

# **ANALYSIS OF FEMICIDE/FEMINICIDE LEGISLATION IN LATIN AMERICA AND THE CARIBBEAN AND A PROPOSAL FOR A MODEL LAW**



# ANALYSIS OF FEMICIDE/ FEMINICIDE LEGISLATION IN LATIN AMERICA AND THE CARIBBEAN AND A PROPOSAL FOR A MODEL LAW

Study authored by:  
Alicia Deus and Diana Gonzalez

*The opinions expressed in this publication  
do not necessarily reflect the views of the UN  
Women, the United Nations or any of its  
affiliated organizations.*



United Nations Entity for Gender Equality  
and the Empowerment of Women





## ACKNOWLEDGEMENTS



We thank the specialists in gender, criminal justice, and international women's rights, especially Adriana Quiñones Giraldo, Alejandra Negrete Morayta, Alicia Deus, Ana Carcedo, Ana María Choquehuanca de Villanueva, Arcenio García Cores, Diana González Perret, Erika Aifan, Francoise Roth, Geomara Anayansi Guerra Miranda, Hilda Morales, Isabel Agaton, Julia Estela Monarrez Fragoso, Liriola Leoteau, Maruquel Castroverde, Mercedes Hernandez, Patsilí Toledo, Pedro Vera-Pineda, Silvia Loli Espinoza, Sylvia Mesa Peluffo, Urania Athena Ungo and Zagrario Osiris Pérez, who participated and contributed to the meeting held in October 2017, in Panama, and to specialists Barbara Bailey, Gabrielle Hosein, Gaietry Pargass, Miriam Roache, Patsilí Toledo, Rinette Djokarto, Sylvia Mesa Peluffo, Tonya Haynes and as well as the President of the Inter-American Commission on Human Rights Margarette May Macaulay, who participated meetings organized by the Technical Secretariat of the Follow-up

Mechanism to the Belém do Pará Convention (MESECVI) and the Regional Office for the Americas and the Caribbean of UN Women in July 2018 meeting held in Trinidad and Tobago.

Moreover, we thank the UN Women Team for their technical guidance and proposals: Lara Blanco, Kathy Taylor, Tonni Ann Brodber, Dayanara Salazar and Gabrielle Henderson and the Technical Secretariat of MESECVI Luz Patricia Mejía Guerrero, Eva Villarreal, Alejandra Elguero and María Eugenia Villavicencio. We thank Maria Ely Manuel and Chloe Taylor-Gee for their support to review and edit the document.

We also acknowledge Luiza Carvalho, UN Women Regional Director of Latin America and the Caribbean, for the support and trust to carry out this joint initiative from the beginning and to Carmen Moreno, Executive Secretary of the Inter-American Commission of Women for her permanent support.

# FOREWORD

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women was adopted in Belém do Pará, Brazil by all the countries in Latin America and the Caribbean in 1994, formalizing the definition of violence against women as a violation of their human rights.

The Belém do Pará Convention establishes for the first time the development of mechanisms to protect and defend the rights of women, in the fight to eliminate violence against their physical, sexual and psychological integrity, both in the public and in the private spheres.

The Belém do Pará Convention asks the States Parties to adopt legislative measures of a criminal nature (among others) that “are necessary to prevent, punish and eradicate violence against women” (Article 7.c of the Convention)<sup>1</sup>.

Recommendation No. 35 on gender based violence by the Committee for the Elimination of All Forms of Discrimination against Women (CEDAW) states that: “Women’s right to a life free from gender-based violence is indivisible from and interdependent with other human rights, including the right to life, health, liberty and security of the person, the right to equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, freedom of expression, movement, participation, assembly and association.”<sup>2</sup>

---

1. Committee for the Elimination of Discrimination Against Women. General Recommendation 35 on Gender based violence against women, updating General Recommendation 19. 26 July 2017.

2. Committee for the Elimination of Discrimination Against Women. General Recommendation 35 on Gender based violence against women, updating General Recommendation 19. 26 July 2017.

Feminists, surviving victims and academics in Latin America and the Caribbean managed to conceptualize as an offense of femicide/feminicide, developing a great regional debate, documenting and generating evidence in each country and comparing the phenomenon. It is from their great efforts that the typification of femicide/feminicide is achieved and it has been justified based on the standards of international human rights law.

In the framework of the CSW57 in 2013, in the agreed conclusions it was possible to incorporate the concept of femicide as a criminal offense expressing “concern for the violent murders of women and girls for reasons of gender, while recognizing the efforts made to face this form of violence in different regions, particularly in countries where the concept of femicide has been incorporated into national legislation.”

A first tool developed by the Office of the High Commissioner for Human Rights and UN Women in the Latin American and Caribbean region was the Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide) in the framework of the UN Secretary General’s Campaign UNITE to end violence against women.

On this occasion, both MESECVI and UN Women intend to provide the region with a model law on femicide/feminicide to address the most serious women’s human rights violation. To do so, we will first analyze the existing legislation, provoking debate and improvement in cases where it is required.

# CONTENT

## 11 ■ CHAPTER 1. THEORETICAL FRAMEWORK

---

- 12 1.1. Conceptual definitions
- 15 1.2. Modalities of femicide/feminicide
- 20 1.3. Femicide vs feminicide
- 22 1.4. International human rights standards related to femicide/feminicide
- 26 1.5. Criminal law and gender-based discrimination against women

## 31 ■ CHAPTER 2. REGIONAL LEGISLATION ADDRESSING FEMICIDE/FEMINICIDE

---

- 32 2.1. Laws that define femicide/feminicide as a crime
- 36 2.2. Nomen iuris, scope of the crime and type of classification
- 42 2.3. Factors considered to determine if the behavior or  
circumstances qualify the criminal act as femicide/feminicide
- 45 2.4. Special aggravating factors for femicide/feminicide
- 47 2.5. Considerations related to analyzed factors
- 47 2.6. Punishment
- 47 2.7. Other crimes related to femicide/feminicide
- 49 2.8. Regulations: prevention, protection, investigation, and  
reparation

## 56 ■ CHAPTER 3. CONCLUSION AND RECOMMENDATIONS

---

## 61 ■ BIBLIOGRAPHY

---



ARGENTINA	66
BOLIVIA	66
BRAZIL	67
CHILE	68
COLOMBIA	68
COSTA RICA	69
DOMINICAN REPUBLIC	69
ECUADOR	70
EL SALVADOR	70
GUATEMALA	71
HONDURAS	71
MEXICO	72
NICARAGUA	72
PANAMA	73
PARAGUAY	74
PERU	74
URUGUAY	75
VENEZUELA	76

E. L. BLANCHARD

SECONDARY




...S E...

Elvir o. Almirante


PLASTOSCHUTZ

Let's a RE spinoso

CRISTINA E. RIBERO



DESOLANDO



ENCLOSURE

NATHAN SILVER

2 4 4

MINERVA TORRES

ELODIA G.

Version 2.1  
May 2012

Adriana T. Marquez

Cervantes Dávila

April 2, 1942

in kilol et

Paulina León

DESCRIBTA

Raquel L Macias

Maria del L. Murgado


CYNTHIA JZZ

Desconocida

Priscilla Cortez Estrada

NANCY WILLIAMS

INCONVULS



BRUNNEN

Reyes

GRACIA  
GARCIA ROMERO





*"What is not named does not exist."*

-Rudolf Steiner

*"Men are afraid that women will laugh at them. Women are afraid that men will kill them."*

-Margaret Atwood

## CHAPTER 1. THEORETICAL FRAMEWORK

1.1. Conceptual definitions

1.2. Modalities of femicide/feminicide

1.3. Femicide vs. Feminicide

1.4. International human rights standards related to femicide/feminicide.

1.5. Criminal law and gender-based discrimination against women

## 1.1. Conceptual definitions

Patriarchy, the system of power relationships existing within society, that permeates and determines how women and men interact, favors men and devalues and degrades women in practically all cultures, and is reflected in how the political, economic, social, and religious institutions are dominated by men. The murder of women and girls by men, simply because they are women, even when viewed against the backdrop of the historical and social details of when they occurred, is a common thread of humanity regardless of country, region, social class, and ethnic origin. It has been normalized and made invisible over many millennia.

In recent years, the advance of feminist movements has forced the recognition of these crimes as part of the structure of the dominant system, including the systematic discrimination, oppression, and violence against women, whose violent deaths are the most extreme consequence.

Resistance to the conceptualization of femicide/feminicide<sup>1</sup> as a distinct phenomenon with its own characteristics, allowing it to be distinguished from the more generic term, “homicide”, still exists in many arenas, including within politics and academia.

The report from the United Nations Special Rapporteur on Violence Against Women<sup>2</sup> notes that a variety of factors must be taken into account in order to understand gender related crimes, including the political, social, and economic context in which they occur; the relationship between men and the empowerment of women; political, legal, and social responses;

and the patterns of structural discrimination and inequality that are the reality of the female victim.

Rita Segato<sup>3</sup> states that establishing femicide/feminicide as a separate category is essential if we want to expose the patriarchal system as being sustained through control and the ability to punish women’s bodies, as evidenced by the murders of women resulting from this control and punitive ability.

More theoretically, Aleida Luján Pinero<sup>4</sup> points out the importance of discussing the concept of feminicide from a philosophical standpoint, especially as countries begin to define it as a distinct crime in their national legislation.

For Pinero, femicide/feminicide, like all concepts, arises from the interaction between the other concepts that comprise it, and it can change as it evolves. This produces a constant transformation, as no concept remains static, nor can it be reduced to a simple speech or image.

The concepts that together comprise feminicide - the patriarchy, sex-gender system, gender, women, violence, and gender-based violence - each have their own history and time. As each component changes or is no longer considered as part of the original concept, the concept of femicide/feminicide will change as well. Pinela uses “woman” as an example - the current meaning of “woman” is derived from a strictly patriarchal structure, and that structure establishes and defines the sex-gender system.

The concept of femicide/feminicide not only exposes the existence of certain crimes, but it also compels the development of policies and interventions to combat it. Conceptual definitions are important in law, not only for the language used in legal regulations (as can be seen across the

1. There are discrepancies in the use of the terms femicide and feminicide, and as a result, this document has chosen to use both forms, without prejudice. An analysis of the issue surrounding the use of the terms can be found in section 1.3.

2. Report of the Special Rapporteur on violence against women, its causes and consequences. May 23, 2012, A/HRC/20/16, paragraph 16 and ss. Available at: [https://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16\\_En.pdf](https://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf)

3. SEGATO, L. Rita, What is femicide? Notes for an emerging debate, *Serie Antropología*, Brazil, 2006.

4. PINERO, Aleida, A theoretical approach to the concept of femicide/feminicide. Master Thesis. ULTRECHT UNIVERSITY, 2015. Available at: [GEMMA-Master%20Thesis-dspace.library.uu.nl/.../GEMMA-Master%20Thesis-ALEIDA%20](https://uu.nl/.../GEMMA-Master%20Thesis-ALEIDA%20)

different laws that identify femicide/feminicide as a crime), but also for the interpretation of the laws within the criminal justice system. How femicide/feminicide is understood will determine how the law is interpreted and applied.

From a legal standpoint, the situation is more complicated, as most of the concepts originate in the social sciences, frequently resulting in a lack of precision in the terms used as they are transferred into the more traditional structures of the law. They attack the traditional structures and legal framework such as classification of offenses or legal security in the criminal sphere.<sup>5</sup>

The concept of gender-based violence will determine the scope of femicide/feminicide as a crime, and whether it will include only femicide committed within an intimate heterosexual context or will also apply to femicide committed against women in other circumstances or the gender-based killing of persons with diverse sexual orientations and identities.

