



A neighbor observes as the police investigate at the scene of a murder of an unidentified woman in Guatemala City, Guatemala, Friday, November 25, 2005. According to the police, 580 women were murdered in Guatemala that year.

Hidden in Plain Sight

Violence Against Women in Mexico and Guatemala

By Adriana Beltrán and Laurie Freeman

Introduction

Every woman has the right to live free of violence in both the public and private spheres, and to have access to effective justice to protect this right. This seemingly simple concept, affirmed in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the “Convention of Belém do Pará”) and subsequently adopted in international law, has transformed the hemisphere’s perception of violence against women. Not only does it transform the problem from a private matter into a public one, but it makes “a life free from violence” a fundamental human right, one that states are obliged to promote and protect.

Belém do Pará aims to tear down the wall separating private from public violence, a wall that made it acceptable for a man to beat his wife but not to hit a colleague in the workplace or assault a stranger on the street. Without such a wall, violence within intimate relationships or in the home must be treated as a crime, just like other forms of violence. Furthermore, although the state is not the direct perpetrator of the violence – as is the case with torture, forced disappearance, or extrajudicial execution, violations more traditionally addressed by the human rights community – Belém do Pará considers violence against women a human rights abuse because a state’s failure to prevent or punish it is tantamount to encouraging it.

Though important strides have been made to criminalize and raise awareness about violence against women, the wall shielding it from greater public scrutiny or outrage still exists. This is most immediately apparent in the lack of adequate studies on the prevalence or nature of the problem in Latin America. Still, the data that do exist are staggering. Violence against



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women affects huge swathes of the population like no other form of crime or human rights abuse. According to recent studies in ten countries, between 10 and 44 percent of women in Latin America and the Caribbean have been physically abused by their partner.¹ Young women and girls continue to be victims of rape, incest, sexual abuse, and sexual exploitation.

In Mexico and Guatemala, violence against women is widespread, cutting across boundaries of class, age, and ethnicity. Although both countries have ratified international women's rights instruments, the reality is that violence against women continues to occur at alarming rates. In Mexico, 44 percent of women over 15 years old have been victims of some form of intrafamily violence, and 60 percent of women between the ages of 15 and 34 reported such abuse.² According to conservative estimates, in Guatemala, 36 percent of women who live with a male partner suffer domestic abuse, including physical, sexual, or psychological abuse.³

The starkest expression of violence against women in Mexico and Guatemala is the continued and increasing killings of women and girls. The precise number of women killed in Guatemala is uncertain due to the lack of reliable statistics and differences among the criteria used by various agencies to compile data. This makes it difficult to lay out a precise picture of the extent of the problem of violence against women in the country. Police statistics reveal, however, that more than 2,500 women have been violently killed in Guatemala since 2001.⁴ In Mexico, in the border town of Ciudad Juárez, more than 400 murders have been reported since 1993; many of the victims were raped, sexually assaulted, tortured, and in some cases mutilated.

Because violence against women is both a crime and a human rights violation, the public security and criminal justice systems – specifically police, prosecutors, forensic experts, and judges – have a crucial role to play in responding to the problem. While a criminal justice approach alone cannot eradicate the problem, the institutions involved have an obligation to protect the

rights of women and apply due diligence to prevent, investigate and punish those who harm women. Failure to act would mean that the state is failing to meet its international responsibility and, more importantly, that it is perpetuating a culture of impunity by sending the message that it is acceptable to hit, rape, torture, and murder women.

Yet in both Guatemala and Mexico, authorities have continuously failed to carry out effective investigations into violence against women and bring those responsible to justice. Police and justice institutions are weak, ineffective, and often corrupt, inspiring distrust and even fear. Their general flaws are compounded by gender biases within the institutions, which act to systematically silence and discriminate against women. Their shortcomings cannot excuse them from their obligation; if they cannot do their jobs properly now, they must be reformed and brought up to the task. The safety, wellbeing, and human rights of women are at stake, and, by extension, the health, security, and wellbeing of society as a whole.

This brief report analyzes various programs and policies implemented by public security and criminal justice institutions in Mexico and Guatemala with respect to violence against women, especially the murders of women, in order to highlight weaknesses, point to promising initiatives, and provide recommendations for reform. It also explores the role that the international community, particularly the U.S. government, can play by providing technical assistance, fostering political will for reform in these countries, and bringing a gender perspective into their training programs and broader policies to promote police and judicial reform and the rule of law.

What is Gender-based Violence?

The United Nations has defined violence against women as any act:

that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of

*such acts, coercion, arbitrary deprivation of liberty, whether occurring in public or private life.*⁵

It includes but is not limited to rape, sexual assault and abuse, battery, systematic humiliation, forced sexual servitude, and murder, whether it takes place in an interpersonal relationship (by a family member or intimate partner) or in the larger community. It is known as “gender-based” because it “evolves in part from women’s subordinate status in society.”⁶ Cultural beliefs that women are inferior to men – and therefore subject to their demands, decisions, and control – perpetuate violence against women by accepting it as normal and tolerable. And women are often unable to leave abusive relationships because they are financially dependent on the men who commit violence against them.

Although both men and women can be victims as well as perpetrators of violence, the violence commonly committed against women greatly differs from that committed against men. While men are generally more likely to experience physical violence on the street by a stranger, women and girls are more likely to be assaulted or killed by someone they know, usually a family member or intimate partner.⁷ That does not rule out that women and girls are also attacked by strangers, a phenomenon that is common in settings such as armed conflict and displacement.⁸ Generally, women are also at a higher risk of being sexually assaulted or exploited at different stages of their lives.

Much has been written on the costs and impacts of gender-based violence. According to a World Bank study, violence against women has serious negative impacts on women’s health and well-being, ranging from fatal outcomes, such as homicide and suicide, to non-fatal outcomes such as physical injuries, increased instances of depression, complications during pregnancy, and lower birth weights.⁹ Gender-based violence also results in economic consequences such as increased absenteeism and decreased productivity at places of employment, lower earnings, and increased healthcare costs. Lost remuneration as a

consequence of gender-based violence has been estimated at between 1.6 and 2.0 percent of GNP in Latin America.¹⁰

The impact of gender-based violence extends to society as a whole. Behavioral research has demonstrated that domestic and social violence are closely intertwined and mutually reinforcing.¹¹ Children who experience or observe violent behavior in the home are far more likely to engage in violence themselves. Research shows that domestic violence significantly increases the likelihood that a child will be the perpetrator of violent behavior later in life, whether in domestic or social acts of violence.¹² According to a recent study, children exposed to violence between parents are almost three times more likely to engage in violence with their partners.¹³ Some experts also argue that an increase in social violence generates more domestic violence by lowering inhibitions against the use of violence.¹⁴

Despite its prevalence, its devastating impact on women’s lives, and its multiplier effect on social violence and public insecurity, gender-based violence remains largely invisible and unpunished.

