body was handed over to me, I threw myself to the ground shouting and crying but they kept on telling me not to get so worked up.*

*With the help of witnesses, the authorities identified two of the culprits and a luxury car and obtained details of the house where she had been held. The case has been passed to two prosecutor’s offices but those responsible are still at liberty”.<sup>1</sup>*

The brutal sexual violence inflicted on María Isabel following her abduction and before her murder in 2001 is a characteristic common to many of the hundreds of killings of women and girls that have been reported in Guatemala in recent years. The failure of the Guatemalan authorities to subsequently detain and bring to justice those

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<sup>1</sup> Testimony of the mother of María Isabel Veliz Franco, aged 15, who was abducted and murdered in December 2001.

responsible for her murder is another characteristic of this case and many others. The suffering of many of the relatives of murdered women has been compounded by the knowledge that the government’s failure to adequately address these cases by ensuring such crimes are thoroughly and impartially investigated means that they will almost certainly never have access to truth and justice. At a broader level, the Guatemalan Government’s failure to prevent an escalation in the number of killings or to ensure effective prosecutions means that those responsible can continue to commit these crimes in the certainty that they will not be held to account.

Guatemalan authorities confirmed to the Inter-American Commission on Human Rights (IACHR) that between 2001 and August 2004 they had registered the deaths of 1,188 women.<sup>2</sup> Nevertheless, the precise number of women who have been murdered is unknown and disputed. Figures vary among institutions and are based on different criteria.<sup>3</sup> One official source is the

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<sup>2</sup> Figure provided to the Special Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights during her visit to Guatemala in September 2004.

<sup>3</sup> In view of the deficiencies in the collection and management of data, the figures provided in this report should not be read as definitive. However, the IACHR Special Rapporteur on the Rights of Women, the UN Special Rapporteur on violence against women, the

National Police Force (PNC, *policía nacional civil*) which recorded 527 cases of women violently killed during 2004. A number of factors, however, including relatives' fear of reporting a murder and lack of public confidence in state institutions, in particular in the administration of justice system to adequately respond to complaints, suggest that police figures could be conservative. Some observers have questioned or dismissed the seriousness of the problem relating to killings of women by arguing the statistics are the same or similar to statistics for the killing of women in other countries in the Americas region. Amnesty International believes, however, that the pattern of brutality, the evidence of sexual violence, which can amount to torture in some cases, and the increasing number of women killed require the authorities pay immediate and urgent attention to the problem.

Most of the killings of women in Guatemala have occurred in urban areas of the country which have also witnessed a dramatic rise in violent crime in recent years often linked to organized crime, including drugs and arms trafficking and kidnapping for ransom, or to the activities of street youth gangs known as '*maras*'.<sup>4</sup> Men have also been affected by general levels of violence in the community and there has been a significant

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Guatemalan Human Rights Ombudsman's Office (*Procuraduría de los Derechos Humanos – PDH*), the Special Prosecutor for Crimes against Women of the Public Ministry (*Fiscalía de la Mujer del Ministerio Público*) and national police investigators, while presenting different statistics, all concur on the general trend of an increase in the number of cases of killings of women. As such, statistics presented in this report should be used as a guide to the trend.

<sup>4</sup> In recent years, the activities of gangs of mainly young adult males known as '*maras*' have dominated discussions on rising levels of crime in Guatemala and other countries in Central America. Widespread social deprivation, lack of educational opportunities, the increase in the trade and use of illegal drugs and availability of small firearms have contributed to the growth of gangs in the region. While a proportion of violent crime in urban areas can be attributed to the activities of '*maras*', the authorities frequently categorize all criminal activity, including murders of women, as gang-related before carrying out proper investigations.

increase in the overall murder rate. Public security issues and breakdown in the rule of law are frequently cited as among the main concerns of the population at large.

Many women and girls in Guatemala live with gender-based violence: violence against women in the family, rape, and sexual harassment in the workplace are commonplace. Women and young girls are also the victims of commercial trafficking and sexual exploitation.<sup>5</sup> Police officers have also been implicated in cases of sexual violence. A number of the victims of killings were under 18 years of age.<sup>6</sup> Among the women killed over the last few years in Guatemala are students, housewives and professionals, domestic employees, unskilled workers, members or former members of street youth gangs and sex workers. While the murders may be attributed to different motives and may have been committed by both state and non-state individuals, a study of some of the cases shows that the violence is usually gender-based; the gender of the victim would appear to be a significant factor in the crime, influencing both the motive and the context, as well as the kind of violence suffered by the woman and the manner in which the authorities respond.

In a number of cases of murdered women, there is evidence that they were raped or subjected to some other form of sexual violence before they died. International human rights courts and international criminal tribunals have established that the pain and suffering caused by rape are consistent with the definition of torture. In many circumstances under international law, rape has been acknowledged as a form of torture owing to the severe mental and physical pain and suffering that

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<sup>5</sup> In February 2004, a special unit was created within the Office of the Special Prosecutor for Crimes against Women of the Public Ministry to investigate reports of trafficking cases.

<sup>6</sup> Guatemala ratified the Convention on the Rights of the Child in 1990. The Convention makes it an obligation to protect children against all forms of physical and mental abuse, ill-treatment or exploitation, including sexual abuse, whoever may be responsible and irrespective of sex or social origin. (See Convention on the Rights of the Child, arts. 2 and 19.)

is inflicted on the individual<sup>7</sup>. Under international law, not every case of rape engages the responsibility of the state. It is however, accountable under international human rights law for rape by its agents and for rape by private individuals if it fails to act with due diligence to prevent, punish or redress it. Given the nature of the offence, rape committed by state officials has been recognized as being "an especially traumatic form of torture".<sup>8</sup>

Establishing a comprehensive picture of the extent of the violence perpetrated against women in Guatemala remains extremely difficult because of the lack of reliable official information. In particular, the almost total absence of sex-disaggregated data in official documents means that gender-related violence is generally under-recorded and often rendered almost invisible. For example, in the case of women who have been killed, the numbers presented by the police for 2004 attribute 175 deaths to gunshots, 27 to knife wounds and 323 to "other causes". These categories, however, conceal the gender-based brutality and sexual nature of many of the killings in which victims present evidence of rape, mutilation, and dismemberment. The absence of official information represents a serious setback for research and policymakers since any examination of violence against women as a human rights issue needs to be based on data that is broken down by sex and to follow a methodology that addresses women's rights, gender and the victims.

The prevalence of violence against women in Guatemala today has its roots in historical and cultural values which have maintained women's

<sup>7</sup> See IACHR judgement in the case of *Mejía v Peru* (1995) and European Court judgement in Case of *Aydin v. Turkey* (1997) and judgements handed down by the Tribunal for the Former Yugoslavia in the cases of *Delalic and Furundzija* (1998).

<sup>8</sup> Report of the UN Special Rapporteur on Torture (1995) E/CN.4/1995/34, para.19. See also the IACHR judgment in the case of *Mejía v. Peru* (1995), the judgment of the European Court in the case of *Aydin v. Turkey* (1997) and the judgments handed down by the Tribunal for the Former Yugoslavia in the cases of *Delalic and Furundzija* (1998).

subordination and which were most evident during the 36-year internal armed conflict that ended with the signing of the United Nations-brokered Peace Accords in 1996. According to the investigations and subsequent reports produced by the Guatemalan Catholic Church's Project for the Recuperation of Historical Memory (REHMI, *Recuperación de la Memoria Histórica*) (1998) and the Historical Clarification Commission (CEH, *Comisión de Esclarecimiento Histórico*) (1999), of the estimated 200,000 people who "disappeared" or were extrajudicially executed during Guatemala's internal armed conflict, a quarter of the victims were women. Their reports document how women were murdered, "disappeared", terrorized and stripped of their dignity by members of the Guatemalan military and members of the Civil Defence Patrols<sup>9</sup> (PAC, *Patrullas de Autodefensa Civil*). Rape and sexual violence were an integral part of the counter-insurgency strategy<sup>10</sup>.

Many women who were widowed or who lost their children, their land and their livelihood, also had to contend with the physical and psychological sequelae of having been sexually abused during the conflict years and having to deal with pregnancy or sexually transmitted infections as well as the stigma

<sup>9</sup> Initiated in 1981, the obligatory civilian militias, the PAC were formed at military behest and operated under military control during the conflict. Members of the PAC were responsible for many of the human rights violations perpetrated during the conflict. Renamed in 1986 as the *Comités Voluntarios de Defensa* (CVDC), some former civil patrollers have continued to commit serious human rights violations. For further information, see Amnesty International, *The Civil Defence Patrols Re-emerge*, AI Index: AMR 34/053/2002, 4 September 2002.

<sup>10</sup> The scorched earth policy, counter-insurgency campaign launched by the Lucas García government (1978-1982) in the late 1970s and early 1980s was aimed at the mass repression of the civilian population in order to disperse or remove rural Mayan communities in the west and north-west of the country, suspected by the army of having links with the armed opposition, the Guatemalan National Revolutionary Unity (URNG, *Unidad Revolucionaria Nacional Guatemalteca*). In the course of this campaign, thousands of men, women, children and old people were the victims of extrajudicial executions, numerous massacres and torture including rape.

attached to rape. The real magnitude of the violence women suffered during the internal armed conflict will almost certainly never be known, partly because cases were not properly documented, but also because many women, suffering internalized guilt or shame as a result of the sexual violence they suffered, remain too traumatised to come forward, afraid of reprisals or rejection by their communities.

The consequences of the internal armed conflict in terms of the destruction of communities, displacement, increased poverty and social exclusion has a bearing on levels of violence against women today as does the failure to bring to account those responsible for past human rights violations. The vast majority of women who were victims of human rights violations during counter-insurgency campaigns led by the Guatemalan army during the early 1980s were members of Mayan indigenous groups living in rural areas whereas most of the reported murder victims in Guatemala today are *ladino*<sup>11</sup> women living in urban areas of the country. Yet, the brutality of the killings and signs of sexual violence on their mutilated bodies bear many of the hallmarks of the terrible atrocities committed during the conflict that went unpunished and reveal that extreme forms of sexual violence and discrimination remain prevalent in Guatemalan society.

The State's failure to bring to justice those responsible for the atrocities committed during the internal armed conflict or to provide reparations to the victims and their families has left a terrible legacy. The continuing general pattern of impunity has meant the perpetrators of past human rights violations have evaded criminal prosecution and has contributed to a spiralling level of violence in society and continuing human rights violations.<sup>12</sup> The failure to hold those accountable for past and

<sup>11</sup> People of indigenous and Spanish origin, who speak Spanish as their first language.

<sup>12</sup> For further information on the legacy of impunity and continuing abuses see for example, Amnesty International, *Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations*, AI Index: AMR 34/001/2002

current violations has further undermined public confidence in the justice system, weakening the rule of law.

Amnesty International acknowledges that some positive steps to prevent violence against women have been taken by the Guatemalan authorities including the ratification of international human rights treaties, the introduction of laws and creation of state institutions to promote and protect the rights of women. However, these measures have frequently not been effectively implemented, monitored or reviewed and have therefore seldom prevented women from suffering violence.