In addition to determining the crime itself, the investigation, testing required for its admission, and its evaluation by the courts will be governed and determined by the conceptual definitions that comprise the femicide/feminicide.

R. Segato<sup>6</sup> writes;

*"The legal arena is, above all, a discursive arena, as much in the formulation of laws, as in the effective application of those already in existence ... it is a battle, on the one hand, to put a name to the crime, in order to legally consecrate how we talk about human suffering, to legally enthrone the names already in use, and on the other hand, a battle to publicize and establish the use of the words of the law in people's mouths."*

The term femicide in English dates to the beginning of the 19th century. In 1801, John

Correy used the term to describe the "death of a woman" in "A Satirical View of London at the Commencement of the Nineteenth Century" and in 1827 William MacNish, who killed a young woman, titled his memoirs: "The Confessions of an Unexecuted Femicide."<sup>7</sup>

In the 1970s, the term was adopted by the feminist movement, which incorporated the concept of misogyny into the 19th century definition, which only described it as the death of a woman. In 1976, the feminist Diana Russell employed the modern usage of the word in her testimony before the International Tribunal on Crimes Against Women in Brussels.<sup>8</sup> Simone de Beauvoir hailed the event as the "start of a radical decolonization of women."

At the end of the 1980s, the repercussions of the

---

7. RUSSELL, D. E. H. (2006), "Definition of feminicide and related concepts" in: RUSSELL, D. E. H. y HARMES R. A., FEMINICIDE: a global perspective Mexico, Centro de Investigaciones Interdisciplinarias en Ciencias y Humanidades Universidad Nacional Autónoma de México.

8. This original tribunal arose during an international feminist campout in Denmark in August 1974, that was held to define the discussion on acts and actions. The idea was to bring together women from many different parts of the world to have them testify and denounce experiences of oppression and violence against women. It took place without the participation of governments and political parties and employed its own (female) judges. The participants adopted the criteria of feminism itself to judge crimes, ignoring the categories and definitions that existed in patriarchal legislation. The substance was that oppressed persons have the right to disassociate themselves from those definitions of crimes that have been developed by their oppressors to serve their own selfish interests. The topics addressed were diverse and included: forced maternity and its opposite, forced sterilization; crimes committed in the heart of the patriarchal family; imposed heterosexuality; violence against women; or double oppressions like the consequences of being a migrant or belonging to a religious minority. A detailed description of the preparation and outcome of the Tribunal is available in: Elena Laporta Hernández. Femicide/feminicide. Reflections on feminist law. Tesina. Universidad Carlos III, Madrid. 2012. Available in Spanish at: [http://e-archivo.uc3m.es/bitstream/handle/10016/18787/TFM\\_MEADH\\_Elena\\_Laporta\\_2012.pdf?s](http://e-archivo.uc3m.es/bitstream/handle/10016/18787/TFM_MEADH_Elena_Laporta_2012.pdf?s)

---

5 TOLEDO, Patisli., FEMINICIDE, Office of the High Commissioner of the United Nation for Human Rights in Mexico. Mexico, 2009.

6 SEGATO, Rita. Femi-geno-cidio as a crime in the arena of international Human Rights: the right to give suffering a name in the law. PDF. Argentina. Available in Spanish at: <http://FEMINICIDE.net/sites/default/files/femigenocidio.pdf>

Montreal Massacre<sup>9</sup>, when Marc Lépine attacked the University, killing 13 female students, yelling, *"I hate feminists,"* contributed to the evolution of the term, as the motives for the attack were clearly demonstrated to be the misogynistic and anti-feminist beliefs of the attacker.

In 1992, Diana Russell, in a book co-edited with Jill Radford, entitled, *"Femicide: the politics of woman killings"*<sup>10</sup> defined femicide as the "misogynistic killing of women by men." The definition was later refined, and in 2001 she describes it as the "killing of females by males because they are female," placing crimes against women and girls within the patriarchy and identifying them as the most extreme example of gender-based violence against women.

The initial definitions of the concept include a series of behaviors, or rather, of institutional practices that are identified as femicide if the woman dies. Examples include cases of forced maternity, illegal abortions, or forced plastic surgery and other physical mutilations suffered in the name of beautification. These acts are all the consequences of misogynist social practices and policies that weaken the right of women to make decisions regarding their own bodies.

Russell redefines femicide as the *"killing of females by males because they are female,"* broadening the concept to include all forms of sexist killing. Misogynist killings are limited to those motivated by a hatred of women, while sexist killings include those committed by men, and motivated by a sense of entitlement or superiority over women, pleasure or sadistic desire, or by the perception of ownership over them.<sup>11</sup> Femicide represents the extreme end of a spectrum of anti-female terrorism, and includes a wide variety of verbal and physical abuse, such as rape,

torture, sexual enslavement, (via prostitution in particular), sexual abuse of children by family members or others, physical and emotional violence.

In the same book<sup>12</sup> Jane Caputo addresses the political dimension of crimes against women, and describes them as a form of patriarchal terrorism. The use of force by men is intrinsic to the patriarchal system across all social spheres. As a result, violent men believe they own the rights to women's bodies. *"I killed her because she was mine"* is frequently heard in the statements of those who commit femicide, who, in some twisted way, believe their behavior to be justified.

More recently, Russell defines femicide as the death of one or more females because they are female.<sup>13</sup>

Segato<sup>14</sup> points out that the concept is useful to instill the idea that there are crimes whose motives can only be understood within the context of patriarchal power, and to call attention to the crimes of the patriarchy in the media. At the same time, Segato sees them as hate crimes, like those motivated by racism or homophobia, resulting from women defying the rules of the patriarchy: control and possession of the female body and superiority of males. In this sense, then, they are clearly crimes of power, intended to simultaneously retain and subject women and reproduce the power held over them. Segato proposes adding two additional and equally simultaneous elements to the characterization of these crimes: they are committed to maintain the asymmetry of power between males and females, and at the same time, and interrelatedly, to maintain the symmetrical relationship between equals, within the *camaraderie* or *male brotherhood*. These two additional characteristics expand the audience of a femicide/feminicide to other interlocutors who rank as equal to or more

9. Retold in: IRIBARNE, Macarena. Eunomía. Revista en Cultura de la Legalidad No 9, October 2015 – March 2016, pp. 205-223.

10. RUSSELL, Diana E. et al: Femicide: The Politics of Woman Killing. New York: Twayne Publishers, 1992. Also, at: <http://www.dianarussell.com/femicide.html>

11. RUSSELL, D. Defining Femicide and related concepts, in RUSSELL, D, HARMES, R. (COMP). Femicide in global perspective.

12. CAPUTO, Jane, en Jill and Diana E. H. Russell: Femicide: The Politics of Woman Killing. New York: Twayne Publishers, 1992.

13. [http://www.dianarussell.com/f/Defining\\_Femicide\\_-\\_United\\_Nations\\_Speech\\_by\\_Diana\\_E.\\_H.\\_Russell\\_Ph.D.pdf](http://www.dianarussell.com/f/Defining_Femicide_-_United_Nations_Speech_by_Diana_E._H._Russell_Ph.D.pdf)

14. SEGATO, L. Rita, what is Feminicide? Notes for an emerging debate, Serie Antropología, Brasil, 2006.



important than the victim herself.

The radical Mexican feminist, anthropologist, and congressperson Marcela Lagarde expands the Anglo-Saxon academics' definition of femicide/feminicide to include the impunity granted by government institutions with which these crimes are committed.

She points out that "Femicide" reflects an English language voice, which in Spanish translates like "homicide" and only means the homicide of women. She differentiates with "feminicide", imbuing the term with additional factors such as the violation of the human rights of women affected by the crimes and the disappearance of women; and the crimes then become crimes against humanity. It attaches the concept of femicide to that of genocide when historic conditions generate the social practices that allow violent attacks against the integrity, health, freedoms and lives of girls and women.

Lagarde affirms that:

*"Time and space are concurrent in feminicide, as harm against young girls and women carried out by strangers and those known to them, by violence – and occasionally rape – by individuals and groups, amateurs or professionals that lead to the cruel deaths of some of the victims. Not all the crimes are planned or committed by serial killers. There are serial killers and one time killers, some killings are committed by people known to the victim – partners, ex-partners, relatives, boyfriends, husbands, companions, family members, visitors, colleagues and work friends. They are committed by unknown and anonymous assailants, and by groups of gang members and delinquents associated with violent and criminal lifestyles.<sup>15</sup> Regardless, they all have one thing in common – the belief that women are usable, expendable, abusable and disposable. They all converge in their infinite cruelty, and are, in fact, hate crimes against women. For femicide to exist as a crime, silence, omission, negligence, and the partial or total collusion of the authorities responsible for preventing and eradicating these crimes must all exist concurrently."<sup>16</sup>*

Julia Monárrez<sup>17</sup>, in an investigation she conducted on crime and the disappearance of women and girls in Ciudad Juárez, defines feminicide as "the mass murder of women committed by men by nature of their group superiority". She links it to the motives and damage inflicted on the bodies of the women victims, and the political complacency of the social structure that permits, tolerates and facilitates it.

In 'Trama de una injusticia', citing Deborah Cameron and Elisabeth Frazer in *The Lust to Kill*, Monárrez notes, *"when a society is confronted daily with the killing of women, it isn't worth it to ask why one person kills another. The question should be, 'why do members of one group kill the members of another group?' To answer this question, you have to connect the motives with the violent acts of the criminals and juxtapose them with the social structures in a given region and the differences in power in the hierarchy of sexual power"*.

The table below provides a comparative view of these crimes to femicide.<sup>18</sup>

## 1.2. Modalities of femicide/feminicide

In the report of the United Nations Special Rapporteur on Violence against Women, its causes and consequences, published in May 2012, femicides/feminicides can be classified as active and direct, with a defined perpetrator, and can be the result of intimate partner violence; sorcery and/or witchcraft; honor-related killings; armed conflict-related killings; gender-identity- and sexual orientation-related killings; and ethnic-origin-related killings. They can also be classified as indirect femicides/feminicides and include deaths due to poorly conducted or clandestine abortions; maternal mortality; death due to harmful practices; deaths due to human trafficking, drug trafficking, organized crime and gang-related activity; death of women and girls due to neglect as a result of starvation or abuse;

15. IRIBARNE, Macarena. FEMINICIDE in Mexico, *Eunomía. Revista en Cultura de la Legalidad* N° 9, October 2015 – March 2016, pp. 205-223.

16. LAGARDE, Marcela. Anthropology, feminism and politics: feminicidal violence and the human rights of women. Universidad de México (UNAM) in Theoretical gials and new practices, Mexico.

17. MONARREZ, Julia. Plot of an injustice. Sexual Systematic Femicide in Ciudad Juárez. 2013. Digital edition.

18. <http://www.FEMINICIDE.net/articulo/tipos-de-FEMINICIDE-o-las-variantes-de-violencia-extrema-patriarcal>

# FEMICIDE AS AN INTERNATIONAL CRIME

## FEMINICIDE



### GENOCIDE

Any of the acts mentioned in the Rome Statute committed with the intention to partially or completely eliminate a national, ethnic, racial or religious group. Examples of genocide include the killing of members of the group; infliction of grievous bodily or psychological harm on members of the group; or measures intended to impede births in the group (Article 6 of the Rome Statute). Genocide can take place both during war or during peace.