Challenges of the Criminal Justice Approach

Criminal justice reform is a critical component of efforts to reduce gender-based violence. While a criminal justice approach alone will not be able to eradicate the problem, the justice sector can prevent and combat gender-based violence by sanctioning aggressors, raising awareness that violence against a woman is a crime, by increasing women’s access to the legal system, and by improving the range of interventions to protect victims.¹⁶ Police and judicial institutions have an obligation to ensure respect for and protection under the law. Failing to do so sends the message that gender-based violence is not a serious crime or a violation of women’s human rights.

Unfortunately, in both Mexico and Guatemala, law enforcement and judicial institutions continue to confront profound

Research shows that domestic violence significantly increases the likelihood that a child will be the perpetrator of violent behavior later in life, whether in domestic or social acts of violence.¹²

institutional weaknesses that have made them unfit to combat rising crime. Despite key reforms, the justice systems in both countries continue to deny the vast majority of the population equal access to justice and the effective protection of their rights. This problem is even greater when victims or their relatives lack sufficient resources to seek legal assistance, understanding of their rights or the system, and information for tracking cases. As a result, most crimes are not reported. Those crimes that are reported are not adequately investigated and generally remain unpunished, confirming citizens' lack of faith in the system.

In Mexico, "impunity was pervasive to an extent that victims often refused to file complaints."¹⁷ Of every 100 crimes, it is estimated that roughly 20 are reported.¹⁸ According to a police official in the Mexican state of Oaxaca, only four or five of those 20 crimes are actually investigated, and of the investigations that are opened, more than half are never resolved. That official also noted that these figures are broadly representative of the country as a whole.¹⁹

Moreover, widespread corruption and the infiltration of organized crime into state institutions have further compromised the justice sector's will or ability to sanction crime, thereby contributing to greater impunity and to society's even deeper distrust of the criminal justice system. Justice is a rarity when police, prosecutors, and judges are on the take or are fearful of incurring organized crime's wrath.

In Guatemala, organized crime has successfully infiltrated key public institutions, including the police and justice system. As noted by the Office of the UN High Commissioner for Human Rights, "various criminal groups are attempting to infiltrate and make use of state institutions in order to prevent progress in criminal proceedings, especially in cases involving corruption, serious human rights violations, organized crime or drug trafficking."²⁰

Consequently, judges, prosecutors, and justice workers are also constantly the target of death threats and attacks aimed at intimidating them or hindering their work.

From 2001 to mid 2005, for example, 469 cases of threats or attacks against justice workers were reported.²¹ In 2005, alone, eight judicial sector workers, including two judges, were murdered.²²

These institutional challenges pose a special challenge to investigating and prosecuting violence against women. According to the World Bank:

*In many settings, law enforcement institutions are under-funded, inaccessible, incompetent or even corrupt, making it impossible for them to enforce criminal law more generally. Governments often fail to budget resources for implementing changes in law and policies. Police and judges are often unwilling or unable to enforce laws related to gender-based violence. And, in many settings, girls and women remain unaware of the law or face social and economic barriers that make it impossible for them to exercise their rights.*²³

In the case of gender-based violence, the effectiveness of the criminal justice system is further compromised by discriminatory attitudes and prejudices of state authorities. Victims of gender-based violence are often re-victimized by police and judicial personnel who harass them, treat them dismissively, or blame them for their fates based on their clothing or their lifestyles. Such gender biases frequently impede these cases from being investigated and prosecuted seriously, and can consequently put a woman's life in even more danger. Throughout the judicial process, officials' judgmental attitudes about the victims can encourage or cause a woman to return to an abusive relationship.

It is no wonder that crime victims and their families so profoundly distrust the police, prosecutors, and courts. Policymakers and advocates encouraging these institutions to address gender-based violence must take the system's institutional weaknesses into account. The region's criminal justice institutions cannot, in their current state, effectively prevent or punish gender-based violence. Reforms within police and judicial agencies are needed in order to eradicate their gender biases and facilitate

International and Regional Milestones in Addressing Violence Against Women¹⁵

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), UN General Assembly, 1979

In 1979, the UN General Assembly adopted the CEDAW. Since it entered into force in September 1981, the CEDAW has served as an international Bill of Rights for women. The Convention guarantees women equal rights with men in all spheres of life, including education, employment, healthcare, enfranchisement, nationality, and marriage. In 1992, the Expert Committee monitoring its implementation recognized that violence against a woman because she is a woman is a form of discrimination against women.

<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

World Conference on Human Rights (Vienna Declaration and Program of Action), 1993

The Vienna Declaration and Program of Action affirmed that women's rights are a fundamental part of all human rights. The Declaration also asserted the importance of eliminating violence against women in both public and private life.

[http://193.194.138.190/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://193.194.138.190/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)

Declaration on the Elimination of Violence Against Women, UN General Assembly, 1993

In 1993, the United Nations General Assembly resolved that violence against women "...constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms." The Declaration further states that "opportunities for women to achieve legal, social, political and economic equality in society are limited, *inter alia*, by continuing and endemic violence." It also establishes that violence against women encompasses, but is not limited to, physical, sexual and psychological violence occurring in the family or community and perpetrated or condoned by the state.

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?OpenDocument)

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará), 1994

The Convention recognizes that women have the right to a life free of violence in both public and private spheres, and denounces all forms of violence against women. The Convention also obligates states to adopt policies and programs to prevent, punish, and eradicate violence against women.

<http://www.oas.org/cim/English/Convention%20Violence%20Against%20Women.htm>

Fourth World Conference on Women (Beijing Declaration and Platform for Action), 1995

The Beijing Platform for Action recognized violence against women as an obstacle to the achievement of equality, development and peace, and as an act that violates the enjoyment of women's rights and freedoms. The document also specifically declared that violence against women is one of the twelve critical areas of concern towards which governments, the international community, and civil society should focus their efforts in order to achieve gender equality and the advancement of women.

http://www.un.org/womenwatch/daw/beijing/beijing_declaration.html

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999

The Protocol enables individual women or groups to file complaints with the United Nations when violations of their rights are not adequately redressed in local courts. It also empowers the UN Committee on the Elimination of Discrimination Against Women to investigate situations of systemic or serious violations of women's human rights.