“Every woman has the right to be free from violence in both the public and private spheres ... Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights. The right of every woman to be free from violence includes among others: the right of women to be free from all forms of discrimination.”

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. (“Convention of Belém do Pará”)

This report examines the murder of women in Guatemala and looks at the state's failure to exercise due diligence in preventing, investigating and punishing these crimes. The report also discusses the discrimination that lies at the heart of violence experienced by women in Guatemalan society and some of the laws that perpetuate such discrimination. The report concludes with a set of recommendations that Amnesty International believes should be fully and effectively implemented.

The lack of adequate documentation on cases of women who have been murdered posed a significant challenge for Amnesty International's research into the issue. The cases that form the

basis for the analysis of the state's response to the killings are among several that Amnesty International studied where an investigation is known to have been undertaken. The fact that these cases have become known at all is largely due to the bravery of the relatives and their tenacity in the face of official complacency and inaction. In most cases where relatives of the victim were unaware of their right to justice and an effective remedy, the authorities have done little or nothing to establish the identity of the perpetrators or bring them to justice.

Violence against women constitutes a violation of women's human rights and fundamental freedoms. It violates a whole range of fundamental human rights, civil and political as well as economic, social and cultural. The 1993 UN Declaration on the Elimination of Violence against Women (DEVAW) defines violence against women as any act of gender-based violence – that is, violence directed against a woman because she is a woman or that affects women disproportionately – that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Violence against women is closely bound up and interacts with unequal power relations between men and women and gender-based discrimination. The right not to be discriminated against on the grounds of race, sex, sexual orientation, gender expression and identity, age, birth, or religion, is the basis of human rights - the inherent and equal dignity of every woman, man and child. States have an obligation under international human rights law to “respect, protect and fulfil” human rights. They must ensure that human rights abuses are not carried out by public officials or other agents of the state; and they must also protect people against human rights abuses by private actors, including individuals within their own communities and families, and must adopt legislative, administrative and other measures to enable the fulfilment and realization of human rights. In particular, states should eliminate discriminatory legislation and practice which put women at risk of violence and take steps to protect women against discrimination and violence.

This report is one of a series published as part Amnesty International's *Stop Violence against Women* campaign, which was launched in March 2004.<sup>13</sup> The global campaign highlights the failure of countries round the world to prevent, investigate and punish violence against women. Through the campaign, Amnesty International joins the women and men who have fought against this violence, some of whom have achieved dramatic changes in laws, policies and practices. Amnesty International seeks to show how the human rights approach can galvanize the state, the community and individual men and women everywhere to confront and overcome violence against women. With this report, Amnesty International hopes to contribute to greater awareness of the extent and seriousness of violence against women in Guatemala and in Latin America.<sup>14</sup>

Amnesty International visited Guatemala in May and October 2004 and met with relatives of women and girls who have been murdered, survivors of sexual violence, women's organizations, human rights organizations, and officials from several state institutions with responsibility for criminal investigations into violence against women and policymaking. Amnesty International acknowledges with thanks the contribution of the individuals and organizations whose testimony and knowledge form the basis of much of this report.

#### Chapter One: General context of violence and gender-based violence in society

Escalating crime and issues relating to human and public security are a matter of concern in Guatemala as elsewhere in Latin America. The failure to bring effective prosecutions against those

<sup>13</sup> See Amnesty International's report, *It's in our hands – Stop violence against women*, March 2004 (AI Index: ACT 77/001/2004).

<sup>14</sup> See for instance Amnesty International, *Mexico: Intolerable killings: 10 years of abductions and murder of women in Ciudad Juárez and Chihuahua* (AI Index: AMR 41/026/2003); *Colombia: “Scarred bodies, hidden crimes” – Sexual violence against women in the armed conflict* (AI Index: AMR 23/040/2004); *Appeal Case Guatemala: the long legacy of violence* (AI Index: AMR 34/017/2004).

suspected of involvement in criminal gangs and organized crime has undermined faith in the rule of law and the system of administration of justice. At the same time, the consolidation of illegal clandestine groups<sup>15</sup> has also contributed to lawlessness and the crisis in public security<sup>16</sup>.

Over recent years, serious concern about continuing human rights violations, rising levels of crime and the failure of the state to hold the perpetrators of both past and present abuses to account has been reflected in a number of observations and recommendations by human rights experts and bodies, including the United Nations Verification Mission in Guatemala (MINUGUA),<sup>17</sup> the Inter-American Commission on Human Rights (IACHR), the United Nations Human Rights Committee and thematic mechanisms such as the UN Special Rapporteur on the independence of judges and lawyers. They

<sup>15</sup> The term clandestine groups has been used to refer to criminal networks involving the business sector, private security companies, common criminals and gang members. Preliminary investigations have also implicated members of the police and the armed forces. Ex-military personnel, some of whom have been implicated in past human rights abuses, are also widely suspected of pertaining to such groups. These clandestine groups are closely linked to what are referred to as 'hidden or parallel powers', an informal group of powerful individuals, both civilian and military, who have embedded themselves within the state structure. These parallel powers use their positions and contacts to both control lucrative illegal activities such as drug trafficking and organised crime, guarantee immunity from prosecution, and, through the clandestine groups, intimidate those who threaten their perceived interests. Many of the increasing number of attacks against human rights defenders, while often disguised as common crime, are believed to be carried out by members of these groups.

<sup>16</sup> In August 2004 the Constitutional Court ruled that key areas of an agreement between the United Nations (UN) and the Guatemalan Government to set up the Commission for the Investigation of Illegal Bodies and Clandestine Security Apparatus (CICIACS, *Comisión de investigación de cuerpos ilegales y aparatos clandestinos de seguridad en Guatemala*) were unconstitutional.

<sup>17</sup> The MINUGUA mission ended at the end of 2004 after 10 years of monitoring implementation of the human rights provisions of the Peace Accords.

have repeatedly condemned the chronic and systemic weaknesses in the justice system and continuing impunity for those responsible for committing human rights violations, which as the 2001 IACHR report notes, "*is one of the most important factors contributing to the persistence of such violations, as well as criminal and social violence.*"<sup>18</sup>

In September 2004, a department was set up in the Public Prosecutor's Office (hereinafter referred to as the Public Ministry) to investigate the high level of murders of both men and women. However, in March 2005, the Special Prosecutor for Crimes against Life (*Fiscal de Delitos contra la Vida*) announced that his Office was unable to manage the number of complaints regarding alleged killings occurring daily in the capital.

In the past three years, violent deaths have increased generally but the noticeable rise in killings of women is of particular concern. As outlined in the introduction, statistical information about the numbers of women killed in Guatemala is limited and unreliable, with significant variations in the numbers reported by various state institutions. However, the percentage of women killed within the overall total has steadily grown: according to police records, in 2002 women accounted for 4.5 per cent of all killings, in 2003 11.5 per cent and in 2004 12.1 per cent<sup>19</sup>. Figures compiled by the PNC cited in the 2003 report "*Muertes violentas de mujeres*" issued by the Human Rights Ombudsman's Office (PDH, *Procuraduría de los Derechos Humanos*) note that the number of

<sup>18</sup> IACHR, Fifth report on the situation of human rights in Guatemala, OEA/Ser.L/V/II.111, doc.21 rev. 6 April 2001. See also MINUGUA's final report, Report of the Secretary General, A/59/150, 20 August 2004, and the IACHR's *Justicia e inclusión social: los desafíos de la democracia en Guatemala, Justice and social inclusion: challenges of democracy in Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, 29 December 2003.

<sup>19</sup> Figures for 2002 and 2003 from the report of the Human Rights's Ombudsman's Office, *Violent Deaths of Women in 2003, Muertes violentas de mujeres durante el 2003*. (2004), page 31, citing police records. Figure for 2004 from *La Prensa Libre*, 4 January 2005, citing police records. (Total number of murders in Guatemala: 2002, 3631; 2003, 4237; 2004, 4346).

women who were murdered rose steeply from 163 in 2002 to 383 in 2003. Statistics researched by the Human Rights Ombudsman's Office's put the number of murdered women at 360 for 2003.

**© private – poster campaign to stop violence against women**

The absence of adequate protection programs to prevent the abduction and murder of women is one of many examples of the failure of the authorities to recognize the current wave of violent killings of women as a public security concern. In summing up the findings of her visit to Guatemala in September 2004, the IACHR Special Rapporteur on the Rights of Women, expressed particular concern about the failure of policies on public security to take into account the specific needs of women. She noted,

*“Violence in the family and domestic violence affects women in particular but are not considered a public security issue. In addition, the invisibility of violence against women can be seen in the absence of studies or statistics on the prevalence of*

*violence in the family or domestic violence, as well as in the lack of information on sexual crimes that mainly affect women”*<sup>20</sup>

The fact that many of the women who have been killed came from poor backgrounds means that they suffer discrimination on the basis of both gender and social class. The killing of women in Guatemala violates the victim's right to life and physical integrity. The constant threat of violence has affected their freedom of movement, the right to work in safe conditions and the right to the highest level of physical and mental health. Despite the government's commitments under the Peace Accords to end discrimination and promote the participation of women in public life, the IACHR Special Rapporteur on the Rights of Women observed,

*“Worrying testimonies have been received in relation to the notable sense of insecurity that women in Guatemala feel today as a result of the violence and the murders in particular. The resulting effect of intimidation carries with it a perverse message: that women should abandon the public space they have won at much personal and social effort and shut themselves back up in the private world, abandoning their essential role in national development”*<sup>21</sup>

Traditional systems of power and patriarchy remain largely unchallenged in Guatemala as

<sup>20</sup> “La violencia intrafamiliar y doméstica afecta particularmente a la mujer pero no están tomado en cuenta como un problema de seguridad ciudadana. Además, se puede ver la invisibilización de violencia contra la mujer en la ausencia de estudios o estadísticas sobre la prevalencia de violencia intrafamiliar o doméstica, así como la poca información que existe sobre la prevalencia de delitos sexuales que afectan principalmente a la mujer”. Press release 20/04 issued by the IACHR Special Rapporteur on the Rights of Women, Washington DC, 18 September 2004.