When acts are committed with the intention to partially or completely eliminate a group of women because they are women, and the acts result in death.



### CRIMES AGAINST HUMANITY

Any of the acts mentioned in the Rome Statute when knowingly committed as part of a generalized or systematic attack against a civilian population. Included in these acts are murder; extermination; torture; rape; sexual slavery; forced prostitution; forced pregnancy; forced sterilization and other comparably serious sexual abuses; forced disappearance (Article 7 of the Rome Statute). Crimes against humanity can take place both during war and during peace.

When the civilian population is comprised of women and the motive of the generalized and systematic attack is based on their status as women.



### WAR CRIMES

War crimes are a violation of international human rights law, as well as the Geneva Convention of August 1949. Examples include: intentional killing; torture or other inhumane treatment, including medical or biological experimentation; deliberate infliction of excessive suffering or grievous attacks on physical integrity or health; rape, sexual slavery, forced prostitution, forced sterilization and any other serious violation of the Conventions (Article 8 of the Rome Statute). War crimes can take place during both domestic and international armed conflicts.

Refers to all violations of international human rights law considered to be war crimes that are committed against women because they are women.

The Office of the United Nations in Vienna held a symposium on femicide – using this term – to argue that the gravity of this crime meant that the response could not be solely limited to national legislation. Justice for the most serious of crimes must be universal and therefore, given the characteristics of femicide, any response must include an international dimension.

Symposium participants agreed that the United Nations should explicitly address gender-based killings and use the term femicide/feminicide in the Declaration on the Elimination of Violence Against Women.

and deliberate acts or omissions by the State.

Ana Carcedo and Montserrat Sagot<sup>19</sup> published an initial study on femicide in Costa Rica between the years 1990 and 1999. For the purposes of their investigation, they defined femicide as “the homicide of women by men provoked by domestic or sexual violence”. They identify three types of femicide: intimate femicide, which refers to cases where the perpetrator is the partner, ex-partner or family member who lives with the woman victim; non intimate femicide, which refers to cases where the perpetrator does not have a close relationship with the women; and finally, what they call femicide because of association or connection, which refers to cases where the violence is not specifically directed at the woman, but she is killed because she is located in the line of fire. This can occur when another female family member attempts to intervene, so another woman is not killed.

Carcedo<sup>20</sup> later introduces an additional category to the list, femicide scenarios that she defines as “the socioeconomic, political and cultural contexts in which especially unequal power relationships between women and men occur that generate dynamics of control, violence and femicide against women, that adopt and include their own characteristics.” She argues that while violence against women can occur in any context, the probability that it will take place in these situations is much higher. She goes on to identify two types of femicide within these scenarios: those which she calls traditional, which would be contexts common to all times and places, such as families or in a couple, and new types, which include human trafficking, criminal networks, and gangs. It should be noted that scenarios can also be interrelated.

---

19. CARCEDO, A., SAGOT, M., (Coord.), Femicide in Costa Rica, 1990-1999, Pan American Health Organization, Program Women, Health and Development, San José, Costa Rica, 2000. Available in Spanish at: [http://genero.bvsalud.org/lildbi/docsonline/5/4/445-MFN\\_2966\\_CIE\\_M\\_2166.pdf](http://genero.bvsalud.org/lildbi/docsonline/5/4/445-MFN_2966_CIE_M_2166.pdf).

CARCEDO, A., (Coord.), We do not forget. We do not Accept. Femicide in Central America, CEFEMINA, San José, Costa Rica, 2010.

20. CARCEDO, A., (Coord.), We do not forget. We do not Accept. Femicide in Central America, CEFEMINA, San José, Costa Rica, 2010.

The sociologist, Julia Monárrez states that *"While in general femicide includes all gender-based killings of women by men, it presents itself in different ways."* She believes that to prevent and eradicate the problem, it is essential to understand the dynamic, *"that underlies the fact that some men, and also some women, kill girls and women in this community."*<sup>21</sup> One of the most important contributions coming out of the investigation of non-intimate femicides/feminicides is the development and analysis of the category of systematic sexual femicide, its acceptance as genocide and the inclusion of impunity as a factor. It is defined as the *"legally sanctioned killing of women and girls, whose abducted bodies have been tortured, raped, killed and cast aside in offensive scenarios, by men who use misogyny and sexism to cruelly define the borders of gender via state terrorism, and supported by hegemonic groups, reinforce masculine control and subject the families of the victims to a deep and chronic insecurity over a continuous and unlimited period of impunity and complicity."*<sup>22</sup>

Sexual femicide/feminicide occurs when a woman is killed after a perpetrator or perpetrators have subjected her to deviant sexual attacks. In some cases, these are isolated acts committed by the attacker (unorganized sexual femicide), but in others they are committed within the context of organizations.

The anthropologist Segato<sup>23</sup> emphasizes the importance of distinguishing between the different types of killings that comprise the generalized statistics of the deaths of women. She analyzed crimes in Ciudad Juárez, Mexico, and notes the transcendence of the unification and demarcation of

all the forms of the violent deaths of women in order to understand gender-based violence and the violent nature of the patriarchy, as well as the use of quantitative data as a strategy to call attention to the phenomenon. She believes a precise characterization of the *modus operandi* of each type of crime is essential, as well as the development of a more exact typology of the different modalities to allow effective investigations and bring an end to impunity. With undifferentiated data, there is a "willful indistinction" that serves as a smoke screen impeding transparency and facilitating impunity. This demonstrates the need to question whether the term femicide should encompass all killings of women or if the term should be limited to a more restricted category.

Segato notes that the crimes in Ciudad Juárez affect no particular type of women, just women in general, just because they are women, in the same way genocide is a general attack against a particular ethnic or racial group. In both cases, the crimes are directed at a category, not a specific individual. There is no personal relationship or personalized motive linking the victim to her attacker. Segato,<sup>24</sup> highlights they are closer to crimes of the State or crimes against humanity in which there is no active subject or individual, acting against a specific victim to exhibit, reaffirm, or revitalize his capacity to control her.

She observes that in order to develop investigative strategies and develop a deeper understanding of the reality of femicide in each region, legal categories must be created, followed by specific laws that address the different types of crimes that target women. She proposes reserving the term femicide to crimes that fall within the context of interpersonal relationships or are a product of the attacker's personality (such as serial killer, for example) and using the category femi-genocide to refer to crimes that are systematic and impersonal and are specifically intended to destroy women because they are women, highlighting that they can be categorized as genocide, crimes against humanity and war crimes.

The Latin American Model Protocol for the

21. MONÁRREZ, J., "The different manifestations of femicide and the killing of women in Ciudad Juárez: 1993-2005", in MONÁRREZ, J., CERVERA, L., FLORES, C., RUBIO, R., Violence against women and civil insecurity in Ciudad Juárez, El Colegio de la Frontera Norte - Miguel Ángel Porrúa Editores, México, 2010.

22. Elements of analysis systematic sexual femicide, presented at the International Seminar: Femicide, Law and Justice, Mexico, December 2004. Available in Spanish at: <http://www.femicidio.net/index.php?option=comcontent&view=article&id=>

23. SEGATO, L., What is Femicide? Notes for an emerging debate, ob.cit.

24. SEGATO, Rita. Femi-geno-cidio as a crime in the international arena of Human Rights: the right to give suffering a name in the law. PDF. 2010. Argentina.

Investigation of Gender-Related Killings of Women,<sup>25</sup> identifies the following modalities of violent gender-related killings of women in Latin America:

- **Intimate femicide:** The killing of a woman by a man with whom she had a relationship or intimate connection: husband, ex-husband, life-partner, boyfriend, ex-boyfriend, lover, or person with whom she had a child. This includes the situation where a man murders a female friend or acquaintance that refuses to engage in an intimate relationship (emotional or sexual) with him.

- **Non-intimate femicide:** The killing of a woman by a man unknown to her.

- **Child femicide:** The killing of a girl under the age of 14 by a man in the context of his position of responsibility, trust, or power as an adult.

- **Family femicide:** The killing of a woman in the context of a familial relationship between the victim and the perpetrator. The relationship might be by blood, marriage, or adoption.

- **Femicide because of association/connection.** The killing of a woman “in the line of fire” by a man that was killing or attempting to kill another woman.

- **Systematic sexual femicide:** The killings of women that have been kidnapped, tortured, and/or raped. There are two manifestations:

Organized systematic sexual femicide: In these cases, the assassins may operate as an organized network of people involved in sexual feminicides, with a planned method practiced over an extended and indeterminate period of time.

Unorganized systematic sexual femicide: The killing of women accompanied by kidnapping, torture, and/or rape. The assassins are presumed to have killed the victim at a given point in time.

- **Femicide because of prostitution or stigmatized occupations:** The killing of a woman that works in prostitution and/or another stigmatized occupation (such as strippers, servers, masseuses, or dancers in night clubs) by a man or several men. This includes cases in which the perpetrator (or perpetrators) assassinates a woman motivated by the hate and misogyny that the occupation of the victim generates. This particular manifestation illustrates the role that social stigmatization and justification play in the criminal act on the part of the perpetrator: “she deserved it”; “she had it coming because of what she did”; “she was a bad woman”; “her life wasn’t worth anything”.

- **Femicide because of trafficking:** The killing of women produced in the context of human trafficking. “Trafficking” is understood here as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, prostitution to others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.

- **Femicide because of smuggling:** The killing of women produced in the context of the smuggling of migrants. “Smuggling” here refers to procuring the illegal entry of a person into a state of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit.

- **Transphobic femicide** The killing of a transgender or transsexual woman in which the perpetrator (or perpetrators) kills her because of a hate or rejection of her transsexual condition or gender identity.

- **Lesbophobic femicide:** The killing of a lesbian woman in which the perpetrator (or perpetrators) kills her because of a hate or rejection of her sexual orientation.

25. United Nations Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide) Available at: <http://www.un.org/en/women/endviolence/pdf/LatinAmericanProtocolForInvestigationOfFemicide.pdf>

- **Racist femicide:** The killing of a woman because of hate or rejection of her ethnic or racial origins or her genetic features.
- **Femicide because of female genital mutilation:** The killing of a girl or woman as a result of the practice of genital mutilation.

### 1.3. Femicide vs. Femicide

Despite its Anglo-Saxon origins, the theoretical evolution of the term femicide primarily took place in Latin America, where 18 countries currently have legislation classifying femicide/feminicide as a crime.

The translation into Spanish of the English **femicide** whose theoretical concept was developed by Russell, is divided into two camps – in some countries it is known as femicide and in others feminicide. This divergence has generated a great deal of debate in Latin America on the conceptual supremacy of one usage over the other.

Lagarde, who pioneered the translation of the term as feminicide, finds that femicide lacks the political implications imbued by Anglo-Saxon authors. In Lagarde's interpretation, femicide maintains a neutral perspective, and does not reflect the fact that the motive for the killings is that the victims are women, when in fact, highlighting that distinction is exactly the point of using the term.