<http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>



PHOTO BY LAURIE FREEMAN, WOLA

Just across from El Paso in Ciudad Juárez, this monument uses large nails surrounding a cross on a pink background to symbolize the murdered women of Ciudad Juárez.

Law enforcement institutions are underfunded, inaccessible, incompetent or even corrupt.
—World Bank

the investigation and prosecution of gender-based violence without losing sight of the victims' needs or interests. Yet in order to improve the criminal justice system's ability to address violence against women in the long run, it is imperative that focus be given to overcoming broader institutional and technical weaknesses, eliminating opportunities for corruption and breaking ties to organized crime. These reforms will benefit women victims of violence as well as society overall, in terms of lower rates of youth crime and violence, increased contributions of women to the economy, and more professional, effective, and responsive police

and judicial institutions in the service of all.

Gender-based Violence in Mexico and Guatemala

Although significant progress has been made in understanding and addressing the problem of violence against women, it remains widespread—inside and outside the home—in Mexico and Guatemala. According to a 2003 national survey, one in four women in Mexico has been the victim of physical violence at least once in her lifetime, and one in six women has experienced sexual violence.²⁴ The same survey revealed that domestic violence is the most prevalent form of violence in the country, with one in every five women living in a relationship that is characterized by physical, sexual and/or psychological abuse.²⁵ Today, Mexico has one of the highest rates of rape for women in the world.²⁶

In Guatemala, domestic and sexual violence continue to occur at alarming rates. From January to September 2005, alone, the Public Prosecutor's Office reported having received more than 13,703 complaints of family violence.²⁷ According to the Network for Non-Violence Against Women, it is estimated that 90 percent of incidents of domestic violence go unreported.²⁸ Prosecutors from the Special Unit of Crimes Against Women noted that reports

of rape had increased by 30 percent over the past four years.²⁹ Yet, it was not until 2006 that the law which permitted a rapist to escape charges by marrying the victim was finally abolished.

Indigenous people constitute approximately 43 percent of the Guatemalan population. The law provides for equal rights for indigenous people, yet indigenous women continue to face multiple forms of discrimination, which deny them the full enjoyment of their rights and increases their vulnerability to violence. Discrimination is reflected in the rejection of their traditional dress, their limited access to education and basic public services, and the lack of opportunities in the workplace and access to land.³⁰ According to the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, "indigenous women experience the lowest levels of economic and social well-being."³¹ While efforts have been made to improve the social and legal services provided to indigenous women, there is an absence of statistical information regarding the situation of indigenous women.³² State agencies responsible for citizen security and policies for preventing violence against women fail to take into account the ethnicity of women in their statistics, reports or other documentation.³³ Indigenous women continue to face numerous barriers, particularly with regards to language, when trying to access the justice system.

The prevalence of violence against women today in Guatemala has its roots in the history of discrimination, exclusion and violence suffered by women, which was most evident during the 36-year internal armed conflict that ended with the signing of the 1996 Peace Accords. According to the United Nations Historical Clarification Commission (CEH), approximately 50,000 women were "disappeared" or extrajudicially executed during the armed conflict.³⁴ The CEH's investigation revealed that the rape of women, during torture or before being murdered, was a common practice.³⁵ Thousands of women were left widowed and the sole breadwinners for their children, often with no resources after the

scorched-earth policies resulted in the destruction of their homes and crops.³⁵ The state's failure to bring to justice those responsible for the atrocities perpetrated during the war or to fully implement the commitments regarding women's rights contained in the Peace Accords has left a terrible legacy that continues to foster much of the discrimination and violence that threaten the lives of Guatemalan women today.

Investigative and Prosecutorial Shortcomings

Both Mexico and Guatemala are parties to a range of international treaties and standards for the promotion and protection of women's rights, including the United Nations Convention on the Elimination of all Forms of Discrimination Against Women, the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Convention of Belém do Pará, among others. They have taken significant steps toward fulfilling international obligations. Yet the gap between the law and its implementation is still disturbingly wide, creating numerous barriers to justice for women victims of violence. Authorities fail to adequately and promptly investigate cases and punish and prosecute those responsible. They tend to blame the victims and fail to see gender-based violence as a serious crime. In some cases anachronistic laws remain on the books, in outright contradiction of international norms. The issue's low priority is reflected in the lack of resources, equipment and training within police and judicial institutions.

Police Practice

Police are often the first to be called to respond to, and intervene in, instances of gender-based violence. It is imperative, therefore, that police be trained to respond effectively and sensitively to the needs of the victim. Timely and responsive law enforcement intervention can deter further violence, improve investigations, and facilitate successful prosecution.

Although laws and police policies for responding to violence against women exist, the persistence of discriminatory attitudes, lack of understanding of the dynamics of violence against women, and lack of sensitivity has meant that police fail to respond promptly to reports of domestic violence, intervene in violent situations, open investigations when a woman is reported missing, or adequately follow-up on complaints.

Following her latest official visit to Mexico, the UN Special Rapporteur on Violence Against Women noted with concern that in Ciudad Juárez, for example, the municipal police often fail to dispatch patrols when a case of violence against women is reported.³⁶ This is not surprising given the municipal police chief's dismissive attitude. When asked by WOLA about the role of the police in responding to violence against women he said: "It's not a police problem; it's a social problem."³⁷ In cases in which the police respond, a prosecutor in Mexico City explained that they cannot enter the house without a protection order. Worse, they often try to convince the woman she should not try to leave her husband.³⁸ In Guatemala, the law requires police protection for victims as well as for the police to intervene in violent situations in the home. In practice, however, police officers often fail to respond to requests for assistance in cases of violence in the family.³⁹

Changing attitudes towards violence against women is a long-term process that demands significant attention and resources dedicated to appropriate and strategic police training. Yet law enforcement officials receive very little training in how to attend to victims of gender-based violence. According to Mexico City authorities, the judicial police receive about two hours of training in how to handle victims out of a full year of training, enough to "give them a varnish" but not ensure that they will treat victims with respect and sensitivity.⁴⁰

In the case of Guatemala, efforts have been undertaken to improve the training given to police officers. Of the 1,315 training sessions taught at the Police Academy,

Timely and responsive law enforcement intervention can deter further violence, improve investigations, and facilitate successful prosecution.