<sup>21</sup> “Se han recibido testimonios preocupantes en relación a la notoria percepción de inseguridad que experimentan hoy día las mujeres en Guatemala a propósito de los hechos de violencia y de los asesinatos en particular. Este efecto intimidatorio puede llevar un mensaje perverso: que las mujeres deben abandonar el espacio público que han ganado con tanto esfuerzo personal y social y recluirse nuevamente en el mundo privado, abandonando su rol indispensable en el desarrollo nacional.” Evaluation of visit to Guatemala of IACHR Special Rapporteur on the Rights of Women, press release, September 2004.

elsewhere in several other Central American countries and stereotypes regarding the subordinate role of women in society are still firmly entrenched.<sup>22</sup> According to leading international development agencies and national institutions, such cultural and social norms are manifest in the very high incidence of violence against women in the family.<sup>23</sup>

#### Killings in exceptionally brutal circumstances

*“In the case of women, the brutality used in cases of mutilation is definitely unique by comparison to male victims. Although sexual violence has been used in the case of many murdered women, it is also true to say that there have been cases of women who have been mutilated without being subjected to sexual violence which also demonstrates a particular type of cruelty that manifests itself in cuts to the face and inherent notion of the disfigurement of women’s beauty, the severing of organs .... In other cases, the murders are similar to those of men in that the bodies are*

*found with the hands tied and with a single shot to the head, as happened in the past”.*<sup>24</sup>

A key characteristic in many of the cases of women who have been killed in recent years is the brutality of the violence involved. According to the Office of the Special Prosecutor for Crimes against Women of the Public Ministry, the Human Rights Ombudsman’s Office, as well as press reports, a number of the bodies of the victims bear signs of sexual violence. Some of the victims had had their throats cut, or had been beaten, shot or stabbed to death. Some of the bodies were mutilated. Many women were abducted and sometimes held for several hours or even days, before being murdered.

In the case of women and young girls subjected to sexual violence, including rape and sexual mutilation before being murdered, the Office of the Special Prosecutor for Crimes against Women stated that of the 152 cases being investigated between January and August 2004, 28% had been sexually assaulted and 31% had previously been threatened. In its 2003 report, the Human Rights Ombudsman’s Office says that of a sample of 61 cases which were examined in depth, it concluded that 22 of the women had died in the context of sexual violence.<sup>25</sup>

The real incidence of murder with sexual violence is likely to be higher. At present, the way the authorities classify female deaths does not include a gender perspective. Categories register death by firearm or stabbing for example, but do not take into account types of violence, such as sexual abuse – inflicted on the bodies that might indicate a

<sup>22</sup> The UN Special Rapporteur on violence against women observes that , *“The impacts of the psychological ramification of the civil war and poverty on men’s ability to fulfil machista roles as providers have intensified family abandonment, unstable relationships and alcoholism, all resurfacing in the form of violence against women in and outside the home. Alcoholism among males, unemployment/ underemployment and attempts to preserve patriarchal power over women contribute to domestic violence and undermine opportunities for the promotion of non-violent relationships in future generations”* (para 25) Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Mission to Guatemala, E/cN.4/2005/72/Add.3. 10 February 2005.

<sup>23</sup> The US Department of State Country Report on Human Rights Practices, 2004 notes that *“The Public Ministry reported receiving almost 10,000 complaints of family violence against women and children in Guatemala City during the year; only approximately 370 cases went to trial. In accordance with the Law on Domestic Violence, 1,364 orders of restraint against domestic violence aggressors and police protection for victims were issued. Full investigation and prosecution of domestic violence and rape cases usually took an average of 1 year, and prosecutors noted that half of victims of domestic violence who filed complaints never returned to pursue their cases after their initial visit to the Public Ministry. The Network for Non-violence Against Women estimated that 90 percent of incidents went unreported”*.

<sup>24</sup> *“En los casos de las mujeres la brutalidad sí es única en los casos de mutilación, respecto de casos de hombres. Aunque en muchos casos de mujeres asesinadas hay violencia sexual, también es cierto que hay casos de mujeres con mutilación y sin violencia sexual, lo cual muestra también una saña particular que se refleja en las cortadas en el rostro, y la idea inherente de desfigurar la belleza de la mujer, el cercenamiento de órganos, las violaciones anales. En otros casos, los asesinatos son similares a los de los hombres donde los cadáveres aparecen con las manos amarradas y un tiro de gracia, como en los años pasados”*. Human Rights Ombudsman’s Office, October 2004.

<sup>25</sup> Human Rights’s Ombudsman’s Office, *Violent Deaths of Women in 2003, Muertes violentas de mujeres durante el 2003, supra*, note 19.

form of gender-based violence.<sup>26</sup> Other categories such as “death from multiple trauma” (*“muertes por politraumatismo”*), head trauma (*trauma cráneo*) or abdominal trauma (*trauma abdomen*) do not distinguish whether the deaths were accidental or the result of intentional harm, for example, being beaten to death. The failure of the appropriate authorities to accurately document and consider all the elements of the crime prejudices the likelihood of a thorough and impartial investigation and may even signify that no investigation is opened at all. In addition, serious deficiencies in the protection of the crime scene, collection and preservation of evidence and failure to determine signs of sexual assault during autopsies means that crimes of sexual violence are frequently missed or ignored.

**© private – crime scene where the body of María Isabel Veliz Franco was discovered in December 2001**

The bodies of many women, sometimes naked or semi-naked, are often abandoned in public places, on wasteland, down gullies or in city centres. As press reports regarding the case of 17-year-old

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<sup>26</sup> For example, statistics produced by the forensic services of the judiciary responsible for carrying out autopsies state that in 88 cases between 2000 and July 2004, death resulted from asphyxia caused by strangulation. In its report on the abduction and murder of women in Ciudad Juárez and Chihuahua, Mexico, Amnesty International noted that “In over 70 per cent of the cases of murder with sexual violence, death resulted either from asphyxia caused by strangulation or from blows ...” See *Ten years of abductions and murders of women in Ciudad Juárez and Chihuahua*, AI Index: AMR 41/026/2003.

Sandra Janet Palma Godoy indicate, many of the murders are exceptionally brutal. According to the press, her body was discovered next to a football pitch on 5 July 2004. She had reportedly been abducted a week earlier in the town of Buena Vista in San Pedro de Sacatepéquez. The reports indicate that her right arm, breasts, left hand, eyes and heart had been mutilated. One theory developed during the course of the initial investigation was that she had been a witness to a murder a few weeks earlier. Owing to the trauma of the killing, the family are reported to have left the area.

Some women, not necessarily gang members, have been murdered as a form of revenge or to instil terror or intimidate the local population. The IACHR Special Rapporteur on Violence against Women observed in September 2004 that she had received,

*“consistent reports of ‘exemplary’ killings in which the abuses reflected in the condition of the body of the victim and the place where the bodies were left, pursue the aim of sending a message of terror and intimidation”<sup>27</sup>*

The daily newspaper, *Prensa Libre*, carried an article on 12 June 2004 about the discovery of the body of 17-year-old Andrea Fabiola Contreras Bacaro on wasteground in Jocotenango, Sacatepéquez. According to the article, the word “vengeance” had been carved into her right leg with a knife. The article described the brutal murder, stating,

*“She was found with her hands tied in a plastic bag which had been thrown into a ditch used as a rubbish dump. Her throat had been cut, she had wounds and cuts on her face and chest and she had been shot at close range in the head. She had been raped, her plastic sandals, white blouse and underclothes were found next to her body.”<sup>28</sup>*

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<sup>27</sup> “informes consistentes sobre asesinatos “ejemplificadores” en los cuales los abusos reflejados en la condición del cuerpo de la víctima y el lugar en los que fueron dejados los cadáveres, persiguen el objetivo de enviar un mensaje de terror e intimidación”.

<sup>28</sup> “Fue hallada con las manos atadas, en una bolsa plástica en el interior de un foso utilizado como basurero. Tenía un tiro de gracia en la cabeza, estaba degollada, con heridas y cortadas en la cara y en el pecho. Fue violada y a un costado de su cuerpo fueron

Some women subjected to attempted murder and rape have survived the ordeal only to be condemned to staying silent as a way of surviving the stigma attached to sexual violence.<sup>29</sup> If they do speak out, they can be ostracized because of attitudes that associate women's sexuality with honour and perceive the type of violence they have suffered as shameful. In some cases, survivors have been abandoned by relatives or by their community. They have also been abandoned by state institutions which often fail to provide judicial redress or adequate medical attention.

#### The context in which the killings take place

Studies done by official bodies indicate that the murders are concentrated in urban areas such as Guatemala City and Escuintla town in the department of Escuintla. Most of the women who have been killed over the last few years were adolescent girls or women under the age of 40. According to the Office of the Special Prosecutor for Crimes against Women, of the 152 cases it was investigating as of August 2004, just over a third of the victims were under the age of 20, while a further half were between the ages of 21 and 40.<sup>30</sup> According to the Human Rights Ombudsman's Office report of 2003, more than half of the 360 victims were aged between 13 and 36. Many were housewives, and a number were students or professionals. Many came from poor sectors of society, working in low paid jobs as domestic employees, shop or factory workers. Some were migrant workers from neighbouring countries in Central America. Among the victims were women from particularly marginalized groups including members or former members of youth gangs and sex workers.

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*balladas sus sandalias de plástico, una blusa blanca y su ropa interior*".

<sup>29</sup> The Public Ministry reported receiving 749 cases of rape and sexual assault between January and October 2004 in Guatemala City. The Supreme Court reported receiving 1,777 cases throughout the country between January and September 2004.

<sup>30</sup> Report of the Office of the Special Prosecutor for Crimes against Women, August 2004.

According to the Network of Non-Violence against Women<sup>31</sup> (*Red de la No Violencia Contra la Mujer*), a third of all cases of murder take place within the family after the victims have suffered violent incidents and attacks, often in silence, for many years. In some cases, the victims were wives or former partners who were murdered after lodging formal complaints of ill-treatment. According to the Special Prosecutor for Crimes against Women, in two cases that occurred in 2004, the victims were in the process of taking protection orders to the PNC when they were murdered by their husbands.

Some of the victims were murdered reportedly because they did not belong to, or refused to join a particular gang or because they wanted to leave a gang. Some did not belong to any specific group. According to one leading Guatemalan human rights lawyer,

*"Some victims do not belong to any group but live in territory controlled by groups or youth gangs. If the latter fall in love with them and they [the women] reject them, the punishment is death. There has been a return to ... each group wanting to own territory in which women are their property, they are "ours", they cannot be seen or touched by, or have relationships with, members of another group."*<sup>32</sup>

For example, on 28 June 2003 members of the *Mara Salvatrucha* in Guatemala City kidnapped two

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<sup>31</sup> The *Red de la No Violencia contra la Mujer* is a broad coalition of women's organizations that was created in 1990. The Network played an important role in campaigning for the Law to Prevent, Punish and Eradicate Violence in the Family and is a member of the National Coordination Group to Prevent Violence in the Family and Violence against Women (CONAPREVI, *Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y en Contra de la Mujer*). Organizations in the network provide legal, psychological and other assistance to women suffering violence in the family and the community.