In Mexico, Monárrez also prefers the term feminicide coined by Lagarde. According to her, feminicide is the appropriate word in Spanish, and highlights that the inclusion of the concept of "femininus" is essential to understanding the idea that all feminicides are the killing of women, but not all killings of women are feminicides. Its origin diverges from its etymology. The roots of the word are Latin, femina – woman – and –caedo, caesum – to kill. The Latin word for woman is *fēmina*, with an "i", not *femena*, with an "e". When the two words are combined to form one, the roots of both words are maintained, and they are not only merged, but also unifying vowels can be added depending on the word. In this case, the "i" is the unifying letter, coming from the third declension of the Latin *feminis*, which translates as "of the woman". The death of a woman *feminiscidum*, and from there is derived the word feminicide, which is the



correct word in Spanish. The word “femenino” (the Spanish word for the feminine gender), explains the author, is an adjective that also comes from the word *femina*; in Latin, *femininus*, but became *femenino* in Spanish. Femicide therefore means the death of a female person or an individual with female characteristics, regardless of whether the individual is a woman or not.

Russell<sup>26</sup> does not use the term feminicide for two reasons she considers to be fundamental: first, because conceptually it separates the phenomenon from the response to it, and second, because it would omit femicide cases where the government was not negligent in its obligations. She opines that according to Lagarde’s definition, if a man kills a woman within the context of domestic violence, and is tried and sentenced, he would not be guilty of feminicide because the case was not treated with impunity.

The Costa Rican theorist Ana Carcedo<sup>27</sup> prefers the term femicide. It places a value on impunity, but like Russell, it becomes a part of the scenario, not a concept itself, so that in a legal sense, the difference is that femicide is adjudicated at the national level, and feminicide, which implicates the State, is judged at the international level.

Beyond etymology, in Spanish, the term feminicide is more accurate because of how the concept materializes in laws and the legal environment, and how it interacts with the other components that comprise it – gender, gender-based violence, the patriarchy, women, and impunity.<sup>28</sup>

For attorney Patsilí Toledo,<sup>29</sup> the apparent complications of terminology are not such that a theoretical and political consensus has not been reached, and in practice, studies refer to a restricted definition that identifies the phenomenon with violent deaths resulting from the commission of crimes.

26. [http://www.dianarussell.com/origin\\_of\\_femicide.html](http://www.dianarussell.com/origin_of_femicide.html)

27. CARCEDO, A., (Coord.), *We do not forget. We do not Accept. Femicide in Central America*, CEFEMINA, San José, Costa Rica, 2010.

28. See: PINERO, Aleida. *A theoretical approach to the concept of femicide/feminicide*. Master Thesis. ULTRECHT UNIVERSITY, 2015. Available at: [GEMMA-Master%20Thesis-dspace.library.uu.nl/.../GEMMA-Master%20Thesis-ALEIDA%20](http://GEMMA-Master%20Thesis-dspace.library.uu.nl/.../GEMMA-Master%20Thesis-ALEIDA%20)

29. TOLEDO, P., *Femicide*. Office in Mexico of the United Nations High Commissioner for Human Rights, Mexico, 2009

After a debate on the usage of the different terms at a meeting of the Latin American and Caribbean Feminist Network Against Domestic and Sexual Violence held in Chile in 2006, the group decided that both terms referred to the same criminal act and use of different terms would depend on the context or special circumstance of the situation in each country.<sup>30, 31</sup>

As noted by Toledo, however, it is important to highlight that the theoretical differences argued in support of one term or the other lose their practical relevance in the strictly legal sense because of the existing consensus on specific points.

Areas of agreement include: both terms refer to the gender-based killing of women, as each side recognizes the social phenomenon with its own characteristics that distinguish it from the more generic term “homicide”. Rather it is a category that lies within the field of feminist theory arising from a lack of gender perspective in the treatment of specific criminal acts. Homicide, and the vast majority of crimes committed against persons, are viewed from an androcentric perspective, and do not take gender into account as relevant information. Complex definitions linked to these killings originate from Russell, including those of sexual violence, sexist terrorism, misogyny and the patriarchy, and the unequal distribution of power in society. Both call attention to the existence of the phenomenon and demand rights-based public policies that promote the essential cultural changes, in addition to the revision of legal norms, as a response.

In conclusion, then, it could be argued that from a conceptual point of view, the distinction between the two terms lies in the inclusion of state intervention, whether by action or omission, as an inherent part of the concept which therefore allows the possibility of accountability. As in crimes of genocide, crimes against humanity, and war crimes, the International Criminal Court introduces concepts like those mentioned by Lagarde to highlight the responsibility of the state in crimes of femicide.

30. See the Latin American Model Protocol for the investigation of gender-related killings of women – United Nations.

31. Report of the United Nations Special Rapporteur on violence against women, its causes and consequences. 2012 (A/HRC/20/16).

We feel it is necessary to differentiate between femicide and feminicide from a political, philosophical, anthropological and sociological perspective and the specific *nomen iuris* of a crime that refers to the acts of one or more persons.

The typical elements of an international crime can be integrated into the definition of a type of crime, such as “the intention to partially or completely destroy a group based on their gender identity,” and he who knowingly commits the crime, “as part of a plan or policy against a civilian population” or as “part of a large scale plan or policy of such crimes”. In this case, the correct *nomen iuris* would definitely be feminicide, or as Segato suggests, femi-genocide.

In crimes where these extremes are not required to define the criminal conduct, the term “femicide” can be applied, as there are no objective elements that would identify the conduct as an international crime, even though it could be considered as such from an anthropological or sociological perspective.

Using the two terms differently according to the different modalities of femicide/feminicide allows for differentiation in legislation that addresses the different types of killing of women, which, in agreement with Segato, favors distinct treatment in the strategies and policies of prevention, investigation and sanction, and the inclusion of modalities more similar to genocide, as in international crimes.

Nevertheless, it is important to know that the concept developed by Lagarde is not reflected in the types of crimes incorporated into national legislation enacted by the different countries of the region, with the exception of those that define it as a crime related to the omission or impediment of investigations of femicide/feminicide by public officials.

## 1.4. International human rights standards related to femicide/feminicide

Violence against women because they are women is a form of gender-based violence and discrimination manifests itself across all cultures and historical time periods, and as such, is the subject of a variety of human rights conventions and declarations of international and regional human rights organizations, other jurisdictional bodies, as well as follow-ups to treaties and special processes.

In 1992, the Committee for the Elimination of all Forms of Discrimination against Women adopted General Recommendation No. 19, which states that violence against women violates the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) because this violence “is directed against a woman because she is a woman or affects women disproportionately.” The recommendations include:

- a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.
- b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.

The Conference on Human Rights in Vienna, recognized that gender-based violence is “...a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.” (United National General Assembly Resolution 48/104, December 20, 1993.)

The Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Belem

do Para Convention), adopted in 1994, is the first human rights-oriented instrument that addresses this phenomenon. Article 3 states, “Every woman has the right to be free from violence...” (Art.3), it defines violence against women as, “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere (Art.1), ... that occurs within the family or domestic unit or within any other interpersonal relationship ... whether or not the perpetrator shares or has shared the same residence with the woman ... that occurs in the community and is perpetrated by any person... in the workplace ... in educational institutions, health facilities or any other place... that is perpetrated or condoned by the state or its agents regardless of where it occurs” (Art.2).

Compliance with the Convention requires States to adopt, by all means and without delay, policies directed at the prevention, sanction and eradication of gender-based violence, including actions to ensure access to justice, timely and effective investigation of the crime, effective access to restitution, reparation for damages and other just and effective measures (Art. 7), including revision of legislation, institutions, and institutional practices (Art. 8).

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have developed extensive and detailed guidelines on the due diligence required to guarantee the human rights of women, highlighting the importance of the dignified treatment of victims and their families, overcoming obstacles to access to justice, timely and high quality specialized investigations, comprehensive reparations, and the systematization of data related to the crimes.<sup>32</sup>

Judicially, the mass and systematic killing of women in Ciudad Juarez, Mexico, led to the Inter-American Court of Human Rights “Cotton Fields”<sup>33</sup> ruling, which is the first finding on femicide/feminicide from an international tribunal. In their

decision, the Court writes that these women are being killed because they are women, and that they are taking place within a “culture of discrimination.” They make the connection between the subordination of women and practices based on the socially dominant and persistent gender stereotypes, exacerbated by policies and practices reflected in the reasoning and language of the judicial police, as demonstrated in this case before the court. The creation and use of stereotypes is one of the causes and consequences of gender-based violence against women. (Paragraphs 399 to 401).

The standards established by the court for the prevention, sanction, investigation, and reparation of femicide/feminicide are particularly interesting. It writes that the States should adopt comprehensive measures to comply with due diligence in cases of violence against women. In particular, they should have an appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the respective complaints. The prevention strategy should also be comprehensive; in other words, it should prevent the risk factors and, at the same time, strengthen the institutions that can provide an effective response in cases of violence against women. Furthermore, the State should adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence. (Paragraph 258).

The court finds that the investigation of the deaths of women has additional obligations when it comes to the treatment of a woman who has been killed or abused, or whose personal freedom has been affected within the general context of violence against women, requiring that the principle of due diligence must be strictly applied by the State: “[due diligence] arises when missing women are reported, with respect to search operations during the first hours and days. Since this obligation of means is more rigorous, it requires that exhaustive search activities be conducted. Above all, it is essential that police, prosecutors and judicial officials take prompt, immediate action by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place where they may be held captive. Adequate procedures should exist for reporting disappearances, which should result in an immediate effective investigation. The authorities should presume that the missing person has been held captive and is still alive until there is no longer any uncertainty about her fate.” (Paragraph 283).

Additionally, the Court orders that States must “continue harmonizing all its protocols, manuals, judicial

32. Inter-American Commission on Human Rights. Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II, 2007.

33. Gonzalo et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009.



investigation criteria, expert services and delivery of justice used to investigate all crimes concerning the disappearance, sexual abuse and murder of women with the Istanbul Protocol, the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, and the international standards for searching for disappeared people, based on a gender perspective.” (Paragraph 502).

With respect to reparation, the Court finds that any reparations must be comprehensive and should, “be designed to change this situation, so that their effect is not only of restitution, but also of rectification.” And that, “In this regard, reestablishment of the same structural context of violence and discrimination is not acceptable.” (Paragraph 450).

The Declaration on Femicide, published by the Follow-Up Mechanism to the Belem do Para Convention, declared that, “In Latin America and the Caribbean femicide is the most serious manifestation of discrimination and violence against women. High rates of violence against women, their limited or nonexistent access to justice, the prevalent impunity in cases of violence against them, and the persistence of discriminatory sociocultural patterns are among the causes that influence the rise in the number of deaths.” Further, it adopted the following definition of femicide: *“the violent death of women based on gender, whether it occurs within the family, a domestic partnership, or any other interpersonal relationship; in the community, by any person, or when it is perpetrated or tolerated by the state or its agents, by action or omission.”*<sup>34</sup>

34. COMMITTEE OF EXPERTS ON VIOLENCE OF THE FOLLOW-UP



The Declaration makes the following recommendations:

- a. That the extenuating circumstance “crime of passion” not be used to diminish responsibility of the perpetrators of femicide.
- b. That they enact laws or strengthen existing legislation on women’s empowerment and their rights and freedoms.
- c. That they include risks to life and personal safety as well as other manifestations of violence against women in their public security policies.
- d. That they guarantee increased and enhanced access to justice by women, improving the system for criminal investigation and the protection of women affected by violence,
- e. That they adequately punish public officials who did not exercise due diligence in those proceedings.
- f. That they develop and utilize data banks, research, and statistics that enable them to assess the magnitude and problematic of femicide.