[In Guatemala] perpetrators can only be charged with an offense if signs of physical injury remain visible for at least ten days.⁵⁰

twenty-four are dedicated to topics related to gender-based violence, including types of domestic violence and people at risk of domestic violence.⁴¹ According to the Director of the Police Academy, officers are taught about violence prevention and police procedures for how to intervene in cases of violence against women.⁴² Officers are also given specialized trainings, including courses related to the murders of women. Observers have noted, however, that the training officers receive on gender-related topics is minimal and lacks a focus on practical tools to adequately prepare them for how to effectively investigate or assist victims. In the cases of Guatemala and Mexico, these first steps towards institutionalizing some sort of training lack vital components such as participation by all levels of personnel, including high-level officials, and the necessary accompanying changes to institutional policies, procedures, resources and monitoring.⁴³

In both Mexico and Guatemala, police officers rarely receive follow-up or refresher courses on gender-related topics. Efforts to provide additional courses have been more the product of concerned organizations or high-level individuals within the police than an attempt to institutionalize new practices.

Prosecutorial Practice

Important strides have been made in enacting legislative reforms related to women's rights in both countries. Guatemala, for example, enacted the Law to Prevent, Punish and Eradicate Intrafamilial Violence, and the Law for the Integral Advancement and Dignity of Women.⁴⁴ Since Mexico has a federalized structure of government, legal standards to prevent and address gender-based violence differ significantly throughout the country. Twenty-three of 31 Mexican states and the Federal District have adopted legislation to prevent and punish domestic violence.⁴⁵ Amendments to the penal code to include domestic violence as a specific offense have also been made in 19 states and the Federal District.⁴⁶ In February, Mexico passed a law that requires federal and local authorities

to prevent, punish and eradicate violence against women⁴⁷. The law calls on states and municipalities to issue legal norms, allocate resources and put in place the mechanisms to guarantee women a life free from violence. While it is the first federal measure to combat domestic violence and other forms of violence against women, concerns have been raised about the lack of infrastructure and sensitivity on the part of the authorities necessary for its full implementation.

Despite these steps, there are still large barriers that deny women meaningful access to legal redress and protection from further violence. A number of discriminatory provisions remain on the books, and worse, there are still certain acts of violence that have yet to be typified as crimes. In Mexico, for example, the penal code of twenty states does not criminalize marital rape,⁴⁸ and eleven states do not recognize domestic violence as a specific ground for divorce.⁴⁹ Similarly, in Guatemala, violence against women in the family, including marital rape, is not defined as a criminal offense. As a result, perpetrators can only be charged with an offense if signs of physical injury remain visible for at least ten days.⁵⁰ Prosecutors never take into account the frequency of the attacks or the use of psychological or other forms of gender-based violence recognized by international law.⁵¹

In other cases, crimes are still defined based on the victim's "reputation." According to Guatemala's Penal Code, sexual relations with a minor is only a crime as long as the victim is considered "honest" or chaste.⁵²

The lack of reliable physical and scientific evidence results in cases having to rely solely on witness testimony, further jeopardizing a woman's chances of prosecuting her aggressor. The careful documentation of physical and psychological harm and the collection of scientific evidence can be decisive in building an effective criminal case against a perpetrator. Yet, in both Mexico and Guatemala, authorities fail to ask the appropriate questions or properly handle the evidence. According to a recent report, for example, investigators in Guatemala

believe that physical evidence is hard, if not impossible, to find at the scene of the crime in cases of rape or sexual violence.⁵³ In other instances, the lack of coordination among prosecutors, forensic doctors, and psychologists forces the victim to undergo several times the necessary forensic exams and procedures, thereby increasing the victim's trauma.

These obstacles are further compounded by the dismissive attitudes and discriminatory behavior of some prosecutors, and by the lack of free and effective legal counsel to help victims navigate their way through the legal system. Victims and relatives have often complained of encountering abusive treatment and rejection of their complaints. Moreover, while both Mexican and Guatemalan law allow victims to participate in the investigation through a process known as "*coadyudancia*" in Mexico and "*querellante adhesivo*" in Guatemala, the process is complicated, and without legal assistance, poor victims are unable to take advantage of it.

As a result of these obstacles, cases of gender-based violence are not investigated or prosecuted seriously. In Guatemala, "half of the victims of domestic violence who filed complaints failed to pursue their cases after their initial visit to the Public Prosecutor's Office."⁵⁴ In fact, the Public Prosecutor's Office achieved convictions in only 105 of the 3,906 cases it opened in 2005, less than three percent of the total.⁵⁵ The abusers are free to continue abusing, and women are vulnerable to further violence.

Prosecutors are not provided with adequate training to reduce gender stereotypes or improve their technical capacity to handle valuable evidence. Some concrete steps, however, have been taken to improve the treatment afforded to victims of gender-based violence, particularly with regard to enhancing the training provided to prosecutors. In Guatemala, for example, the Training Department and the Office of Attention to Victims⁵⁶ of the Public Prosecutor's Office have both given greater attention to developing new training modules on violence against women.

Rights advocates have welcomed these steps, while noting that more time needs to be devoted to specific training on gender-based violence and on ensuring that trainers have the appropriate background, commitment, and expertise in gender-related issues.

Court Practice

Women who are finally able to file a case of sexual or domestic violence face additional hurdles in the courts. As in other steps of the legal process, the discriminatory attitudes of judges and their lack of understanding of gender-based violence and international law often influence trial procedures. Perpetrators of sexual crimes are often pardoned and sentencing depends more on the personal criteria used by the judge.

In one case from Mexico, a woman who had been battered by her husband sought a divorce on grounds of domestic violence. The first-instance court granted her the divorce and custody of her children, but ordered her to go to family therapy with her former spouse. The appeals court overruled the divorce, saying that psychological evidence was not sufficient proof of domestic abuse. The appeals court then contradicted itself, blaming the woman for the violence against her and holding her responsible for exposing her children to violence. According to the court, "domestic violence is a shared life-style" and "the partner who allows the other to commit acts of domestic violence is equally guilty and responsible."⁵⁷

The judiciary's disregard for violence against women as a serious crime is also clearly reflected in the frequent use of mediation or reconciliation to resolve cases. Mexican and Guatemalan judges often encourage the victim to choose mediation over prosecution, and in some cases simply advise the victim to return to her partner. This is counter-productive and dangerous, since it assumes that both parties enter



PHOTO BY JOSÉ LUIS MAGAÑA

Candlelight vigil for the murdered women in Ciudad Juárez.