<sup>32</sup> *"Hay víctimas que no pertenecen a ningún grupo, pero viven en territorios controlados por grupos o por maras y si las enamoran y ellas no aceptan, matarlas es el castigo. Hay un retorno a la endogamia que se expresa en que cada grupo quiere ser dueño de un territorio y allí las mujeres son una propiedad, son nuestras, no pueden ser vistas, tocadas o tener relaciones con miembros de otro grupo"*. Interview, May 2004.

sisters, Deborah Elizabeth and Olga Aracelly Tomás Viñeda aged 16 and 11 respectively. They were killed with a machete and parts of their bodies were found on 2 July in San Pedro de Ayampuc, 20 kilometres from the capital. According to investigators from the Office of the Special Prosecutor for Crimes against Women, the two girls had previously received death threats from one of the perpetrators for refusing to have a relationship with him. The police classified the motive for the killing as “*due to personal problems.*”<sup>33</sup> The criminal investigation concluded that the girls had been raped and cut up with a handsaw. In July 2004, the Third Sentencing Court (*Tribunal Tercero de Sentencias*) sentenced three members of the gang to fifty years in prison.

Controlling women’s sexual activity and fidelity has become a form of currency among men vying for power or control of a local area. In this context, some women have been murdered as a form of punishment of the women themselves or of family members or as a demonstration of power between rival groups. “Luisa”, a former gang member told one Amnesty International delegate that,

*“Such murders can be used to show which gang has most power. The one which does the most brutal things has most power, all the more so if nothing happens to them as a result. However, if someone is sent to prison ... the group he belongs to loses points.”*<sup>34</sup>

A number of women killed over the last few years are believed to be sex workers. In 2001, at least 12 sex workers were reportedly strangled, some of them in similar circumstances, in Guatemala City, Escuintla and Huehuetenango. The first murder occurred in February 2001 when the body of a woman was found in the room of a hotel in Zone 7 of Guatemala City. According to reports, the body was found with the message “*death to bitches,*

<sup>33</sup> See following chapter for further discussion of problems in police classifications.

<sup>34</sup> “*Los asesinatos pueden estar siendo usados para mostrar quien es más poderoso entre las bandas. Tiene más poder el que lo hace más brutal y más si no le pasa nada. Pero si alguien es encarcelado como pasó hace poco con tres miembros de las maras pasa lo contrario, el grupo al que pertenecen pierde puntos.*” Interview May 2004.

*I’ve come back*” (“*muerte a las perras, ya regresé*”). The following month, a second body was found in another hotel in the same area. The woman was reportedly strangled after a fight. This time the murderer had reportedly left the message, “*I hate bitches*” (“*odio a las perras*”). She was buried as unidentified but was subsequently claimed by her family. At least three other women were murdered shortly after.

The cases were reported to the PNC and an identikit picture was distributed around Guatemala City resulting in the detention of one individual who was subsequently released. Some of the cases were investigated by the Special Prosecutor for Crimes against Women but those responsible were not identified.

Several cases of killings of women in which members of the PNC have been implicated have also been reported over the last few years.

On 18 May 2004, 17-year-old Oliberta Elizabeth Cael Gómez was allegedly killed by a police officer based at the PNC station in San Bartolomé Jocotenango, in the department of El Quiché. According to the report prepared by the Human Rights Ombudsman’s Office in El Quiché, Oliberta was coming out of school with a friend when she was stopped by a police officer who offered to drive her and her friend to their destination. Oliberta reportedly knew the police officer so they accepted the offer. The police officer drove to a remote area and told the two students to get out of the truck. They tried to run away but were caught and taken back to the truck. The police officer reportedly threatened to kill them if they tried to run away again. He reportedly told the two to remove their underwear and took out a knife and a gun. One of the girls managed to escape but Oliberta was murdered. The autopsy report states that she had multiple stab wounds to her neck, thorax and abdomen. The police officer was detained on 10 June 2004. At the time of writing, the case was near sentencing.

In 2003, the Human Rights Ombudsman’s Office studied two cases in which women were murdered apparently in connection with their status as

witnesses in investigations into unlawful activities in which police officers were implicated. According to the Human Rights Ombudsman's Office, in at least two other cases, investigations conducted by the Public Ministry revealed that those identified as responsible for the killing of the women were the former partners of the victims assisted by other police officers. In its 2003 report on the murders of women, the Human Rights Ombudsman's Office stated that there were indications suggesting that this type of police conduct was frequent but says, "the perpetrators linked to the security forces have been able to 'fabricate' alibis and divert the course of the investigations to maintain impunity."<sup>35</sup>

#### Chapter two: State obligations and responsibilities

The 1996 Peace Accords<sup>36</sup> contained a comprehensive set of commitments on human rights, including recommendations regarding the fulfilment of the rights of women. Under the Accords, the Guatemalan State pledged to combat all forms of discrimination against women, to promote equality and women's full and effective participation in all areas of public life and national development. The commitments also took into consideration the suffering experienced by women during the internal armed conflict, as victims of violence, as widows and as women living in absolute poverty as their families, homes and livelihoods were destroyed. The Accord on the Identity and Rights of Indigenous Peoples recognized that indigenous women face double discrimination as women and as indigenous women. It committed the state to establishing sexual

<sup>35</sup> "los autores vinculados a los cuerpos de seguridad han tenido la capacidad de "fabricar" coartadas o desviar el rumbo de las investigaciones para mantener los hechos en la impunidad".

<sup>36</sup> The UN-brokered Peace Accords negotiated between the Guatemalan Government and the *Unidad Revolucionaria Nacional Guatemalteca (URNG)*, Guatemalan National Revolutionary Unity, sought to re-establish the rule of law and to address the underlying causes of the conflict, via agreements regarding human rights, the rights and identity of indigenous peoples, socio-economic and agrarian rights, strengthening civil society, and the role of the army in a democratic society, historical clarification, and resettlement.

harassment as a criminal offence and to dealing with sexual crimes against an indigenous woman as an aggravated criminal offence.

In May 2002, the Guatemalan Government ratified the Optional Protocol to the UN Convention on the Elimination of all Forms of Discrimination against Women.<sup>37</sup> The government has also passed the Law for the Dignity and Integral Promotion of Women (*Ley de Dignificación y Promoción Integral de la Mujer*, 1999), the Law to Prevent, Punish and Eradicate Violence in the Family (*Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar*, 1996) and undertaken reforms to the Civil Code eliminating certain discriminatory provisions.

In addition, several new plans and policies have been drawn up. These include the National Plan for the Prevention and Eradication of Violence in the Family and Violence Against Women (*PLANOVI, Plan Nacional para la Prevención y Erradicación de la Violencia Intrafamiliar y Contra las Mujeres*), the National Policy for the Promotion of Development of Guatemalan Women (*Política Nacional de Promoción de Desarrollo de las Mujeres Guatemaltecas*) and the Equal Opportunities Plan, 2001-2006 (*Plan de Equidad de Oportunidades*). Several new bodies have also been created including, the Office of the Defender for Indigenous Women (*DEMI, Defensoría de la Mujer Indígena*), the National Coordination to Prevent, Punish and Eradicate Violence in the Family and Violence Against Women (*CONAPREVI, Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y contra las Mujeres*) and the Presidential Secretariat for Women (*Secretaría Presidencial de la Mujer*).

Guatemalan women's rights activists have succeeded in ensuring that a number of their proposals and demands are included in the national

<sup>37</sup> The Guatemalan Government ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará) in 1995 and the UN Convention on the Elimination of all Forms of Discrimination against Women in 1982 which is monitored by the UN Committee on the Elimination of Discrimination against Women (CEDAW).

political, social and economic agenda. However, Guatemalan women remain seriously under-represented in decision-making bodies and continue to face many obstacles and discrimination in every sphere of life, including work, education, health and access to justice. Commenting on Guatemala's third, fourth and fifth periodic reports, CEDAW expressed its concern at the, "*persistence of stereotypes concerning the role of women in the family and society*", and noted that such stereotypes "*are particularly strong within the indigenous population*". It went on to say, "*notwithstanding the various efforts being made to achieve equality between women and men through legislative reform, the execution of gender-sensitive programmes, the training of officials and the creation of national machineries, the persistence of such stereotypes will impede the advancement of women in Guatemala, in particular among indigenous women, and the enjoyment of their human rights*"<sup>38</sup>.

Amnesty International has found serious and persistent shortcomings in the way the authorities have responded to many cases of killings of women at every stage of the investigative process. These deficiencies have included delays and insufficient efforts by police to locate women who have been reported missing; failure to protect the crime scene once a body has been discovered or gather necessary forensic or other evidence; failure to follow up on possible crucial evidence; and failure to act on arrest warrants. In many cases, investigations have been partial, while in others they have been totally absent. In the report of her visit to Guatemala, the UN Special Rapporteur on violence against women noted that, "*The Women's Office of the Ministerio Público and the special unit of the PNC reported that 40% of the cases are archived and never investigated*".<sup>39</sup> The unit, she was informed, was functioning with 20 investigators divided into five groups with each investigator estimating they had 20 cases pending.

<sup>38</sup> Consideration of the combined third and fourth report and the fifth periodic report of Guatemala, para. 188 (CEDAW/C/GUA/5) at its 577th and 578th meetings, on 12 August 2002 (see CEDAW/C/SR.577 and 578)

<sup>39</sup> para 59.

A lack of training in investigative techniques, lack of technical resources and lack of coordination and cooperation between state institutions particularly between police investigation units and the offices of the Public Ministry has meant that many cases have not gone beyond the initial investigation stage.

A measure of the political will to address the killings of women is the level of human, financial and technical resources assigned to the investigation of such crimes. After the visit of the UN Special Rapporteur on Violence Against Women in February 2004 a new Female Homicide Unit (*Unidad de Homicidios contra Mujeres*), part of the Criminal Investigation Service (SIC, *Servicio de Investigación Criminal*) of the PNC was set up to investigate cases of killings of women. In her visit a few months later, the IACHR Special Rapporteur on the Rights of Women found the unit functioning with 15 officers, each covering 23 cases, one car, one cellular phone and one working computer.<sup>40</sup>

#### Lack of protection for women at risk and delays in opening investigations

*"In some instances, the duty of due diligence to prevent a violation requires an **urgent** response, for example in the case of women in need of measures to protect against an imminent threat of violence, or in response to reports of a disappearance".*<sup>41</sup>

The often inadequate response of the police to emergency calls reporting an incident involving violence against women or to anxious relatives wishing to lodge a missing persons' report and failure to establish effective mechanisms for systematizing data is indicative of a pattern of negligence of some state institutions towards the killing of women.

<sup>40</sup> *La Prensa Libre*, 14 September 2004.

<sup>41</sup> The Situation of the Rights of Women in Ciudad Juárez, Mexico: Chapter Four, The Right to be Free from Violence and Discrimination, Inter-American Commission on Human Rights, 2002, OEA/Ser.L/V/II.117, Doc. 44, para 155, 7 March 2003.

On 1 February 2002, Nancy Karina Peralta Oroxon, aged 30, left home at 6 in the morning to go to work and then on to the University of San Carlos (USAC, *Universidad de San Carlos de Guatemala*) in Guatemala City where she was studying. She failed to return home that evening. After a sleepless night, her anxious family began searching for her at local hospitals and stations. When her sister went to report her missing at the local police station, she was asked whether she was sure she had not run off with her boyfriend. She was told she would have to wait 48 hours to lodge a missing persons' report. She provided a description of her sister and left a photograph. She also called the morgue and gave a description of her sister but was reportedly informed that no young woman had been admitted. In fact, a death certificate had been issued a few hours earlier on behalf of an unidentified woman. Time of death was registered at 11pm, 1 February 2002.