The CEVI has repeated these recommendations in later reports,<sup>35, 36</sup> signaling the importance of adopting sanctions to punish this crime in both the public and private spheres, as well as how to follow up on judicial rulings, and remove any legal obstacles that could impede the family members of the victims from obtaining justice or delay the sentence of an attacker who alleges extreme emotion to justify or mitigate the gravity of the crime.

The Rome Statute of the International Criminal Court is another human rights instrument with special significance for femicide/feminicide. Its jurisdiction allows it to impose international

criminal sanctions on individuals for the crimes of genocide, crimes against humanity and war crimes. Violence against women committed by the State and its agents is one of the less frequently addressed issues in national legislation, but Lagarde and other feminist authors emphasize the importance of highlighting impunity and the responsibility of the State in femicide, by classifying the crime as equal to genocide and crimes against humanity.

The Rome Statute of the International Criminal Court includes clear provisions with respect to the inclusion of a gender perspective. For example, it says that States have an obligation to investigate all incidents of gender-based violence and prohibit making gender-based distinctions that could adversely affect men or women. In addition, it identifies associated crimes linked to gender-based violence such as sexual slavery, forced prostitution, forced pregnancy (not surprisingly the most controversial topic), forced sterilization and any other sexually violent acts comparable to these crimes.<sup>37</sup>

---

MECHANISM TO THE MECANISM TO THE BELÉM DO PARÁ CONVENTION (MESECVI) (CEVI) 1 August 14–15, 2008, Washington, D.C., OEA/Ser.L/II.7.10MESECVI/CEVI/DEC. 1/0815 August 2008

35. Second Follow-up Report on the Recommendations of the Committee of Experts of the MESECVI 2014 (OEA/Ser.L/II).

36. Second Hemispheric Report on the Implementation of the Belem do Para Convention, 2012 OEA Ser/L

---

37. Facio, Alda. Women and the International Criminal Court. Seminar on the International Criminal Court organized by the Ministry of Foreign Affairs, Human Rights Watch and a Coalition of NGOs by a CPI, hosted in Buenos Aires, May 2001 CPI. Available in Spanish at: <http://portal.uasb.edu.ec/UserFiles/369/File/PDF/CentrodeReferencia/Temasdeanalis2/cpi/articulos/facioalda.pdf>

## 1.5. Criminal law and gender-based discrimination against women

Historically, the countries of Latin America have followed the basic foundations of Spanish law that, in both civil and criminal law, affirm and reaffirm the supremacy of the rights of men over women, within a hegemonic patriarchal system. The concept of an “honest woman” was required in order to define crimes committed against women, the exculpation or legal pardon for a subsequent marriage or the passion provoked by adultery, the image of “an attack on modesty” and its consideration as a minor infraction in order to define the different forms of sexual abuse, are clear examples of an androcentric and sexist system of criminal law.

The last few decades have seen progress in international human rights law and the recognition of women's rights, and there has been a tendency toward the development of a more gender-neutral criminal law. Some legislation in the region has criminalized some forms of domestic violence affecting women in an intimate or family scenario. However, in most norms the gender-neutral nature of the perpetrator is maintained and as a result, the laws are not specifically directed at sanctioning violence against women.

The conceptualization of gender based violence has not permeated the criminal justice system. The academic field holds strong resistance. Some of the main questioning of the typification of femicide are:

- the sufficiency of already existing neutral criminal offenses.
- the convenience of using a generic aggravating circumstance instead of special types.
- the risk of constituting a form of criminal law of authorship as far as femicide/feminicide can only be committed by men.
- the lack of determination of the different legal goods protected by these new norms.

These dogmatic positions on criminal law, at their base, are ignoring the specificity of violence against women and their structural and

structuring character in a patriarchal society. The relations of power and submission that sustain it constitute violations of human rights and, therefore, always require a criminal response.

From the perspective of minimum criminal law, understanding it as a criminal law conceived solely in terms of the protection of primary goods and fundamental rights,<sup>38</sup> there is no doubt that the murders of women motivated by the fact that they are women, make up this basic core which is reserved for the criminal law.

To confront this doctrinal position, it is necessary to restate the conceptual definitions and what exactly is meant by gender-based violence against women. If we consider that gender-based violence is just one more manifestation of the violence that exists in society, then there is no real justification for special treatment just because the victim of the crime is a woman. However, if we consider that gender-based violence is a form of discrimination produced by the unequal power relationships between men and women within the dominant patriarchal system, then femicide/feminicide should be considered a problem that women suffer from, solely because they are women, and that requires a differentiated and specialized response.

In addition to these questions, the classification of femicide as a crime is frequently criticized by both legal and human rights doctrine for the perceived lack of precision in the description of the type of crime that weakens its tipification.

As noted above, and in agreement with Toledo,<sup>39</sup> this imprecision is a consequence of the transfer of the concept to the world of criminal law, and more specifically, in its reduction to criminal types, terms and concepts developed by the social sciences. The imprecision that exists in the description of the conduct is even more accentuated as the norms attempt to define the different types of femicide/feminicide that occur in both the private and public spheres and the

38. FERRAJOLI, Luigi, On fundamental rights and their guarantees, National Commission on Human Rights, Mexico, 2006, p. 40.

39. TOLEDO, Patsili. Femicide, Office of the United Nations High Commission of Human Rights, 2009.





different modalities and motives are listed within the same crime type. Toledo notes, however, that the types that limit feminicide to those crimes committed within the intimate sphere, while they do manage to be highly precise, tend to only constitute a feminization of existing crime types, like parricide and homicide, and maintain the exact same criminal penalties.

It is a challenge to translate abstract concepts to the criminal sphere and, particularly, to the criminal process and the rules of evidence. Especially when these abstract concepts refer to the social and cultural environment that determine the perpetrator's criminal behavior, beyond their immediate motive. However, as Diana Russell<sup>40</sup> notes with respect to racist homicide or other hate crimes, one would never consider not prosecuting them just because of the difficulty of determining the motive.

Another challenge posed to the term is the potential inclusion of women as perpetrators of the crime in apparent contradiction to one of the most basic elements of its definitions. However, both Russell<sup>41</sup> and Monárrez<sup>42</sup> discuss the possibility of femicide being committed by women.

Regardless of whether the inclusion of women as the attacker can be discussed, the existence of contempt for women because they are women and the context of a gender-based unequal power relationship would still need to be demonstrated in these cases as the motive in order to maintain the assumption of the crime as one of gender-based violence.

In any event, the vast majority of laws that address femicide/feminicide in the region have adopted a gender-neutral perpetrator, notwithstanding possible violations of the principle of equality or the potential for development of "perpetrator-based criminal law".

Feminists have decried the ability of the criminal justice system to respond satisfactorily to gender-based crimes, given that they are the consequence of complex social and cultural problems, and when they are placed within the framework of traditional criminal law, they are simplified, and the political arguments and context that justify their consideration and special treatment are diluted.<sup>43</sup>

Laporta<sup>44</sup> writes:

*"...the structure itself of criminal law (...) is distanced from feminist demands because of its closed, hierarchical, decontextualizing, selective, and simplifying nature."*<sup>45</sup> That is, in the words of Gerlinda Smaus, *"the sex of criminal law is not only expressed in its content, but also in its actual form."*<sup>46</sup>

This makes criminal law dangerous for women, and as René Van Swaaningen points out, *"criminal law cannot remain unquestioned as a gender-neutral tool, as it is sometimes perceived by feminists, but rather as an inconvenient and flawed ally in the fight for women. We must either ignore it or use it subversively."*<sup>47</sup>

40. RUSSELL, D., "Defining Femicide and Related Concepts", en RUSSELL, D., HARMES, R., (Comp.), Femicide in global perspective.

41. RUSSELL, D. idem.

42. MONÁRREZ, J., "Las diversas representaciones del FEMINICIDE y los asesinatos de mujeres en Ciudad Juárez: 1993-2005", en MONÁRREZ, J., CERVERA, L., FLORES, C., RUBIO, R., Violencia contra las mujeres e inseguridad ciudadana en Ciudad Juárez, El Colegio de la Frontera Norte - Miguel Ángel Porrúa Editores, México, 2010.

43. Laporta Hernández, E. ob.cit.

44. idem

45. VAN SWAANINGEN, R., "Feminism, criminology and criminal law: a contentious relationship", Papers d'estudis i formació, nº 5, 1989, pp. 94-95.

46. SMAUS, G., "Feminist analyses of criminal law", in BERGALLI, R., (Ed.), Contradictions between the law and social control, Editorial M.J. Bosch, S.L., Goethe Institut, Barcelona, 1998, p. 89.


47. VAN SWAANINGEN, R., "Feminism, criminology and criminal law: a contentious relationship", Papers d'estudis i formació, op. cit., p. 103







NO QUIERO  
VALIENTE  
QUIERO CRECER  
SIN MIEDO



## Chapter 2.

# LEGISLATION ON FEMICIDE/FEMINICIDE IN THE REGION

2.1. Laws that introduce the crime of femicide/feminicide

2.2. Nomen iuris, scope of the crime and type of criminal classification

2.3. Factors considered to determine the actions and circumstances that define the crime as femicide/feminicide

2.4. Special aggravating circumstances for femicide/feminicide

2.5. Considerations related to the factors analyzed

2.6. Punishment

2.7. Other crimes related to femicide/feminicide

2.8. Laws on prevention and protection, investigation and reparation

## 2.1. Laws that introduce the crime of femicide/feminicide

All Latin American countries except Cuba and Haiti have approved laws that penalize femicide/feminicide: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

The following table lists the legal provisions that introduce the crime.<sup>48</sup>

Thirteen of the countries that criminalize femicide/feminicide also have a comprehensive law against violence. Seven of them penalize femicide in that same law (Bolivia, El Salvador, Guatemala, Nicaragua, Panama, Paraguay and Venezuela). Four have done so in an autonomous law, later (Argentina and Colombia) or earlier (Peru and Uruguay). Mexico introduces it in a law that reforms several laws (the comprehensive law on violence and the Criminal Code, among others). Ecuador introduced it in the general reform of the Criminal Code prior to approving the integral law.

Five other countries do not have a comprehensive law on violence against women, but they include the crime of femicide/feminicide: Brazil, Chile, Costa Rica, the Dominican Republic and Honduras. Three of those countries do so through specific laws to that effect (Brazil, Chile and Honduras), the Dominican Republic includes it when reforming the Criminal Code and Costa Rica introduces it in the law on the criminalization of violence against women.

The countries that criminalize femicide/feminicide, but lack comprehensive laws, only respond to one aspect of this type of violence – criminalization – but do not specify provisions for prevention, protection, investigation of the crime, and reparation for the victims. The few laws that do address these related aspects of femicide/feminicide (Colombia, Mexico) also have comprehensive laws, except in cases when these apply to the laws against domestic violence.