According to a [Mexican] court, "domestic violence is a shared life style" and "the partner who allows the other to commit acts of domestic violence is equally guilty and responsible."

In the state of Morelos, women's groups have denounced a similar pattern where bodies of women, showing extreme violence and sexual assault, were found discarded in empty lots, drainage ditches, and along roadsides.

the negotiation on equal terms, which is clearly not the case when a woman has been beaten or raped by her partner.

In other instances, justice officials avoid full prosecution of first-time offenders in order to overcome the huge backlog of cases before the tribunals. The decision to use this mechanism, known in Guatemala as the opportunity criteria (“*criterio de oportunidad*”), is left to the complete discretion of the justice official overseeing the case. In practice, judges have commonly invoked the “*criterio de oportunidad*” in cases of sexual crimes, deeming the accused to be a low-risk, non-violent offender. This “solution” submits the victim and the accused to a process of mediation and fails to take into account any possible reprisals against the victim for having filed charges. It also downplays the severity of the crime. In a recent incest case involving a minor, the offender was ordered to pay less than US\$39 in reparations.⁵⁸

Complicated and confusing procedures for obtaining restraining orders obstruct women's ability to get protection. Victims receive little information about how to file a complaint and end up having to visit multiple offices in search of a protective measure. As one Guatemalan judicial official told WOLA, “victims often find themselves in an unnecessary pendulum” that not only re-victimizes them but also fails to protect them from further violence.⁵⁹

The problem is further compounded by the inability of the judiciary to enforce laws. Authorities rarely ensure compliance with the protection orders. Once the order has been issued, the police visit the house once at most. According to a Guatemalan judicial employee, in some cases, the aggressors are notified before the victim that the restraining or protection orders have been issued, placing the victim at greater risk.⁶⁰

Murders of Women in Mexico and Guatemala

Ciudad Juárez, Mexico has become synonymous with the murders of women. Since 1993 more than 400 women and girls have been killed or disappeared in Ciudad Juárez

and Chihuahua City (both in the state of Chihuahua). Amnesty International estimates that more than 100 of the victims were sexually assaulted prior to their deaths.⁶¹ Most of the killings have not been satisfactorily resolved. The problem, however, is not limited to Chihuahua. International attention on the Juárez murders has helped shed light on the brutal killings of women throughout Mexico. Between August 2005 and June 2006, the bodies of eight women, showing signs of rape and extreme violence, were found in Chimalhuacán and Nezahualcóyotl, in the state of Mexico outside of Mexico City.⁶² All of the victims had their feet and hands bound; six had been strangled and two had been butchered.⁶³ In the state of Morelos, women's groups have denounced a similar pattern where bodies of women, showing extreme violence and sexual assault, were found discarded in empty lots, drainage ditches, and along roadsides.

In Guatemala, police statistics reveal that since 2001, more than 2,500 women have been murdered. According to police records, while violent deaths in general have increased dramatically in Guatemala, the percentage of women killed within the overall total has steadily grown in the last four years. In 2003, women accounted for 9 percent of all murders, in 2004 11.7 percent and in 2005 12.46 percent.

As in Ciudad Juárez, many of the victims in Guatemala were raped, tortured or mutilated before being killed. The Guatemala Human Rights Ombudsman noted that:

In the case of women, the brutality used in cases of mutilation is definitely unique in comparison to male victims. Although sexual violence has been used in the case of many murdered women, it is also true 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.*⁶⁴

The disappearances and killings of women must not be viewed as isolated incidents, but as a manifestation of a continuum of gender-based violence that takes many forms. The killings are the result of governmental and societal apathy towards and tolerance of gender-based violence, the product of a criminal justice system that has been unable and unwilling to guarantee women equal access to justice and protection under the law. As the UN Special Rapporteur for Violence Against Women explained, “the absence of a rule of law fosters a range of violent acts against women, including rape, domestic violence, sexual harassment, and eventually, murder.”⁶⁵

Flaws in Murder Investigations and Prosecutions

Similar to other forms of gender-based violence, the cases of murdered women are marred with numerous investigative shortcomings. Reports and field visits conducted by WOLA point to the following weaknesses and irregularities in the investigations into the killings of women in Guatemala, Ciudad Juárez and Chihuahua City, Mexico:

Delays in opening investigations. Police fail to adequately respond to emergency calls or promptly respond to reports of a disappearance. Often times, police are quick to wrongfully assume that the victim is missing of her own accord and fail to carry out a proper investigation to determine whether a crime has been committed. Police often wait 48 to 72 hours to begin a search for a missing person, a practice that has no basis in law. Delaying the opening of an investigation reduces the chances of finding the woman alive or identifying the perpetrators.

Failure to preserve the crime scene.

Police frequently fail to cordon off the scene. In Guatemala, for example, voluntary fire fighters are usually the first to arrive on the scene and often inadvertently destroy valuable pieces of evidence.

Failure to collect and preserve

evidence. Material evidence is often not gathered appropriately. Forensics personnel have failed to identify victims, determine cause and manner of death (including whether or not the victim was sexually assaulted prior to her murder), and collect, preserve, and examine evidence that might contain information about the killers. In Guatemala, the lack of coordination among the different forensic services attached to the Public Prosecutor’s Office, police and judiciary has contributed to the frequent failure in collecting evidence and maintaining the chain of custody.⁶⁶ In Mexico, contradictory forensic results – such as a DNA test concluding the victim was a young woman, while the anthropological study concluded the victim was an old man – are not reconciled to establish the truth, but instead all form part of the same investigative file.

Failure to properly coordinate among institutions involved in criminal investigations.

In Guatemala, the Public Prosecutor’s Office is in charge of initiating and overseeing all criminal investigations. Prosecutors are responsible for interviewing witnesses and closely directing the activities of the police. The lack of clarity about responsibilities and information-sharing continues to generate weak cases, organizational rivalries and the duplication of efforts.

Constant rotation of investigators. The constant transfer of prosecutors and investigators results in unnecessary delays in the progress of investigations.

Failure to interview witnesses. In many cases, the authorities fail to seek information from family members, friends, co-workers and others who might have last seen the victim or have other insights.