**© Amnesty International – mother and sister of Nancy Karina Peralta Oroxon who was killed in February 2002**

On 3 February 2002, the family identified Nancy Peralta in the morgue. This was after an article and photograph in the press about the discovery of the body of a young unidentified woman, wearing a white jumper, who had had her throat cut. Recognising the clothing, her father rang the morgue and gave them Nancy Peralta's name and a

physical description of her that matched the characteristics of the unidentified woman. Despite the police having been given a description and a photograph of Nancy Peralta, it appears no effort was made to cross-reference data on a woman reported missing with that of unidentified murder victims.

In a context in which many women reported missing are subsequently found dead, police practice of waiting 48 to 72 hours to begin a search for a missing person is at odds with a state's duty to take urgent action to prevent injury to people believed to be at specific and immediate risk. During the course of its research, Amnesty International found that routine delays in opening investigations to establish the whereabouts of an individual reported as missing has no basis in law and appears to be the result of bad practice, in part a legacy of the years of internal armed conflict when tens of thousands of people "disappeared" at the hands of state agents or went missing as they attempted to flee violence. Delaying the opening of an investigation seriously diminishes the chances of finding the woman alive or identifying those responsible. If searches were begun immediately, killings could be prevented or better evidence could be recovered.

The case of Nancy Peralta highlights how the investigating authorities frequently fail to open a proper investigation to determine whether an offence has been committed. In this case, the authorities failed to act on the probability that a violation might have been committed and assumed that Nancy Peralta was missing of her own accord without carrying out a thorough assessment or investigation of the circumstances in which she went missing. In treating the report by her family that she was missing as a minor incident, the authorities put the burden of proving she did not leave voluntarily on to the family. Such practices mean that initial investigations to establish whether a crime has been committed can be limited, or, as in the case of Nancy Peralta, non-existent.

Where an individual is reported missing, the authorities have a duty to take immediate steps to establish whether a criminal offence has been

committed. This duty should include an assessment by members of the police and Public Ministry of the reasons why the family believe their relative has been abducted, and should pursue all lines of inquiry, including the possibility that she may have been abducted.

The authorities must also establish more effective response systems for dealing with calls reporting an incident of violence against women. According to the mother of 15-year-old María Isabel Veliz Franco, her daughter was left for dead on some waste ground at 10 o'clock in the evening of 17 December 2001. A man reportedly informed police officers that a dying woman had been found. However, police officers failed to arrive at the scene that night and only turned up in the afternoon of the following day when the Public Ministry arrived to remove the body.

#### The initial stage of the investigation: gathering and protecting evidence

*"there is a clamorous absence of physical and scientific proof."<sup>42</sup>*

*"They didn't even do a fluids analysis. They gave me all her clothes in a bag and when I saw some white stains on it, I asked at the morgue: what's this, is it semen? My little girl had been very badly treated, there was blood on her front and back but they didn't do any blood analysis or anything. It's two years and eight months since she was murdered. Where are the forensic tests?"<sup>43</sup>*

The failure to systematically collect and preserve evidence crucial to a proper investigation into María Isabel Veliz Franco's death illustrates the serious deficiencies which persist in the forensic examination services that have been frequently reported to Amnesty International during the course of its research into the killings of women in Guatemala. The forensic services' failure to carry out a fluids analysis and preserve samples of specimens such as seminal fluid, blood, skin or hair

seriously reduced the possibility of identifying and prosecuting those responsible.

Progress in investigations into cases of alleged killings of women have consistently been thwarted by a number of serious shortcomings including the frequent failure to protect, examine or preserve the crime scene and deficiencies in collecting evidence and maintaining the chain of custody to prevent evidence from being lost or becoming contaminated. Delays in reaching the crime scene and subsequently protecting it from contamination by local residents, the press or the investigating authorities themselves means that from the beginning, material and witness evidence is often not gathered or gathered randomly or after it has been tampered with. The lack of cooperation and coordination between official state institutions, but particularly between the Public Ministry responsible for leading the criminal investigation and the PNC, has further undermined the investigative process in terms of identifying specific responsibilities, sharing information, establishing investigative goals and so on. The lack of clarity about roles and the necessary subordination of the police to the authorities in charge of the administration of justice leaves an excessive margin of ambiguity in responsibilities and duties and has led to omissions or duplication of efforts.

A lack of coordination among state institutions is evident in the work of the different forensic services attached to the Public Ministry, the PNC and the Judiciary. Forensic investigators from the Public Ministry and the PNC, under the direction of the Prosecutor, are responsible for collecting and analyzing evidence from the crime scene. The forensic services of the Judiciary are responsible, among other things, for examination and testing in the morgues including conducting autopsies and taking DNA samples. One of the consequences of the lack of cooperation between state institutions is the absence of a laboratory for carrying out DNA tests. A team at the University of San Carlos currently examines blood samples for police investigators. However, reports indicate that the blood often arrives in imperfect condition, rendering the tests invalid.

<sup>42</sup> IACHR Special Rapporteur on Violence against Women, September 2004

<sup>43</sup> Rosa Franco, mother of María Isabel Veliz Franco.

At present, data collection including correctly listing and cross-referencing the different cases in accordance with time of death, the location and time of the discovery of the body, and condition and gender-related forms of violence found on the body, is extremely poor. According to the Research and Statistics Office of the Human Rights Ombudsman's Office, information about the bodies is logged in notebooks which only *"have enough space for the name, sex, age and the place and address of where the body was found but not the conditions in which the body was initially found, on the outskirts, in the middle of the street or in a barrel, if it was clothed or not and other things that are essential for starting an investigation"*.<sup>44</sup> The failure to record and photograph every detail of the dead body inhibits the likelihood of being able to correctly and accurately establish cause of death.

© private – María Isabel Veliz Franco

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<sup>44</sup> *"sólo tienen espacio para el nombre de la persona, el sexo, la edad, el lugar, la dirección del sitio donde se recogió el cadáver y la dirección exacta, más no las condiciones en que se encontró inicialmente el cadáver como si se halló en la periferia, o en plena calle, o en un tonel, o si tenía o no ropa u otros que son básicos para iniciar una investigación."* Human Rights Ombudsman's Office, October 2004.

The lack of technical and scientific expertise and adequate resources<sup>45</sup> of the different investigating authorities and the impact this has on gathering reliable information for an investigation has been highlighted in successive reports by national and international human rights organizations and experts. One consequence of these deficiencies is that a number of dead women believed to have been killed remain unidentified. For example, as of August 2004, among the 152 cases handled by the Special Prosecutor for Crimes against Women were 24 that had not been identified. The problem is compounded by the fact that there is no national register of missing people in Guatemala nor a national identity register making it difficult to cross reference information necessary to make an identification. The head of the Female Homicide Unit of the PNC is quoted in a press article on 16 January 2005 as stating that it was difficult to establish whether the unidentified women had previously been reported as missing because there was no coordination with the Missing Persons Unit (*Unidad de Desaparecidos*). According to the article, the PNC reported at least 157 missing women between January and September 2004.

Police are often first to arrive at a crime scene and their assessment of the situation and decisions to classify the murder and motive has an immediate and generally negative bearing on the route the investigation takes. PNC statistics compiled up until May 2004 record that a third of the killings of women were "due to personal problems". According to the PNC, a fifth of the reported cases of killings of women occurred due to "passionate problems" (*"problemas pasionales"*). The term is applied to cases that fulfil two of the characteristics established by the PNC in the "Definition of motives, their frequency and characteristics" (*Definición de los móviles, su incidencia y sus características*) relating to the killing of women. These are:

- a/ that *"the victims are women who have been married more than once"*

and

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<sup>45</sup> Investigators often lack basic equipment such as cameras and computers to electronically log information.

b/ that “the suspects and even those arrested turn out to be former partners who do not seem to have entered into another relationship”.<sup>46</sup>

Classifying the killings as relating to “personal problems” or “crimes of passion” implies these cases are rarely investigated and are de-prioritised.

The term “crimes of passion” is one that is validated at all levels of society and has not been abolished in many countries of the world. In Guatemala, it has been widely incorporated into the language and practice of all those involved in the administration of justice as well as the media and general public and informs the way the justice system responds to the murders of women, prejudicing the victim’s right to a full and impartial investigation.

These classification criteria are based on firmly entrenched views about men’s and women’s roles and what constitutes “good behaviour” on the part of women. International human rights mechanisms have criticized the use of this definition as discriminatory against women, by implicitly legitimizing violence against women on the basis of male honour in response to what the perpetrator or society consider inappropriate female conduct<sup>47</sup>. The fact that women are primarily the victims of such violence is another element of the discrimination.

#### The plight of the relatives

*“I asked if I could have copies of the case file and they said no, that we had to become a joint party. As we have very little money, we could not pay for a lawyer. At first they would not even let me see the case file. It was only when I got angry that they started to show me things but I have not been able to get a copy ... When we ask for certificates or copies of legal documents, they charge us ... I am going to*

<sup>46</sup> PNC – Guatemala, General Situation of Violence against Women, 27 May 2004.

<sup>47</sup> See UN Office of the High Commissioner for Human Rights, The elimination of violence against women, Resolution of the Human Rights Commission 2003/45. See also UN Special Rapporteur on Violence against Women E/CN.4/2003/75 para 75 and IACHR, Case 13,051, María da Penha Fernandes Maia, Brazil, April 2001, paras. 47 and 50.

*study law because we don’t have a lawyer so we aren’t accepted as joint party .... It is very sad not to have even a lawyer who can write a legal document.”<sup>48</sup>*

Article 116 of the Guatemalan Code of Criminal Procedure (CPP, *Código Procesal Penal*) allows individual victims, their relatives and others (*agraviados*) to act as joint parties to the state prosecution (“*querellantes adhesivos*”) which gives them 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. The process, however, is complex and the lack of free legal services means that access to justice is denied to many relatives who are unable to pay for legal assistance. To become party to the proceedings a complaint (*querrela*) has to be submitted to a judge and while there is no specific stipulation in the CPP that this needs to be done by a lawyer, the Judiciary Law (*Ley del Organismo Judicial*) states that petitions that are not supported by a lawyer will be rejected. If the victim or their family members do not become a joint party, their participation in the judicial process is limited, and their ability to influence or question the procedure and quality of the investigation conducted by the Public Ministry is curtailed.

Even where those affected are not joint party to the prosecution, article 8<sup>49</sup> of the Public Ministry Law (LOMP, *Ley Organica del Ministerio Público*)

<sup>48</sup> “Pregunté si podía tener copias del expediente y me dijo que no, tiene que ponerse como querellante adhesivo. Como uno es de escasos recursos no puede pagar un abogado. Al principio ni siquiera me permitieron ver el expediente, tuve que enojarme y desde ahí me empezaron a mostrar las cosas, pero no he podido tener copia ... Cuando uno pide certificaciones o copias a nivel del organismo judicial le cobran .. Voy a estudiar derecho porque en el caso de mi hermana no tenemos abogado, por eso no somos aceptados como querellantes ... Es muy triste no tener ni siquiera un abogado a que le haga un escrito”. María Elena Peralta, sister of Nancy Peralta.