---

48. The text of the criminal code is included in Annex I.



Argentina	Art. 80 of the Criminal code, as amended by the Law, <i>"FEMICIDE – Criminal Code. Modifications. Incorporation"</i> , N° 26.791, 2012
Bolivia	Art. 252 bis of the Criminal Code, as amended by the <i>"Comprehensive Law to guarantee women a life free from violence"</i> .
Brazil	Art 121 of the Criminal Code, as amended by the Law, <i>"FEMICIDE: Amendment to the Criminal Code,"</i> N° 13.104 de 2015.
Chile	Art. 390 of the Criminal Code by the Law, <i>"Amendment to the Criminal Code and Law N° 20,066 on domestic violence, establishing FEMICIDE"</i> , increasing the applicable penalties for this crime and reforming the regulations on parricide, Law N° 20.480, 2010
Colombia	Art. 104 of Law 599 in 2000 (Criminal Code) as amended by the Law, <i>"By which FEMICIDE is defined as an autonomous crime and establishing other provisions (Rosa Elvira Cely)"</i> , N° 1.761, July 2015.
Costa Rica	Art. 25 <i>"Law criminalizing Violence Against Women"</i> , N° 8.589, 2007.
Dominican Republic	Art. 100 Law N° 550, 2014
Ecuador	Art. 141 Criminal Code of 2014.
El Salvador	Art. 45 <i>"Special Comprehensive Law for a Life from Violence for Women, Comprehensive Law Against Violence Against Women"</i> (Dto.520/2012)
Guatemala	Art 6 <i>"Law against FEMICIDE and other forms of violence against women"</i> (Dto. 22-2008)
Honduras	Art. 118A Criminal Code incorporated by Law Dto 23/2013.
Mexico	Art. 325 Federal Criminal Code, as amended by the Law <i>"By which several provisions of the Federal Criminal Code are reformed and added in the General Law of Access for Women to a Life Free from Violence, the Organic Law of Public Administration, and the Organic Law of the Attorney General of the Republic"</i> 2012.
Nicaragua	Art. 9 <i>"Comprehensive Law against Violence against Women"</i> N° 779, 2012
Panamá	Art. 132A Criminal Code introduced by art. 41, <i>"Law that adopts measures to prevent violence against women and reforms the Code"</i> , N° 82, 2013
Paraguay	Art. 50 of the Law <i>"Of integral protection of women, against all forms of violence"</i> No. 5777 of 2016.
Peru	Art. 108 B Criminal Code, introduced by <i>"Law incorporating Article 108A into the Criminal Code and amending Articles 107, 46B, and 46C of the Criminal Code and Article 46 of the Criminal Sentencing Code, to prevent, punish, and eradicate FEMINICIDE"</i> , Law N° 30.068, 2013 (amends the numbering of articles by Legislative Decree 1237/2015, fe de erratas)
Uruguay	Art. 312 Nal. 8 of the Criminal Code introduced by Law No. 19538 of 2017
Venezuela	Art. 57 <i>"Organic Law on the Right of Women to a Life Free from Violence,"</i> as amended by the Law of Reform of 2014.

The crime of femicide/feminicide is included in the Criminal Code of 12 of these countries (Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, Honduras, Mexico, Panama, Peru, and Uruguay). The remaining six countries address it in laws that lie outside the Criminal Code (Costa Rica, El Salvador, Guatemala, Nicaragua, Paraguay and Venezuela).

Table 2 shows the countries that criminalize femicide/feminicide, that have a comprehensive law on violence, that introduce the crime via a comprehensive law, that adopt laws specifically addressing femicide/feminicide and the countries that comprehensively reform the Criminal Code.

TABLE 2

COUNTRIES THAT CRIMINALIZE FEMICIDE / FEMINICIDE	Have a Compre- hensive Law	Crime included in comprehensive Law	Autonomous Law on Femicide	Comprehen- sively amend Criminal Code	Crime included in Criminal Code
ARGENTINA	X		X		X
BOLIVIA	X	X			X
BRAZIL			X		X
CHILE			X		X
COLOMBIA	X		X		X
COSTA RICA					
DOMINICAN REPUBLIC				C.C.2014	X
ECUADOR	X			C.C.2014	X
EL SALVADOR	X	X			
GUATEMALA	X	X			
HONDURAS			X		X
MEXICO	X		Special law reforming several laws		X
NICARAGUA		X			
PARAGUAY	X	X			
PERU	X		X		X
PANAMA	X	X			X
URUGUAY	X		X		X
VENEZUELA	X	X			

C.C.: Criminal Code

Toledo<sup>49</sup> maintains that the inclusion of femicide/feminicide in statutory law should be done contextually in order to ensure a comprehensive interpretive framework that includes a gender perspective.

Toledo points out that laws that classify femicide/feminicide which are not included in the criminal code could be marginalized and applied less frequently because of a lack of gender perspective in the criminal justice system or a lack of knowledge of principles and scope of the laws themselves. She observes that inclusion of the crimes in the Criminal Code guarantees their visibility through obligatory study in the academic training of agents, but could lead to the crime being valued as equal to others in the general criminal norms, leaving behind the concepts and

interpretation criteria detailed in special laws.

When we consider all these factors, we believe it is especially important to ensure, regardless of whether these types of crimes are included in the criminal code or not, that the legal principles they represent are not only restricted to just right to life, but that they include the right to a life free from gender-based violence.

49. TOLEDO, P. Op.cit.

## 2.2. *Nomen iuris*, scope of the crime and type of criminal classification

Nine countries (Chile, Costa Rica, Ecuador, Honduras, Guatemala, Nicaragua, Panama, Uruguay and Venezuela) identify this crime as femicide, and eight countries (Peru, Bolivia, El Salvador, Mexico, Brazil, Colombia, Paraguay and the Dominican Republic), as feminicide. Argentina lists it as an aggravating circumstance to homicide, without its own *nomen iuris*, even though the law that establishes it is called Femicide.

The debate surrounding the scope of the concept is referred to as either “feminicide” or “femicide” as described in the previous chapter and is not reflected in the published definitions of the crime.

Femicide/feminicide is included as a separate criminal type with the exception of three countries (Argentina, Chile and Uruguay). In Argentina and Uruguay, it is defined as an aggravating circumstance to homicide and Chile includes it in the crime of parricide.

Costa Rica, Chile and the Dominican Republic limit femicide/feminicide to intimate relationships and in the case of Costa Rica and Chile, it is linked only to formal and cohabitating conjugal relationships. Toledo<sup>50</sup> notes that this only serves to feminize aggravated homicide. In general, homicide is aggravated by family connections, and is already included in criminal legislation without specifically calling it femicide.

Only Argentina, Honduras and Nicaragua limit perpetrators to males, while other countries maintain wording that includes males and females.

Gender-based violence traces its origins to inequality in the power structure between men and women within a patriarchal society, and as a result, one can infer that if the act is included in the concept of femicide/feminicide, then the perpetrator should be male. However, within penal doctrine, the exclusion of women has been questioned, arguing that it is included in criminal law as “the actor”.

At the same time, this exclusion could violate the constitutional principle of presumed innocence, by establishing a presumption of guilt by the mere fact of being male, and of equality, in cases where the penalty is more severe than that imposed for the crime of homicide.

Such questioning loses its validity, however, when presented with the generic grammatical form “he who”. In addition, from the perspective of feminist doctrine, women can also commit gender-based crimes when they are committed within the context of a violent crime that subordinates the female victim.<sup>51</sup> In principle, as this crime requires the existence of a relationship of gender superiority with respect to the victim, the active subject is a man.

However, it is a complex issue, given that there may be situations in which women participate in crimes of femicide/feminicide, as co-authors or accomplices or in the framework of criminal networks for the exploitation of women. They or they could even consider the possibility of lesbian relationships in which patriarchal models are reproduced and a partner is murdered because of her status as a woman.

The greater severity of the penalties is clearly justified in the very nature of this crime given that it is a behavior that falls into the category known as hate crimes, that is, crimes committed by prejudice and discrimination.

To define the crime, one group of countries introduces a clause to distinguish femicide from homicide and refers to a motive (subjective element) and/or a type of relationship between the attacker and the victim that includes the concept of gender-based discrimination that is the root cause of the crime (circumstance). The described motive is related to misogyny, to the victim’s status as a woman, to the fact that she is a woman or to gender-based hatred. Relationships are described as being unequal in power, or relationships of control or submission. A law might state for example, “he who kills a woman because she is a woman...” or “he who kills within the context of a relationship based on an unequal power structure...”

These concepts, clearly supported in a vast amount of literature on the topic, are challenged because of the high level of abstraction, which makes it difficult to determine what constitutes punishable acts.

The countries that introduce these types of clauses go on to describe a detailed list of circumstances, means<sup>52</sup> or

51. RUSSELL, D., “Defining Femicide and Related Concepts”. Op.cit. and MONÁRREZ, J., “Different representations of feminicide and the murder of women in Ciudad Juárez: 1993-2005”. op.cit.

50. TOLEDO, Patsili. Op.cit.

TABLE 3

COUNTRY	NAME	RESTRICTED TO INTIMATE FEMICIDE OR AGGRAVATED HOMICIDE BY RELATIONSHIP	THE PERPETRATOR CAN ONLY BE MALE	ESTABLISHES A SEPARATE CRIME	INTEGRATES ANOTHER CRIMINAL TYPE
ARGENTINA	Lacking Nomen iuris		X		X Aggravating Circumstance of Homicide
BOLIVIA	femicide			X	
BRAZIL	femicide			X	
CHILE	femicide	Feminization of Homicide Aggravated By Relationship			X Included In Parricide
COLOMBIA	femicide			X	
COSTA RICA	femicide	Feminization of Homicide Aggravated By Relationship		X	
DOMINICAN REPUBLIC	femicide	Intimate		X	
ECUADOR	femicide			X	
EL SALVADOR	femicide			X	
GUATEMALA	femicide			X	
HONDURAS	femicide		X	X	
MEXICO	femicide			X	
NICARAGUA	femicide		X	X	
PARAGUAY	femicide			X	
PERU	femicide			X	
PANAMA	femicide			X	
URUGUAY	femicide				X Aggravated Homicide
VENEZUELA	femicide			X	



TABLE 4  
 MODELS USED TO DEFINE FEMICIDE/FEMINICIDE: <sup>52</sup>

#	MODEL	COUNTRIES
1.	Gender-based motive or relationship, based on control or submission, or gender-based discrimination demonstrated by specifically outlined behaviors or situations.	<ul style="list-style-type: none"> <li>· Brazil</li> <li>· El Salvador</li> <li>· Mexico</li> </ul>
2.	In addition to the killing, demonstration of gender-based motive or gender-based submissive or discriminatory relationship required in all cases, that must occur within a defined context or specific acts or circumstances.	<ul style="list-style-type: none"> <li>· Ecuador</li> <li>· Guatemala</li> <li>· Honduras</li> <li>· Nicaragua</li> <li>· Paraguay</li> <li>· Peru</li> <li>· Venezuela</li> </ul>
3.	It requires in all cases the proof of the motive of gender and provides a series of behaviors that constitute non-exhaustive indications of that motive.	<ul style="list-style-type: none"> <li>· Uruguay</li> </ul>
4.	Outline a series of independent motives or acts or circumstances, which each qualify as femicide/feminicide.	<ul style="list-style-type: none"> <li>· Argentina</li> <li>· Bolivia</li> <li>· Colombia</li> <li>· Panama</li> <li>· Dominican Republic</li> </ul>
5.	Feminizes aggravated homicide by relationship.	<ul style="list-style-type: none"> <li>· Chile</li> <li>· Costa Rica</li> </ul>

52. Classification developed in-house for the purposes of in order to facilitation.

even more specific motives<sup>53</sup> that take into account the motive and the type of relationship. These circumstances and means are connected to the motive or required relationship framework in two ways:

a. When the configuration of the described circumstance or means infer that the motive or relationship framework exists (Model 1), adopted by Brazil, El Salvador, Mexico and Venezuela adopt this model. It could state: "It is understood that hate or misogyny has always existed when the following circumstances are present". "Hate or contempt for women is considered to exist when any of the following circumstances occur..." (Art. 45 of the Comprehensive Law of El Salvador). This model allows the delimitation of the crime type, defining specific conduct or circumstances that take the motive or existence of a discriminatory relationship into account.

b. When the described circumstances or means constitute an element of the type of crime that amounts to a motive or relationship framework that maintains the criminal act and requires that both extremes be demonstrated in order to classify the crimes as such (Model 2). This model has been adopted by Ecuador, Guatemala, Honduras, Nicaragua and Peru. It could read, for example: "The man or men who kill a woman because of hate or contempt for her gender, commit the crime of femicide ... when one or more than one of the following circumstances are present" (Art. 118 A of the Criminal Code of Honduras).

c. Circumstances or conduct are non-exhaustive indicators of gender motive. (Model 3, Uruguay)

Another group of countries, Argentina, Bolivia, Colombia, Panama and the Dominican Republic, describes a series of conduct or circumstances that, when any of them result in the death of a woman transform a homicide into a femicide/feminicide. (Model 3).