Harassment of and indifference towards victims’ families and advocates.

Police and prosecutors too often express disdain for victims’ families and advocates, brushing aside their suggestions on possible

As the UN Special Rapporteur for Violence Against Women explained, “the absence of a rule of law fosters a range of violent acts against women, including rape, domestic violence, sexual harassment, and eventually, murder.”⁶⁵



PHOTO BY LAURIE FREEMAN, VOILA

Families of the victims in Ciudad Juárez have set up pink crosses adorned with flowers and in some cases photos of their daughters.

leads. They also often treat their families with hostility and contempt.

Failure to sanction personnel who have committed acts of criminal negligence, malfeasance, or abuse.

Criminal justice personnel are rarely held accountable for failing to conduct proper and prompt investigations. In Mexico, a federal review of the Ciudad Juárez murder investigations determined that 177 law enforcement authorities had been negligent or malfeasant in their duties. None have been held accountable. Although the state attorney general fired, suspended, or re-assigned a few personnel because of concerns about corruption and negligence, the five officials charged with abuse of authority had their cases dismissed for lack of evidence or expiration of the statute of limitations.

Blaming the Victim: Beyond Technical Shortcomings

While many of the flaws in the investigation of the killings of women can be attributed to a lack of resources and technical capacity, it is also a question of political will. Experience shows that technical resources and police training will not automatically result in effective investigations.

In addition to the numerous technical and structural failures, the Mexican and

Guatemalan authorities' approach to the investigation of murder is marred by the same discriminatory attitudes that characterize the treatment of other types of gender-based violence. The result is that officials tend to blame the victims for their fates, often alleging involvement in criminal activity or claiming that it is the result of spurning their intimate partners.

For example, in Ciudad Juárez and Chihuahua City, local officials originally claimed the murder victims were prostitutes – implying that they were willingly putting themselves at great risk. Federal officials have since recycled that argument in a recent report that falsely concludes that most of the Juárez victims were sex workers, drug pushers or users, or other criminals.⁶⁷ In the case of Guatemala, police officials attribute the recent rise in violent murders of women to the fact that more young women are joining gangs – they're becoming increasingly involved in criminal activity and getting killed for it. High level officials from the Guatemalan National Civilian Police all expressed the belief that "women's liberation" was the cause of the increased number of murders and concurred that there were few "innocent" victims.⁶⁸

In other cases, criminal justice officials have described women's murders as "personal problems" or "crimes of passion." In Mexico City, for example, with about 100 women's murders per year, homicide investigators characterized 70 to 80 percent of murders of women as "crimes of passion."⁶⁹ Prosecutors explained that in many cases the murders occurred as a result of the woman leaving the relationship. In Guatemala, the police use the term to classify cases in which "the victims are women who have been married more than once" and when "the suspects and even those arrested turn out to be former partners who do not seem to have entered into another relationship."⁷⁰

Classifying the killings of women in such a way not only implies that violence is an unfortunate but natural by-product of some intimate relationships gone wrong, but also implicitly legitimizes gender-based violence on the basis of what is culturally considered inappropriate female behavior.

Political Will and Impunity

National and international attention on the murders of women has helped encourage Mexican and Guatemalan authorities to recognize the problem and take a number of steps to improve the investigation and prevention of violence against women.

In Mexico, the Fox administration appointed two senior officials to handle prevention and investigative efforts regarding the murders of women in Ciudad Juárez. In 2004, a federal special prosecutor was appointed to review the investigations into the Juárez women's murders. Two years later, the special prosecutor's responsibilities were expanded to all of Mexico. A Commission to Prevent and Eradicate Violence Against Women in Ciudad Juárez, which coordinates efforts of federal, state and local agencies, was also created in 2004. Under the new Calderón administration, the future of the Commission is still uncertain. There is speculation that it will either be eliminated or turned into a federal agency. Proposals have also been presented before Congress to discontinue the Commission and use the funds for the implementation of the recently approved violence against women law. Additionally, the Chihuahua State Attorney General began an ambitious program to reform the administration of justice, with assistance from the U.S. Agency for International Development that includes efforts to enhance the capability of Chihuahua police and prosecutors and make the criminal justice system more transparent.⁷¹

In Guatemala, the government has established various special institutions for addressing the killings of women. In 2004, following the official visit of the Inter-American Commission on Human Rights Rapporteur on Women's Rights, a special unit was established within the Criminal Investigations Division to investigate the murders of women. Within the Special Prosecutor's Office for Crimes Against Life, four offices dedicated solely to investigating the killings of women have also been created⁷² are dedicated solely to investigating the killings of women. In addition, the Public Prosecutor's Office now has a unit dedicated to developing case theories and

evidence analysis, which is available at the request of prosecutors in need of assistance with case analysis. Further, in March 2006, the Guatemalan government established the National Commission to Address Femicide,⁷³ which seeks to develop a diagnostic study of the situation and improve coordination among the state institutions responsible for resolving and preventing the killings.

While these initiatives need to be viewed positively, they have had little impact on the numbers of women killed or the ability of the criminal justice system to effectively investigate and prosecute those responsible. The numerous investigatory flaws, discriminatory attitudes and lack of political will still result in the overwhelming majority of cases remaining unresolved and the perpetrators unpunished.

In Guatemala, due to the lack of evidence, a large number of cases never leave the investigation phase, and those that do are hampered at trial. In early 2006, police and prosecutors reported that 40 percent of the killings were never investigated and thus were archived.⁷⁴ To WOLA's knowledge, only 20 sentences have been handed down for the more than 2,500 murders over the last six years.