<sup>49</sup> “El Ministerio Público, deberá dirigir sus acciones tomando en cuenta los intereses de la víctima, a quien deberá brindar amplia asistencia y respeto. Le informará acerca del resultado de las investigaciones y notificará la resolución que pone fin al caso, aun cuando no se haya constituido como querellante”.

states that it is the responsibility of the prosecutor to provide information to them. The prosecutor can not refuse to provide this information, invoking article 314 of the CPP on the basis that they are not part of the judicial process. Moreover, failure to provide information about the results of the investigation is a disciplinary matter. (Article 61, point 7) as is “*offending the victim ... or any other person who goes to the Public Ministry ... seeking justice or to be informed about the state of affairs*”.<sup>50</sup> (Article 61, point 3) Article 49 of the LOMP also states that the parties concerned can propose measures at any time during the preliminary phase of the investigation, that these proposed measures should be carried out if considered pertinent or useful and if the prosecutor considers the proposals are not useful he or she should provide reasons for not carrying them out.

Family members have frequently reported that, in practice, the authorities have often failed to provide them with information about progress in the investigations, have failed to follow up potential leads and have treated them dismissively. Nancy Peralta’s family insisted the Public Ministry call potential witnesses and asked for an identikit picture to be made of the witness who had called the police and fire brigade, the night she was murdered. They also repeatedly asked for the area where Nancy’s dead body was found to be inspected but were reportedly told that the inspection would be carried out in a couple of weeks. Over two years later, the site had yet to be examined. On 8 March 2004, Nancy Peralta’s sister attended a march to mark International Women’s Day during which she managed to speak to a government minister. A few days later, an investigator from the Public Ministry came to the house to question the relatives. When relatives read statements in the case file, they reportedly found that their statements had been changed.

María Isabel Veliz Franco’s mother, Rosa Franco, reported that her daughter had had her mobile phone with her when her body was found. She

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<sup>50</sup> “*Ofender a la víctima ... o a cualquiera otra persona que acude a las oficinas del Ministerio Público ... en demanda de justicia o a informarse del estado que guardan los asuntos*”.

reportedly asked the Public Ministry office dealing with the case to investigate the calls on it which they apparently failed to do. She obtained a list of calls and handed the numbers over to the prosecutor’s office. The phone numbers were never investigated and the list was reportedly filed. The Public Ministry office in Mixco also failed to go to the house where the car from which a witness reportedly saw the dying María Isabel being dragged was seen, nor did it order a search of the addresses that had been identified. They reportedly went to the site on one occasion but did not go into the house. Rosa Franco reported that whenever she goes to the Public Ministry to find how if the case is progressing, it is the staff members of the office who ask her if she has anything new to report. She complained to the Attorney General about the lack of progress in the investigations who concluded that the office in Mixco had acted properly in the investigation. Meanwhile, the case is at a standstill.

**© Amnesty International – mother of María Isabel Veliz Franco**

Relatives of some victims have reported instances of harassment that they have conveyed to the relevant authorities who have reportedly failed to

respond to their concerns. In addition, in July 2004 precautionary measures were sought from the IACHR on behalf of the Women's Sector (*Sector de Mujeres*<sup>51</sup>), whose office was broken into in June 2004. This followed a widely publicized meeting in Guatemala City, attended by Esther Chávez Cano, founder of the Mexican organization *Casa Amiga* which has campaigned for truth and justice in the cases of women who have been abducted and murdered in Ciudad Juárez and the city of Chihuahua. Although nothing was apparently taken, non-governmental organizations believe the break-in was an act of intimidation linked to, among other things, the prominent role played by the *Sector de Mujeres* in calling for an end to violence against women in Guatemala.

#### Blaming the victim

*"We know that in the majority of cases, the women had links with juvenile gangs and gangs involved in organized crime"* <sup>52</sup> (President Oscar Berger, *La Nación* newspaper, 26 June 2004)

During the course of its research, Amnesty International interviewed relatives of a number of victims, many of whom complained about having to prove their relative was "respectable" or that they had not been involved in any crimes before the authorities would take their complaint seriously. Relatives also complained about having to provide new evidence to compel the authorities to take action to investigate the case. In an interview in May 2004 with officers of the Homicide Unit of the PNC, Amnesty International was told that *"most victims were gang members"*<sup>53</sup>. References to the victims by some state authorities as gang members or prostitutes suggests deep-seated discrimination in some sectors that has characterised the response of the authorities to the murders. Such attitudes frequently influence the way in which the cases are investigated and documented.

<sup>51</sup> The Women's Sector is a group of non-governmental women's organizations.

<sup>52</sup> *"Sabemos que en la mayoría de los casos, las mujeres tenían vínculos con pandillas juveniles y bandas del crimen organizado."*

<sup>53</sup> *"son todas mareras"*.

In the absence of any serious studies on the identities of the victims, affected families and women's organizations have drawn attention to the fact that the prejudices and discrimination that give rise to the labelling of victims, conceals the pervasive nature and seriousness of gender-based crime.

The report of the preliminary investigation (*diligencias preliminares*) of the prosecutor investigating the murder of a minor is illustrative of how subjective and preconceived ideas about the role of women in society can influence the degree to which an investigation is taken seriously by the authorities. In it, the prosecutor refers to the minor as *"always dressing provocatively"*<sup>54</sup>. In February 2002, the report of the Public Ministry concluded that,

*"the minor [...] was known under the alias 'the mad girl [la loca]' ... her school attendance was irregular, she was absent on Fridays, she was told off for wearing skirts that were too short ... She was described at her workplace as a young woman with no love for life ... interested in sales commission. The other young ladies in the boutique started the day with a prayer ... she didn't like joining in. Other things the minor liked to do included going to nightclubs for which her mother gave her great freedom ... she often used to come home in the early hours in different cars. She had connections with the Salvatrucha gang who once beat her up."*<sup>55</sup>

The discriminatory attitudes of some state authorities towards women who are victims of violence only increases the suffering of the relatives as the following reaction of the girl's mother highlights,

<sup>54</sup> *"vestía siempre muy provocativa"*.

<sup>55</sup> *"la menor Maria Isabel Veliz Francoera conocida como alias 'la loca', (...) alumna irregular, faltaba los viernes, se le llamaba la atención por llevar la falda demasiado corta. Donde trabajaba la describieron como una joven sin amor por la vida (...) interesada en las comisiones sobre ventas. Las demás señoritas en la boutique inician el día con una oración, a ella no le gustaba participar. Otras preferencias de la menor consistían en frecuentar club nocturnos, con mucha libertad de su mamá. (era habitual que llegara en la madrugada en diferentes vehículos. Estuvo relacionada con la mara Salvatrucha quienes en una oportunidad la golpearon. Vestía siempre muy provocativa."*

*“They said my daughter was an atheist but in fact she went to the Adventist church. They said she was a member of a youth gang but she was studying and working. She hated the youth gangs, they didn’t say that when she was beaten up by them, it was because she refused to join them. The PDH report had five pages on how ‘bad’ my daughter and I were, none of it is true and nothing was said about the facts and evidence about the criminals contained in the case file. They did not investigate them or order their arrest.”*<sup>56</sup>

Women’s groups have pointed out that some newspapers have taken up the issue of gender-based violence against women in a responsible manner and brought it to wider public attention, but that others have been sensationalist, projecting negative or derogatory images of the victims. In doing so, some parts of the media have played a role in generating prejudice against the victims. They have also sometimes inadvertently helped divert attention away from the responsibility of the authorities to tackle the problem seriously. These articles have also contributed to exacerbating a climate of fear and anxiety, particularly among women.

#### Impunity and the denial of justice

*“there is a common denominator to all the murders: impunity.”*<sup>57</sup>

The final report of MINUGUA, while commending past successive governments for certain human rights improvements also noted that impunity was still widespread and that grave obstacles remained to improving the justice system. Impunity has been the hallmark of the investigations into the cases of women who have been murdered. The absence of physical or

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<sup>56</sup> *“Dijeron que mi hija era atea y en realidad iba a la iglesia adventista, dijeron que era marera pero ella estudiaba y trabajaba. Ella detestaba las maras, no dijeron que cuando la golpearon fue porque ella se negó a ingresar a ellas. El informe del MP tenía cinco páginas sobre lo malas que éramos mi hija y yo nada cierto y nada se dijo sobre los hechos y las pruebas que han en el expediente judicial sobre los criminales, no los investigan, ni ordenan su captura.”* Interview with Amnesty International, October 2004.

<sup>57</sup> Human Rights Ombudsman Sergio Morales, *Prensa Libre*, 18 May 2004.

scientific evidence, lack of resources in terms of personnel and equipment dedicated to investigating these crimes, lack of infrastructure, and lack of political will means that the vast majority of the investigations have never progressed beyond the initial stage.

According to the Office of the Special Prosecutor for Crimes against Women in only one of the more than 150 case files handed to its office for investigation has a conviction been obtained. In one other case, the investigation is at the trial stage (*etapa de debate*), the stage that precedes sentencing.<sup>58</sup> According to the Human Rights Ombudsman’s Office only 9% of cases have been investigated. In May 2004, the Human Rights Ombudsman, Sergio Morales, was reported as stating that his Office had been directly involved in three criminal investigations of killings of women and provided information so that those allegedly responsible could be arrested, but that no action had been taken.<sup>59</sup> Even in the limited number of cases where progress has apparently been made, judicial investigations have not advanced further because police have failed to act on arrest warrants requested by the Public Ministry. According to the Office of the Special Prosecutor for Crimes against Women, of the 152 cases her office was investigating as of August 2004, a number of arrest warrants remained pending.

In October 2004, the Women’s Commission (*Comisión de la Mujer*) of the National Congress was charged with following up with the relevant authorities the reasons for the failure to prevent, investigate and eradicate killings of women. In the following weeks the commission met with the Interior Ministry, the Public Ministry, the head of the PNC and the Human Rights Ombudsman, among others, and invited women’s organizations to attend the meetings. In January 2005, the

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<sup>58</sup> In another 88 cases, it had not been possible to identify the perpetrators while in the other cases, 68 arrest warrants had been issued of which in 15 cases there was a formal accusation and in 28 other cases the investigations were still in the initial phase (*averiguación previa*).

<sup>59</sup> *Prensa Libre*, 18 May 2004.

Commission presented its report to Congress. The report stated that none of the institutions had the policies necessary to investigate or prevent killings of women and highlighted the different figures provided by the various institutions on the numbers of women who had been killed. It also emphasized the lack of coordination, lack of specialization and duplication of efforts and called for an integrated plan to be drawn up to prevent and punish those responsible.