Finally, a small group of countries, including Costa Rica and Chile, feminize the known crime of homicide, aggravated by family association. (Model 4).

There are no substantial differences between Model 1 and Model 3 in terms of the definition of the crime, given that both models require the proof of specific conduct or

circumstances.

Table 5 contains the content of the legal framework for models 1 and 2 and its link to the conduct or circumstances described in the definition of the crime type.

---

53. For example, because of pregnancy.

TABLE 5: RELATIONSHIP BETWEEN LEGAL FRAMEWORK AND THE DESCRIPTION OF CONDUCT OR CIRCUMSTANCES

MOD	COUNTRY	LEGAL FRAMEWORK		NUMBER OF CIRCUMSTANCES, MEANS, OR MOTIVES DESCRIBED UNDER THE LEGAL FRAMEWORK
		MOTIVE	RELATIONSHIP TYPE	
1.	Brazil	Because of the victim's status as a woman.		Demonstration of motives.
	El Salvador	Because of reason based on hate or contempt for women.		Demonstration of motives.
	Mexico	Because of gender.		Demonstration of required motive.
2.	Ecuador	Because the victim is a woman or her status as a woman.	Unequal power relationship.	The unequal power relationship is demonstrated by any violent conduct. The motive must be proven as complementing the violent conduct alone.
	Guatemala	Because of the victim's status as a woman.	In the framework of unequal power relationships between men and women.	The motive and the unequal power relationships must be proven together with the circumstances.
	Honduras	Because of the victim's gender, because of hatred or contempt for her status as a woman.		The motive must be proven together with the violent conduct.
	Nicaragua		Within the framework of unequal power relationships between men and women.	Requires proof of unequal power relationships, in addition to the listed circumstances or means.
	Paraguay	Because of the victim's status as a woman.		The motive is a requirement to prove complementary to the violent behavior itself.
	Peru	Because of the victim's status as a woman.		Requires proof of the motive in addition to the listed means or circumstances.
	Venezuela	Motivated by hatred or contempt of the victim's status as a woman.	In the context of a gender-based relationship of control and submission.	The circumstances or means must prove the required motive. Relationship based on control and subordination, must be proven in addition to the circumstances or means.
3.	Uruguay	Reason of hatred, contempt or contempt for her condition as a woman.		They are non-exhaustive indications that allow presuming the required motive. They admit evidence to the contrary.

**TABLE 6:**  
**FACTORS CONSIDERED TO DETERMINE THE ACTIONS AND CIRCUMSTANCES THAT  
DEFINE THE CRIME AS FEMICIDE**

	AR	BO	BR	CH	CO	CR	DR	EC	ES	GU	HO	ME	NI	PA	PY	PE	UY	VE
Misogyny/Hate /Condition of Being a Woman	X		X		X			X+Y	0	Y+Z+X	Y+X	0	X+Z	X	Y	Y+X	Y	0
Unequal Power Relationships/ Subordination/Gender Based Discrimination					X			0		Z+Y+X			X+Z	X		X+Y		Z+X
Cohabiting Partners	X	X		X		X	X	AG		X+Z+Y	X+Y	X	X+Z	X	X+Y	X+Y		X+Z
Non-Cohabiting Partners	X	X					X	AG		X+Z+Y	X+Y	X	X+Z	X	X+Y	X+Y		X+Z
Family relation									AG	X+Z+Y			X+Z		X+Y			
Relationship of Trust or Authority		X								X+Z+Y		X		X	X+Y	X+Y		
Exploitation of a Vulnerable Situation		X							X					X	X+Y			X+Z
In the Presence of Children					AG	AG		AG	AG	X+Z+Y			X+Z	X				
Pregnant or Post Partum		MOT	AG			AG								X		AG		
Denial of Freedom of Movement or Communication					X							X						
Prior Violence	X	X	DV		X			X+Y	X	X+Z+Y	X+Y	X	X+Z	X	X+Y	DV+Y	Y	X+Z
Attempt to Establish or Re-Establish Romantic Partnership		X					X			X+Z+Y	X+Y		X+Z	X	X+Y		Y	X+Z
Prior Sexual Violence		X			X				X		X+Y				X+Y	X+Y	Y	
During Sexual Violence		X			AG					X+Z+Y	X+Y	X	X+Z	X	X+Y	AG	Y	X+Z
Oppression and Control Over Life Decisions And Sexuality					X													
Within the Context of Human Trafficking		X														AG		AG
Grievous Injuries and Lesions									X	X+Z+Y	X+Y	X	X+Z	X				X+Z
Genital Mutilation					AG											AG		
Group Rituals		X			AG					X+Z+Y			X+Z	X				
Weapon of War					X													
Vengeance														X				
Exposure of the Victim's Corpse												X		X				X

AG: Aggravating circumstance

DV: Domestic Violence

MOV: Motive

X: Circumstance or condition

Y: Motive required to prove any of the other circumstances or conditions

Z: Extreme power/authority relationship required to prove any of the other circumstances or conditions.

### 2.3. Factors considered to determine the actions and circumstances that define the crime as femicide/feminicide

The different elements that constitute a crime and that distinguish femicide/feminicide from homicide are analyzed under the rubric of “factors”. Among these factors are the circumstances, means, and motives of the crime.

#### A. Misogyny, killing because the victim is a woman, gender-based hate

The act of killing a woman because she is a woman is referred to in several ways: misogyny, gender-based hate, contempt because of her status as a woman, because she is a woman, because of gender-related rationale.

This factor is present in almost all crimes, given that, theoretically, it is the one element that distinguishes a femicide from a homicide. The only country that does not mention this factor is Bolivia while Chile, Costa Rica and the Dominican Republic restrict the crime to intimate femicide.

The value placed on this factor differs according to each law.

All the countries that use Model 1 (see Table 4) use it as a way to distinguish between the different motives behind femicide, which then require a series of other behaviors or motives that must be demonstrated in order to prove that this was indeed the motive.

This is the case in Brazil, El Salvador and Mexico. For example, the law in El Salvador, after defining the crime of femicide as, “whoever causes the death of a woman based on hate or contempt for the victim’s status as a woman”, adds, “hate or contempt is considered to exist when the following circumstances are present ...” (Art. 45, Comprehensive Law for a Life Free from Violence for Women).

Mexico’s definition is similar to that of El Salvador (Art. 325 Criminal Code). Brazil is slightly different - while the country still uses Model 1, two circumstances must exist in order to determine that the murder took place “because of the victim’s status as a woman”: domestic violence and the “contempt or discrimination against

the victim’s status as a woman.” These factors can be as abstract as the user desires (Art. 121, Criminal Code), to the point of not describing an objective act.

Another group of countries that follows Model 2 as described in Table 4 requires that the motive be proven together with other specifically identified circumstances or conditions. As an example, the Criminal Code of Honduras establishes that “the crime of femicide occurs when the (male) perpetrator or (male) perpetrators kill a woman based on her gender, with hate and contempt for her status as a woman... the crime will be punished ... when one or several of the following circumstances ...” (Art. 118). This change in the wording substantially changes the requirements to prove the crime, given that regardless of the circumstances in which the crime occurred, this element must also be proven.

Uruguay requires to prove a gender motive and establishes a series of circumstances that it denominates as indications, that are not exhaustive and that admit evidence to the contrary. This means that the criminal type is more open, by enabling other possibilities not expressly provided for but, in addition, by admitting evidence to the contrary of the gender motive, making it more difficult to prove.

Finally, for Argentina, Colombia, Nicaragua and Panama, misogyny or gender-based hate is one more of the elements (among others) that can exist as part of the crime. Art. 104 A in the Colombian Criminal code states: “Feminicide. Whoever causes the death of a woman, because of her status as a woman or because of gender identity or when any of the following circumstances has existed or currently exists ...” Status as a woman, gender identity or the existence of certain detailed circumstances function separately from one another, meaning that the death of the woman simply because of her status as a woman is enough to classify the crime as feminicide. The same classification can be obtained when, “a crime is commissioned to generate terror or humiliate an enemy”, without the need to prove that the motive was the victim’s status as a woman.

#### B. Unequal power relationships

Like the previous factor, unequal power relationships, in some countries, can serve as a



pre-condition for all crimes. In other countries, it is one of the factors or circumstances that contributes to the classification of the crime.

Nicaragua and Venezuela require that, in addition to the existence of an unequal power relationship, other strictly defined circumstances or conduct must be present. Guatemala's requirements are stricter, as the misogyny, the framework of unequal power relationships between women and men, and at a minimum, one of a series of specific circumstances listed (Art. 6 of the Law Against Femicide) must be present. Ecuador infers the existence of an unequal power relationship in any violent act.

In Colombia and Panama, the death must have been a result of an exploitation of a victim's vulnerable situation in order to be considered feminicide, a requirement which puts the concept of feminicide itself into question and how it is differentiated from the homicide of a man in the identical situation:

"Commission of the crime while exploiting power over the woman, expressed in terms of personal, economic, sexual, military, political or socio-cultural hierarchy." (Subsection C, Art. 104 A Criminal Code of Colombia).

"When the perpetrator exploits any high-risk situation or the physical or psychological vulnerability of the victim." (4art. 132 A Criminal Code of Panama).

### C. Intimate partner relationship

A couple relationship, whether cohabitating or not,<sup>54</sup> is directly or indirectly considered a factor in the classification of intimate femicide/feminicide.

Most of the laws analyzed defined three modalities of intimate femicide/feminicide: when a current partner is killed, when an ex-partner is killed or when the perpetrator is attempting to establish or reestablish a relationship.

Chile and Costa Rica limit the use of the term femicide to homicides aggravated by a conjugal relationship or cohabitation between the victim and the perpetrator.

In Argentina, Bolivia, Chile, Costa Rica, Mexico, Panama and the Dominican Republic, the existence of a couple relationship is enough to classify the crime as an intimate femicide/feminicide. Brazil, Guatemala, Honduras, Nicaragua, Peru, and Venezuela require additional circumstances, such as prior incidents of violence or hate-based motive in the commission of the crime.

### D. Prior violence against the victim

This factor is particularly significant, as it recognizes femicides/feminicides that occur within the context of gender-based violence by the attacker against the victim.

The existence of prior violent incidents is enough to classify the crime as femicide/feminicide in Argentina, Bolivia, Brazil (in Brazil it is only domestic violence), Colombia, El Salvador, Mexico and Panama.