In Mexico, there are serious concerns about the legitimacy of some of the convictions achieved by prosecutors because of concerns about the possible use of torture to obtain confessions. According to the

A march in downtown Guatemala City shows friends of Claudina Velásquez, killed in August 2005, holding signs proclaiming, "CLAUDINA VELÁSQUEZ LIVES IN OUR HEARTS"

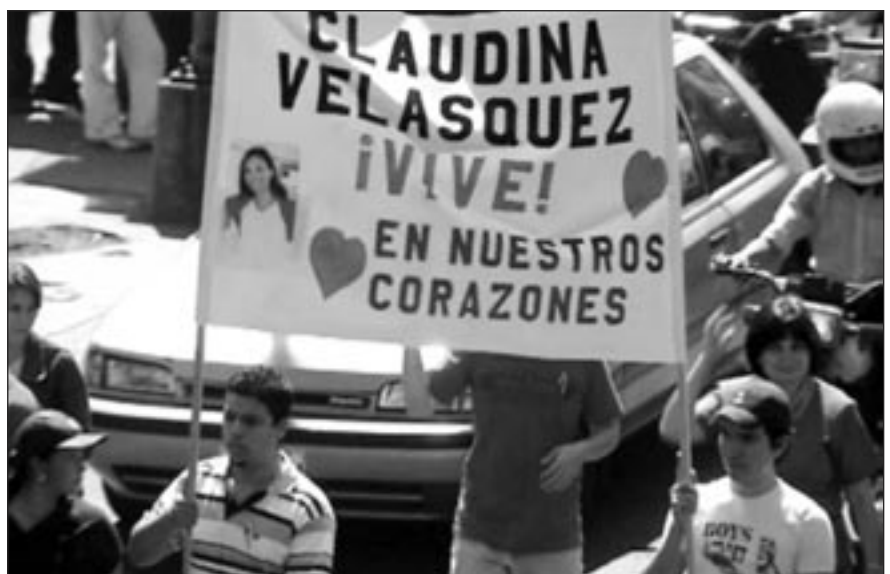


PHOTO BY KILLERS PARADISE, BBC

UN Committee on the Elimination of Discrimination against Women (CEDAW), “[I]n the cases involving sex crimes, the murderers have acted with full impunity. Nearly all sources, including statements and comments made to the experts by Federal Government officials ... have made it clear that the local authorities, both state

and municipal, are assumed to have a years-long history of complicity and fabrication of cases against the alleged perpetrators.”⁷⁵

The message sent by the widespread impunity that has come to characterize the murders of women in Guatemala and Mexico is that women’s lives are of little worth.

Conclusions and Recommendations

Important strides have been made in criminalizing violence against women and raising awareness about the problem in both Mexico and Guatemala. Gender-based violence, however, remains prevalent and largely unpunished, in part because police and justice officials fail to investigate cases and prosecute those responsible. The absence of a functioning criminal justice system has contributed profoundly to a continuum of violent acts against women. It has also led to a pervasive sense of insecurity among women. Much more must be done to ensure that

women are guaranteed their basic human right to a life free from violence.

Developing effective prevention and response strategies to gender-based violence requires a multi-faceted and multi-sectoral approach. Attention must be given on many levels – prevention, education, prosecution and economic development – and by multiple sectors – governments, international donors, civil society, educators, healthcare providers, churches, the media, and the business community – to promote and protect this basic human right.

The failure of the Mexican and Guatemalan authorities to investigate, prosecute and punish those responsible for violence against women has contributed to the continued atmosphere of impunity and profound lack of faith in the system. Turning the situation around will require a serious and concerted effort to reform and strengthen the Mexican and Guatemalan public security and judicial institutions. Nevertheless, it is an effort that must be made. Reform processes, however, must be multi-faceted and address all the related institutions in a coordinated fashion.

A criminal justice system is only as strong as its weakest link. Changes in one institution, therefore, may be undermined by a lack of change in another. Improving states’ responses to violence against women requires

addressing every step of the process. Following are recommendations for local and international policymakers, donors, and corporate stakeholders/businesses concerned about violence against women:

Recommendations for the Governments of Mexico and Guatemala:

Publicly Condemn Violence Against Women: States must send an unequivocal message that violence against women is a serious human rights violation that will be investigated, prosecuted, and punished regardless of the perpetrator.

Increase Women’s Awareness of their Right to a Life Free of Violence: There must be education and media campaigns to raise awareness about laws for the defense and promotion of women’s rights.



PHOTO BY ADRIANA BELTRÁN WOLA

Jorge Velásquez, father of Claudina, speaks to members of the House of Representatives and their staff during an October 2006 congressional briefing in Washington, DC.

Bring National Legislation Into Line with International Standards and Ensure that Laws are Adequately Implemented and Enforced: Existing anachronistic legal provisions must be reformed in accordance with Guatemala and Mexico's international obligations and in order to provide women with sufficient protection against violence.

Invest in Training on Gender Violence for Law Enforcement and Judicial Personnel: Existing training efforts must be intensified to provide continuously updated trainings on the protection of women's rights, gender-specific investigative techniques, and sensitivity to the needs of victims and their relatives.

Implement Evaluation and Oversight Mechanisms to hold Authorities Accountable for Failing to Uphold and Enforce Gender-Based Violence Legislation: Both the Guatemalan and Mexican governments should undertake serious efforts to set in place evaluation and oversight mechanisms to hold accountable law enforcement officials and justice sector personnel whose failure to adequately investigate violence against women, whether through negligence, omission, ignorance or abuse, has led to impunity for gender-based violence.

Bolster the States' Capacity to Conduct Forensic Investigations: In Guatemala, the establishment of the recently approved National Institute of Forensic Sciences⁷⁶ is vital to overcoming many of the current flaws in how evidence is gathered and handled. This will require that it be granted sufficient funds and training.

In Mexico, the Argentine Forensic Anthropology Team (EAAF), which has been conducting forensic investigations in order to identify the remains of all unidentified female murder victims in Ciudad Juárez and Chihuahua,⁷⁷ will issue a final report with recommendations for improving forensic capacity upon completion of their investigation. These recommendations should be studied and implemented.

Develop and Institutionalize Procedures and Protocols to Investigate Gender-Based Violence: Police, prosecutors and judicial institutions should develop and institutionalize protocols, guidelines and procedures for responding to cases of violence against women, including all stages of criminal investigations and for working with victims, relatives and witnesses.

Dedicate Sufficient and Appropriate Resources to Police, Prosecutors, Judges and other Criminal Justice Sector Institutions: Effective prevention and response to gender-based violence requires political will and investment in the criminal justice sector institutions.

Improve Services Afforded to Victims, Family Members and Witnesses: Fear of reprisals and lack of effective protection measures results in many victims, families and witnesses being too afraid to provide testimony. Breaking this cycle will entail the adoption of measures and policies to provide victims and witnesses with protective and support services, while implementing long-term measures to restore trust in the criminal justice system.

Modernize and Synchronize Data Collection Systems Between and Among Criminal Justice Institutions: A synchronized, computerized system of statistics, coordinating the efforts and information of the involved agencies, could both reduce the duplication of efforts on the part of the individual institutions and also lead to much more complete, credible data.