At nearly a third, the percentage of killings of women in the case load of the Office of the Special Prosecutor for Crimes against Women who had previously been threatened underlines the serious consequences of the State's failure to prevent, punish and eradicate violence against women when initial complaints are filed with the appropriate authorities. A study of the State's response to violence against women in the family carried out by MINUGUA in 1999 noted that although the courts ordered protective measures in nearly all the cases studied, they did so as a matter of form without responding to the specific circumstances of each case<sup>60</sup>. Moreover, the study found that judges did not effectively check to see that the protection order had been carried out, in some cases the PNC failed to comply with the judge's order and the PNC generally did not report back to the judge. As the IACHR report of 2001 notes, "*The lack of effective judicial response leaves victims with nowhere to turn to for protection and vindication, thereby exacerbating and perpetuating the consequences of the violence*".<sup>61</sup>

In the context of the Peace Accords, efforts to modernize and reform the justice system in Guatemala have included an independent Public Ministry, a new civilian police force, the adoption of the Law on the Judicial Career (*Ley de Carrera Judicial*) which includes provisions for training and discipline of judges, terms of office and promotion and the creation of an Institute of Public

<sup>60</sup> *Response of justice to violence in the family against women, Respuesta de la justicia a la violencia intrafamiliar contra la mujer* – MINUGUA, 1999.

<sup>61</sup> "*La falta de una respuesta judicial efectiva deja a las víctimas sin tener un lugar a donde acudir para buscar protección y reivindicación, lo cual exagera y perpetúa las consecuencias de la violencia*" (para 51).

Defenders (*Instituto de Defensa Pública Penal*).

However, these measures have yet to have much impact on the endemic weaknesses in investigation procedures and capabilities. Without fundamental reform, the prevailing inefficiency and ineffectiveness of the justice system will continue to ensure that the vast majority of serious human rights violations, both past and present, remain unresolved.

Amnesty International believes that the Guatemalan Government must seek to implement a coherent and far-reaching reform program to address the systemic flaws that exist throughout the criminal justice system. While an analysis of the many problems affecting the justice system in Guatemala lies outside the scope of this report, areas of concern that require urgent attention include: threats and attacks against the judiciary, lawyers, human rights defenders and others in connection with investigations into cases of past and present human rights violations; serious deficiencies in the investigative process; lack of autonomy and independence of the judiciary including interference in the judicial process and corruption; access to justice for marginalized groups; and the need to establish effective oversight and accountability mechanisms.

The failure of the Guatemalan State to effectively prevent, punish and eradicate violence against women means that it incurs international responsibility under the obligations it has entered into through ratification of regional and international standards such as the American Convention on Human Rights (ACHR) and the International Covenant on Civil and Political Rights (ICCPR). It also flouts regional and international standards that deal with discrimination and violence against women: the UN Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará) as well as other treaties and instruments such as the Convention on the Rights of the Child.

National legislation – violence against women, including sexual violence

Under the Convention of Belém do Pará, State parties are committed to:

*“take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures, establish the necessary legal and administrative mechanisms to ensure women subjected to violence have effective access to restitution, reparations or other just and effective remedies”.*<sup>62</sup>

A number of discriminatory legal provisions remain on the statute books that run counter to Guatemala’s international obligations to prevent, investigate, punish and eradicate violence against women. Both the ICCPR and the ACHR assert the obligation to respect, protect and ensure rights without discriminating on grounds of sex and to ensure equality for men and women both in the enjoyment of rights and in the protection of the law.<sup>63</sup> When the law does not provide women with sufficient protection against violence, either because of the way in which offences are defined or the way in which the law is enforced, the State has responsibility by virtue of these anti-discriminatory provisions.

At present under article 200 of the Penal Code (*Código Penal*), criminal responsibility for rape and certain other crimes of sexual violence is waived (if the victim is more than 12 years old) upon the perpetrator’s marriage with the victim.. This provision, which goes against the law to Prevent, Punish and Eradicate Violence in the Family has been repeatedly criticised by national and international bodies including the UN Human Rights Committee and the IACHR but has yet to be derogated.

<sup>62</sup> Article 7(e) 7(f) 7(g).

<sup>63</sup> Articles 2(1), 3 and 26 of the ICCPR and articles 1 and 24 of the ACHR.

According to Decree 79-97, while responsibility to initiate prosecutions of sexual crimes, including rape belongs to the Public Ministry (*acción pública*), the Code of Criminal Procedure, which governs how cases are administered, states that initiating prosecutions for rape and other sexual crimes depends on the victim. The fact that these crimes are not prosecuted *de oficio* can lead victims, exposed to pressure or coercion, who are unaware of their rights, or who lack funds for legal assistance or faith in the justice system, into not filing complaints and may also encourage prosecutors to dissuade victims from filing complaints. The UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice notes: *“7 b) The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence;”*

Currently violence against women in the family, including marital rape, and sexual harassment are not defined as criminal offences. In the case of violence against women in the family, prosecutors have stated that the perpetrators can only be charged with an offence if signs of physical injury remain visible for at least 10 days. The IACHR 2003 report quotes a spokesperson of the Public Ministry as saying,

*“violence in the family does not constitute a crime; consequently one cannot open an investigation unless there are injuries. In this case, the time it would take for healing must be determined in order to establish if a case should be initiated or not. However, when a woman lodges a complaint, in general there are no longer any injuries present, so nothing can be done”.*<sup>64</sup>

<sup>64</sup> *“la violencia intrafamiliar no constituye delito; en consecuencia, no puede iniciarse un proceso a menos que existan lesiones. En ese caso, debe determinarse el tiempo que requeriría la curación para establecer si corresponde iniciar o no un proceso. Sin embargo, cuando la mujer comparece en general ya no hay lesiones presentes, por lo que nada puede hacerse”.* See IACHR, Fifth Report, supra; Graciela Alméndarez and others, *Aplicación del criterio de oportunidad a casos de violencia contra la mujer*, March 2002.

This situation, notes the IACHR ignores the psychological and other forms of violence - ones that leave little if any evidence of physical injury<sup>65</sup> - included in the definition of violence against women in national and regional standards. While, under the Law to Prevent, Punish and Eradicate Violence in the Family a number of state institutions can receive complaints, in practice women continue to encounter numerous obstacles including dismissive attitudes of some officials, the transfer of their case from one institution to another, delays, and a lack of interpreters.<sup>66</sup> The Special Prosecutor for Crimes against Women reported that victims of domestic violence were having to wait 20 days before prosecutors in her office could see them owing to their excessive caseload.

According to article 180 of the Penal Code, it is a crime to have sexual relations with a minor as long as that person (the victim) is considered “honest”<sup>67</sup>. Such a term undermines the rights of the woman as it places a value judgement on the conduct of the victim rather than guaranteeing that the perpetrator is punished. As the IACHR and others have highlighted, “such references are designed to protect a legal procedure other than the rights of the woman and tend to judge the victim instead of guaranteeing punishment of the perpetrator”<sup>68</sup>.

<sup>65</sup> This can include cases of sexual assault. For example, the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) makes clear that finding physical evidence of rape can be very difficult because of the almost inevitable time lapse. Medical experts state that it is rare to find any physical evidence on female genitalia more than one week after the assault and that there is “identifiable damage” of female genitalia in less than 50% of cases immediately after rape.

<sup>66</sup> *Response of justice to violence in the family against women, Respuesta de la justicia a la violencia intrafamiliar contra la mujer* – MINUGUA *supra*, note 60.

<sup>67</sup> 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 (“*honest woman*”, “*mujer honesta*”) is a basic requirement for establishing the existence of the crime.

<sup>68</sup> *esas referencias estan encaminadas a proteger un bien juridico distinto de los derechos de la mujer misma, y tienden a aplicarse de*

The positive steps taken by the Guatemalan Government in terms of ratification of treaties and covenants and introduction of new laws to address violence against women are undermined by the persistence of legal provisions such as these. As the IACHR report observes,

*“Guatemalan women face serious difficulties in exercising their fundamental rights and continue to suffer discrimination in both law and practice ... If the law itself preserves unjustifiable legal provisions based on gender, far from guaranteeing the principle of equality, it perpetuates subordination. Violence against women continues to be one of the main human rights and human security problems, but women who have been subjected to this violence or threat of violence continue to come face to face with multiple barriers when they try to obtain protection or judicial guarantees”.*<sup>69</sup>

### Chapter three: International standards on due diligence

Violence against women violates a whole range of fundamental human rights, civil and political as well as economic, social and cultural.<sup>70</sup>

Those responsible for carrying out crimes of violence against women, including state officials and third parties can be held responsible under international law. Although those responsible for

*modo de poner en tela de juicio o inculpar a la victima, en lugar de garantizar el castigo del perpetrador”* LACHR – *Justicia e inclusion social: los desafios de la democracia en Guatemala* OEA/Ser.L/V/II.118, Doc 5 rev. 1, para 276, 29 December 2003.

<sup>69</sup> *“Las mujeres guatemaltecas enfrentan graves dificultades para ejercer sus derechos fundamentales y siguen sufriendo discriminación tanto en la ley como en la práctica ... Si la ley misma encierra disposiciones legales injustificadas basadas en género, lejos de garantizar el principio de igualdad, perpetúa la subordinación. La violencia contra la mujer sigue siendo uno de los principales problemas de derechos humanos y seguridad humana, pero las mujeres que han estado sujetas a esa violencia o a la amenaza de la misma siguen tropezando con multiples barreras cuando procuran obtener protección y garantías judiciales”.* *Ibid* para 272.

<sup>70</sup> CEDAW, General Recommendation 19, paragraph 7; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, “Convention of Belém do Pará”, articles 3, 4, 5 and 6.

the violence may not be state officials, that does not mean that the cases in question fall outside the scope of international law. International human rights standards place a clear responsibility on States to take effective measures under the obligations to prevent, protect and fulfil, to deal with any type of conduct by private individuals which impedes the full exercise of human rights, including violence against women in the context of the family or the community

Just as violence against women involves a whole range of women's human rights, the whole range of human rights standards can and must be applied in their entirety to combat it and bring those responsible to justice, whether or not they are State officials.

The failure of the State to respond effectively to reports of killings and abductions, as described in the previous chapter, means that the Guatemalan State incurs international responsibility under the obligations it has contracted as a result of ratifying regional and international standards such as the American Convention on Human Rights (ACHR) and the International Covenant on Civil and Political Rights (ICCPR). It also contravenes regional and international standards that deal specifically with violence against women as well as other relevant treaties and instruments which will be examined below.

These standards, which complement and reinforce each other, provide a useful framework for comprehensively evaluating the effectiveness of the authorities' efforts to combat these forms of violence against women. They also specify concrete measures governments should take not only to crack down on abusive behaviour but also to prevent it from recurring. The common thread shared by all these instruments is the obligation to combat discrimination against women and end impunity, both of which are root causes of the violence women encounter in all areas of their lives.