Improve Inter-agency Coordination: Efforts should be made to improve the quality of criminal investigations and to place emphasis on strengthening inter-agency coordination, particularly between police investigators and public prosecutors, and on ensuring that these initiatives receive full political and financial backing.

Address the Structural and Systemic Problems within the Public Security and Criminal Justice Systems: In order to improve the criminal justice system's ability to respond to violence against women in the long run, it is imperative that focus be given to addressing the widespread institutional weaknesses that plague the system – corruption, lack of transparency, ineffectiveness, and ties to organized crime.

Recommendations for U.S. Policymakers:

Raise Concerns with Mexican and Guatemalan Officials: U.S. officials should regularly raise concerns about violence against women in Mexico and Guatemala with officials at all levels and in all encounters.

Include Gender-Based Violence Concerns in Trainings and Institutional Reform Programs with Mexico and Guatemala: U.S. programs aimed at strengthening law enforcement and judicial sector institutions in Mexico and Guatemala should incorporate issues related to violence against women and efforts to promote and protect women's rights.

Provide Assistance to Initiatives to Strengthen the Mexican and Guatemalan Governments' Capacity to Respond to Violence Against Women: The United States should provide assistance to initiatives that directly aim to contribute to the protection and promotion of women's rights, and to enhancing the states' capacity to investigate and resolve the murders of women.

Promote Transparency and Accountability of Criminal Justice Agencies: Justice reform programs should include special emphasis on enhancing transparency and oversight within state agencies, establishing open channels of communication with civil society groups, especially with victims and their families.

Recommendations for the Private Sector:

Make Public Statements Expressing Concern about Violence Against Women: As a key sector in Guatemala and Mexico, the business community can help encourage greater attention in responding to violence against women, by expressing concern and urging the authorities to take effective action.

Provide In-house Education and Training on Violence Against Women: With the guidance of independent experts on gender-based violence and local women's rights organizations, the private sector can develop and institute workplace training and education on gender-based violence for employees and management, as well as establish mechanisms for detecting and reporting incidents of violence against women and harassment in and out of the workplace.

Sponsor Public Information Campaigns About Gender Violence and Women's Rights: The private sector can contribute to creating a culture of zero tolerance for violence by sponsoring public awareness campaigns. For maximum effectiveness, these should be designed in conjunction with experts from local women's organizations.

Build Partnerships with Local Groups Addressing the Issue of Violence Against Women:

The business sector can collaborate and assist groups working to protect women's rights by providing contributions and/or encouraging employees to volunteer their time and services to support and treatment services available to victims.

This report was written by Associate on Violence Against Women Adriana Beltrán and Fellow Laurie Freeman, both from the Washington Office on Latin America (WOLA). They would like to thank Executive Director Joy Olson and Vicki Gass, Senior Associate for Rights and Development, for their invaluable comments and suggestions, as well as Program Officer Joel Fyke for editing and publication assistance. This report was made possible by the generous support of Sally Yudelman, the Moriah Fund, the Tula Foundation, and the Public Welfare Foundation.

Endnotes

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- ² See <http://www.inmujeres.gob.mx/dgede/violencia/violencia.htm>.
- ³ United Nations, Economic and Social Council, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Yakin Ertürk, Mission to Guatemala* (New York: Commission on Human Rights, Sixty-first Session, E/CN.4/2005/72/Add.3, 2005), 11.
- ⁴ Data on the number of women killed to date differ among the Public Prosecutor's Office, National Civilian Police, the Judiciary and non-governmental organizations. The Criminal Investigations Division (DINC) of the National Civilian Police (PNC) reports that 2,686 women were murdered from 2001 to 2006. However, statistics given to WOLA by other police units place the number of women killed at over 2,800 for the same period. Notwithstanding, while the statistics differ, they all indicate a continued violent killing of women. The figures for Guatemala used in this report are based on data provided by the police criminal investigations division.
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- ¹⁵ United Nations Development Fund for Women, *International and Regional Instruments to Eliminate Violence Against Women: 16 Days of Activism Against Violence Against Women November 25 – December 10, 2006*, 2006 (United Nations Development Fund for Women, 2006), 1-2. Mexico ratified CEDAW in 1981 and the Optional Protocol in 2002. Guatemala ratified CEDAW in 1982 and the Optional Protocol in 2002. The Belém do Pará convention was ratified by Guatemala in 1995 and three-years later, in 1998, by Mexico. Both countries signed the Vienna Declaration, the Declaration on the Elimination of Violence Against Women and the Beijing Declaration.
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- 43 Sarah Bott, *Preventing and Responding to Gender-Based Violence*, *op.cit.*, 8.
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- ⁷² The Special Prosecutor’s Office for Crimes Against Life only investigates cases in the Department of Guatemala. Murders of women that occur in other departments or municipalities are investigated by the local public prosecutor, who oversees the investigations into all types of crimes.
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- ⁷⁵ United Nations, Convention on the Elimination of All Forms of Discrimination Against Women, *Report on Mexico Produced by the Committee on the Elimination and Discrimination Against Women Under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico* (New York: Committee on the Elimination and Discrimination Against Women, Thirty-second Session, CEDAW/C/2005/OP.8/Mexico, 2005), 17.
- ⁷⁶ To help resolve the numerous problems resulting from the existence of different forensic services, in September 2006, the Guatemalan Congress finally approved the law for the creation of a new National Institute of Forensic Sciences (*Instituto Nacional de Ciencias Forenses–INACIF*). The INACIF will replace and bring together under one modern, scientific laboratory the three existing forensic services. The INACIF was to begin operations in January 2007; however, at the time of writing, funds for its establishment had yet to be allocated and a director had still not been appointed.
- ⁷⁷ In 2005, the Chihuahua state attorney general allowed an independent team of forensic experts to undertake forensic investigations (including DNA testing) in order to identify the remains of all unidentified female murder victims in Ciudad Juárez and Chihuahua, as well as those victims whose families had doubts about the results of prior forensic testing. The Argentine Forensic Anthropology Team (EAAF), a non-governmental group that applies forensic sciences to the investigation of human rights violations worldwide, began working in Mexico in June 2005. The work of the EAAF is an important step towards alleviating the families’ anguish and uncertainty, enhancing transparency of local institutions, and improving local forensic capacity.

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ISBN: 0-929513-71-1

This WOLA publication was funded by Sally Yudelman, the Moriah Fund, the Tula Foundation, and the Public Welfare Foundation.



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