### **The duty to protect and ensure rights with due diligence**

The rights to life, physical integrity, liberty and personal safety are enshrined in the ICCPR and ACHR. These standards make it an obligation not only to "respect" the rights recognized in them (in other words, ensure that they are not violated by State officials) but also to take necessary measures to "protect and ensure" those rights when they are threatened by the criminal behaviour of private individuals.

Under article 1 of the OAS **American Convention on Human Rights**, States have a duty to ensure the exercise of human rights to all persons within their territory or jurisdiction. The Inter-American Court of Human Rights outlined what that obligation involves in a judgment on a case of "disappearance" in Honduras in which the identity of those responsible was not known.<sup>71</sup> The Court used the concept of "due diligence" to describe the degree of effort a State must make to comply with its obligation to ensure the exercise of human rights, even in cases where the abuses have been committed by people who have no connection with the State:

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

According to the Court, acting with "due diligence" means that the State must take reasonable steps to prevent human rights violations, use the means at its disposal to carry out serious investigations, identify those responsible, impose the appropriate punishment and ensure that the victim receives adequate reparation.<sup>72</sup>

<sup>71</sup> Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment dated 29 July 1988, para. 172.

<sup>72</sup> Ibid., para. 174.

If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State can be said to have failed in its duty to ensure the exercise of those rights. *"The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention".*<sup>73</sup>

The investigation *"must be undertaken in a serious manner and not as a mere formality preordained to be ineffective"*. It cannot rely on the bringing of criminal action by the victim or his or her family or the submission of proof by private parties without the authorities themselves carrying out an effective search for the truth. According to the Court, *"This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane"*.<sup>74</sup>

The Inter-American Court of Human Rights therefore concluded that, although it had not been possible to attribute the "disappearance" to State officials, the State's failure to act with due diligence was in itself a breach of the duty to ensure the victim the rights to life, liberty and personal integrity.<sup>75</sup>

The UN Human Rights Committee, which monitors compliance with the ICCPR, has also stated that the duty to "ensure" the rights included in the Covenant require appropriate measures to be taken to prevent and investigate abuses perpetrated by private persons or entities, punish those responsible and provide reparations to the victims.<sup>76</sup>

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<sup>73</sup> Ibid., para. 176.

<sup>74</sup> Ibid., para. 177.

<sup>75</sup> Ibid., paras. 185-188.

<sup>76</sup> Human Rights Committee, Draft General Comment on article 2 of the ICCPR, CCPR/C/74/CRP.4/Rev.3, para. 7.

## Due diligence and violence against women

The concept of "due diligence" has been enshrined in several instruments adopted by the international community over the past ten years with the specific intention of combatting violence against women.

The UN **Declaration on the Elimination of Violence against Women** reaffirms the State's obligation to "[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons".<sup>77</sup> It sets out what this means by describing the judicial, legislative, administrative and educational measures States should take to comply with their responsibilities.

The UN Special Rapporteur on Violence against Women has put forward a series of criteria for assessing whether States have adhered to the due diligence standard through ensuring that the right not to be subjected to violence by private persons is available to women. They include considerations such as whether constitutional guarantees are provided, how the criminal justice system operates, whether it is possible to obtain reparations, whether support services, education and public awareness programs exist and whether adequate statistical data is being collected.<sup>78</sup>

Although the **Convention on the Elimination of All Forms of Discrimination against Women** does not explicitly refer to violence against women, the UN Committee which monitors its implementation has stated that gender-based violence is a form of discrimination as defined in the Convention.<sup>79</sup> In its General Recommendation

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<sup>77</sup> Declaration on the Elimination of Violence against Women (art. 4c).

<sup>78</sup> Report of the Special Rapporteur on Violence against Women to the 1999 session of the Commission on Human Rights, E/CN.4/1999/68, para.25.

<sup>79</sup> According to the Committee, gender-based violence is "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other

19 on Violence against Women, the Committee on the Elimination of Discrimination against Women (CEDAW) further analyzes the measures the State should take in seeking to prevent and prosecute such violence.

The recent adoption of the **Optional Protocol to the Convention**<sup>80</sup>, which was ratified by Guatemala in 2002, has created a further mechanism for combatting violence against women by giving women who have been denied justice in their country the opportunity to seek redress at an international level for violations of their rights under the Convention. It allows victims or their representatives to submit a complaint directly to the Committee once all other remedies have been exhausted so that the Committee can carry out investigations and reach a decision on the case in question.

The Inter-American system offers the optimum legal framework for combatting violence against women. It is the only system which has a binding treaty on the issue: the **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará")**. The Convention reflects the enormous efforts that have been made in the Americas to develop specific measures that will protect women's right to a life free from violence, both in the home and the community as well as while in the custody of State officials.

The treaty explicitly codifies the obligation to act with due diligence in order to prevent, investigate and punish violence against women and to adopt all appropriate legal and administrative measures without delay.<sup>81</sup> As far as prevention is concerned, the State parties are committed to the progressive introduction of specific awareness-raising measures geared towards modifying social and cultural patterns of behaviour based on gender stereotypes

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deprivations of liberty." General Recommendation 19, CEDAW, para.6.

<sup>80</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly on 6 October 1999.

<sup>81</sup> Article 7.

and prejudices as well as promoting the training of staff involved in the administration of justice and law enforcement.

States are also committed to providing specialized services, including readjustment programs, for women who have been subjected to violence, encouraging the media to contribute towards the eradication of violence against women and ensuring research and the gathering of statistics so that effective policies can be formulated.<sup>82</sup> The Convention obliges State parties to take special account of the vulnerability of migrant women, minors and women who are socio-economically disadvantaged.<sup>83</sup>

The Convention makes it possible for the Inter-American Commission on Human Rights to receive petitions and take action on the issue. The doctrine established fifteen years ago by the Inter-American Court on Human Rights with regard to the responsibility to respond with "due diligence" to abuses committed by private persons has been applied more recently in cases of violence against women examined by the Commission.

Referring to a case of domestic violence, the Commission concluded in 2001 that *"the failure to prosecute and convict the perpetrator under these circumstances is an indication that the State condones the violence suffered"*. According to the Commission, when there is a general pattern of negligence and lack of effective action by the State in tackling violence against women committed by private persons:

*"The condoning of this situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women. [...] That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts".<sup>84</sup>*

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<sup>82</sup> Article 8.

<sup>83</sup> Article 9.

<sup>84</sup> IACHR, Case 12,051, María da Penha Fernandes Maia, Brazil, April 2001, paras. 55 and 56.

## Conclusion

During the course of its research into the recent wave of killings of women and girls, Amnesty International has identified a range of serious failings and shortcomings that it believes the Guatemalan authorities must urgently address. The organization concurs with other national and international experts that the number of killings of women is increasing, that it has increased beyond national averages usually associated with killings of both men and women and that it should be considered as a priority within the issue of public and human security. Amnesty International has found that many of the killings of women in Guatemala were exceptionally brutal often bearing signs of mutilation and disfigurement associated with killings during the internal armed conflict. Despite the lack of detailed forensic information, there is significant evidence to suggest that sexual violence, particularly rape, is a strong component characterizing many of the killings. Amnesty International believes that the level of brutality, mutilation and sexual violence evidenced in many of these cases amounts to torture. Amnesty International has also found that many of the victims were from vulnerable sectors of society, including minors, with no access to formal mechanisms of redress. This is particularly true in the case of minors.

Many of the investigations studied by Amnesty International were flawed and inadequate. The inadequacy of data relating to the killings, including the near total invisibility of gender-based human rights violations in official reports, statistics, analyses and forensic records, prevents the relevant authorities from determining to what extent the gender of the victim influenced the killings. This makes the challenge of developing effective investigation strategies and prevention mechanisms or formulating public policies that take account of the many forms that discrimination takes in the perpetuation of these crimes almost impossible.

Other critical shortcomings in the investigative process include a lack of training in investigative techniques particularly in the collection and

preservation of forensic evidence. The gaps in the training of investigators in detecting signs of sexual violence and failure to properly record cause of death is symptomatic of the lack of appropriate action by the Guatemalan authorities to implement a gender-based approach to violence against women across all government bodies and demonstrates the vital need to integrate a gender perspective into preventive and investigative practices to combat violence against women.

In a number of instances, many of the authorities involved in the investigative process referred to outdated perceptions of the role of women in society that reflect a level of discrimination inconsistent with Guatemala's international obligations. While recognizing that the Guatemalan Government has attempted to address respect for women's human rights to some extent, the measures it has taken to date fall far short of addressing the magnitude of the problem.

Amnesty International offers the following set of recommendations to complement and reinforce those made by other international human rights bodies and experts.

### Recommendations:

Amnesty International urges the Guatemalan authorities to:

Publicly condemn the abduction and murder of women and girls and issue instructions that prevent officials from making unfounded public statements that dismiss or discredit the serious nature of the crimes being reported;

Carry out immediate, coordinated, full and effective investigations into all cases of abduction and murder of women and girls in Guatemala and ensure that the institutions involved – the PNC, the Public Ministry, the judiciary and forensic services attached to all three – collaborate fully and are provided with the necessary gender training, resources and technical assistance to fulfil their duties. Crime scene investigation, and autopsies must meet international standards and draw on international advice and expertise where necessary;

Set up an urgent search mechanism in cases of women and girls reported missing. This mechanism should be the first stage of a criminal investigation with full powers in which the relatives and their representatives are able to participate.

Compile a comprehensive list of women reported as missing - including the creation of a database to improve documentation and cross-referencing of case data - and to assume responsibility for establishing their whereabouts.

Make clear that the full force of the law will be brought to bear on those accused of violence against women and that those responsible, including members of the security forces and non-state actors, will be brought to justice;

Incorporate a gender perspective into the analysis and treatment of violence against women in policing and judicial practice as well as in all other institutions created to protect and monitor women's rights;

Ensure that the nature and dimension of gender-related violence is fully reflected in official reports, statistics, analyses and forensic records, that the collection of data is standardized and that it is used for implementing effective policies to end violence against women.

Draw up, implement and monitor standard guidelines and procedures to cover all stages of criminal investigations into reports of violence against women, particularly those areas of investigation relating to scientific evidence in accordance with international standards;

Increase the resources provided to the Office of the Special Prosecutor for Crimes against Women of the Public Ministry to improve efficacy of the investigations, ensure the full collaboration and cooperation of all other government departments and authorities with this office and extend the service to other areas of the country.

Strengthen and improve coordination between all state institutions dealing with violence against

women and improving respect for women's human rights.

Ensure that policies on public security specifically address violence against women in the home and in the community including the implementation of adequate warning and protection programs to prevent the abduction and murder of women;

Conduct education and advertising campaigns to promote zero tolerance of violence against women and to eradicate discrimination;

Bring legislation into line with international standards on violence against women, modifying or removing legal provisions that are discriminatory, and ensure that it is implemented and enforced.

Train judges in matters relating to violence against women and women's rights and encourage them to cite domestic and international legislation that protects women's rights in their rulings and verdicts.