Prior violence within the framework of a misogynistic or an unequal power relationship is relevant in Ecuador, Guatemala, Honduras, Nicaragua, Peru and Venezuela, but is not mentioned in the Dominican Republic, Chile or Costa Rica.

### E. Sexual violence

Sexual violence against the victim is one highly accurate way to identify misogynist behavior, the attempt to control and force submission of a woman's body.

Clearly, previous sexual violence would be included in all the countries that generically foresee previous violence as an indicator of femicide/feminicide.

Bolivia, Colombia, El Salvador, Honduras, Paraguay and Peru explicitly mention the history of previous sexual violence. Bolivia, Mexico, Panama, Guatemala, Honduras, Nicaragua, Paraguay, Uruguay and Venezuela explicitly describe the situations where

54. The Dominican Republic refers to "couple" with no mention of cohabitation, which could be interpreted as addressing partners that do not cohabitate.

femicide/feminicide occurs within the framework of sexual violence. Colombia and Peru name rape and genital mutilation as aggravating circumstances.

In countries that expressly name sexual violence as one of the circumstances that determine a crime to be femicide/feminicide, it seems excessive to additionally require proof of misogyny or an unequal power relationship (as in Guatemala, Honduras, Nicaragua, Peru and Venezuela).

#### F. Denial of freedom of movement and isolation

Mexico and Colombia establish denial of freedom of movement and isolation as factors that, in and of themselves, classify the killing as femicide, without the addition of other elements, which would characterize it as a gender-based crime.

#### G. Group rites

Bolivia, Guatemala, Nicaragua and Panama include this form of killing women, and Colombia includes it as an aggravating circumstance; but they do not define what factors determine a group activity to be a rite.

#### H. Grievous bodily harm and cruelty

The laws of El Salvador, Honduras, Mexico, Panama, Venezuela, Nicaragua and Guatemala, include mutilation of the corpse of the victim as one of the constituting elements of femicide/feminicide. Honduras refers to cruelty, and Colombia and Peru establish genital mutilation as an aggravating circumstance.

#### I. Display of the corpse of the victim

The post-mortem display of the victim's corpse qualifies a crime as femicide/feminicide in Panama and Mexico. While in Venezuela, in addition to display of the victim's corpse, the crime must be committed within the "framework of an unequal power relationship" to qualify.

#### J. Pregnancy and post-partum

Bolivia considers a victim's pregnancy sufficient motive for femicide/feminicide: "to kill because of pregnancy" (or up to three

months post-partum); and Brazil, Costa Rica and Peru list the victim's pregnancy as an aggravating circumstance.

In Panama, pregnancy alone is enough to classify the crime as femicide – the fact that the victim was pregnant alone negates the need to establish a link between the pregnancy and the murder.

#### K. Presence of children

The presence of the woman's children at the time of the crime is considered an aggravating circumstance in Colombia, Costa Rica, Ecuador and El Salvador and is sufficient to distinguish a femicide/feminicide from homicide, in Panama.

El Salvador and Colombia extend the aggravating circumstance to the presence of any member of the victim's family.

#### L. Exploitation of a vulnerable situation

Bolivia, El Salvador and Panama require proof that the victim was in a vulnerable situation at the time of the murder for the crime to be classified as a femicide/feminicide. Venezuela additionally requires that the murder takes place within the context of gender-based subordination.

#### M. As a weapon of war

Colombia is the only country that lists femicide/feminicide as a weapon of war, describing it as, "to generate terror or humiliate an enemy."

#### N. Human trafficking

Bolivia includes human trafficking as one of the contributing factors of femicide/feminicide; and Peru lists it as an aggravating circumstance.

## 2.4. Special aggravating circumstances for femicide/feminicide

Aggravating circumstances vary greatly by type and nature. Some countries do not list specific aggravating circumstances for the crime of femicide/feminicide, while circumstances that constitute a crime in some countries are considered an aggravating circumstance in others. Example: an attempt to reestablish a relationship.

## 2.5. Considerations related to the factors analyzed

The difficulty of translating the concepts of femicide/feminicide to a clearly defined illicit act means that, often, abstract and open concepts have been introduced that are objectionable, as they diverge from the principles of legality, criminality and legal certainty. Expressions like “contempt for the victim’s status as a woman” or “exploitation of unequal power relationships” are not precise enough to determine if conduct violates the law, without the demonstration of objective behaviors.

In other cases, many of the factors considered are not suitable per se to be included in the definition of the crime of femicide/feminicide, as they have been described (killing because of the victim’s status as a woman). The fact that the victim is in a vulnerable situation, or is pregnant, or the killing takes place in the presence of her children; that her corpse is displayed in a public place, do not necessarily mean that she was killed because she is a woman. The murder could have occurred based on a completely different motive. Nevertheless, these can still be considered aggravating circumstances of the criminal conduct.

At the other end of the spectrum, we find legislation that requires the proof of misogyny as a motive, when the described conduct is itself an act of gender-based violence. For example: killing a woman within the context of sexual violence.

The different modalities of femicide/feminicide extracted from the doctrine, like those listed in the Latin American Model Protocol for the investigation of gender-related killings of women, are not reflected as such in the compared legislation.

In the same vein, the absence of the following acts in the legislation analyzed stands out:

**TABLE 7:**  
**AGGRAVATING CIRCUMSTANCES**

Aggravating circumstance	BR	CO	CR	EC	ES	PE	VE
During pregnancy and up to three months post-partum	X		X			X <sup>55</sup>	
Against a person older than 60-65 years old, elderly female	X	X	X		X		
Against a person under 14 years of age	X						
In the presence of children		X	X	X			
In an attempt to establish or reestablish a relationship or intimacy				X			
In the presence of other family members		X			X		
Multiple perpetrators		X	X		X		
Taking advantage of status as a public servant		X					
Perpetrator is a public servant					X		
Woman under 18 years of age					X	X	
Disability		X	X		X	X	
Forced displacement		X					
Socio economic condition		X					
Racial prejudice		X					
Prejudice against sexual orientation		X					
In the presence of a member of the household		X					
Following a sexual attack		X				X	
Following rituals		X					
Genital mutilation		X				X	
Mutilating the body of the victim							X
Acts of physical or psychological harm		X					
Family member or household member		X					
Family relationship, trust relationship, unequal power relationship (subordinate or superior)				X	X	X <sup>56</sup>	X
Couple relationship, cohabitating or not							X
Intent to commit human trafficking						X	X <sup>57</sup>
Exposure or disposal of the victim's body in public				X			

55. During pregnancy and up to 3 months after of childbirth (PE).

56. Only a person under the care of the perpetrator.

57. For the purpose of trafficking in persons<sup>60</sup>.

- Femicide/feminicide in stigmatized professions or activities (such as sex workers).
- Femicide/feminicide by association, or the killing of third parties who happen to be present where and when the killing or attempted killing of another woman takes place.
- Femicide/feminicide of young girls.
- Lesbophobic and transphobic femicides/feminicides, (except under vague language such as, “acts of oppression and control over the victim’s life decisions and sexuality”).
- Femicide/feminicide as part of human trafficking, which is only addressed by Bolivia and Peru, which lists it as an aggravating circumstance.

Sexual violence is addressed generically, but cases when it occurs within the context of an intimate or family femicide/feminicide are not distinguished from those committed within a systematized manner.

Another issue missing from the analyzed legislation is the criminalization of femicides/feminicides with international implications (genocide, crimes against humanity, or war crimes), with the exception of Colombia, who alone references the killing of women as a way to “generate terror or humiliate enemies.”

## 2.6. Punishment

The following table lists the applicable sentences in each country for the crime of femicide/feminicide. It’s worth noting that, in addition to verifying that all the sentences are serious and that femicides/feminicides are punished more severely than common homicide, sentences cannot be compared to one another. What is most important is that the penalty for this crime corresponds to the most severe sentence possible according to the sentencing guidelines of each country.

## 2.7. Other crimes related to femicide/feminicide

There are two additional crimes that complement femicide/feminicide:

### A. Femicide by instigation of suicide

This crime is mentioned in Panamanian legislation (Art. 135 of the Criminal Code of Panama)<sup>55</sup>, Bolivia (Art. 256 Criminal Code)<sup>56</sup> El Salvador (Art. 48 of the Comprehensive Law for a Life Free from Violence for Women, the Comprehensive Law against Violence Against Women) and Venezuela (Art. 59 of the “Organic Law on the Right of Women to a Life Free from Violence”).<sup>57</sup>

Incitement to suicide is separate from the original crime, either as an aggravating circumstance or as a separate crime, when it is directed at a woman under specific circumstances:

- Abuse (Panama)
- Resulting from a violent situation (Bolivia and El Salvador)
- Exploitation of a high-risk situation resulting from violence or exploitation of dominance of a previous or current relationship between the inciter and the victim (El Salvador)
- Hate or contempt for the victim’s status as a woman (Venezuela)

### B. Impeding access to justice

This crime is addressed by Peru, Bolivia, Costa Rica, El Salvador, Mexico and Nicaragua.<sup>58</sup> Mexico punishes proven negligence on the part of the government official.

55. Introduced by Article 41 “Law that adopts measures of prevention for violence against women and reforms the Code”, N° 82 of 2013

56. Only a person under the care of the perpetrator.

57. Language taken from the law of reform of 2014

58. (Peru, Article 377 and 378 of the Criminal code in the language provided by the comprehensive law); Bolivia (Article. 154 bis of the Criminal Code with language taken from the, “Comprehensive Law to guarantee women a life free from violence”); Costa Rica (Articles 41 and 42 of the law criminalizing violence against women) El Salvador (Article 47, Special Comprehensive Law for a Life Free From Violence for Women) Mexico (Final paragraph of Article 325 of the federal Criminal Code, in language provided by the Law, “By which several provisions of the Federal Criminal Code are reformed and added, of the General Law of Access of Women to a Life Free From Violence, of the Organic Law of Federal Public Administration and the Organic Law of the Attorney General of the Republic (Article 16 “Comprehensive Law against violence against women”, N° 779 of 2012)



TABLE 8:  
SENTENCES

COUNTRY	SENTENCE
ARGENTINA	Life in prison
BOLIVIA	30 years
BRAZIL	12 to 30 years
CHILE	Life in prison
COLOMBIA	20 to 41 years
COSTA RICA	20 to 35 years in addition to the waiving of rights including voting, disqualification from public service including elected office, guardianship, judicial administration of assets when the crime was committed while exploiting these legal situations.
DOMINICAN REPUBLIC	30 to 40 years
ECUADOR	22 to 26 years
EL SALVADOR	20 to 35 years
GUATEMALA	25 to 50 years, with no possibility of a reduction in sentence or substitution of punitive measure
HONDURAS	30 to 40 years
MEXICO	40 to 60 years and a fine equal to 500 to 1000 days. Loss of all rights related to the relationship with the victim, including those of a inheritance
NICARAGUA	<ul style="list-style-type: none"> <li>· 15 to 20 years when the crime is committed in a public environment</li> <li>· 20 to 25 years when the crime is committed in a private environment</li> <li>· If two or more factors are present, the maximum penalty applies</li> </ul>
PANAMA	25 to 30 years
PARAGUAY	10 to 30 years
PERU	Not less than 15 years Not less than 24 years when aggravating circumstances are present When victim and perpetrator have children, loss of parental or guardianship rights 15 to 30 years
URUGUAY	15 to 30 years
VENEZUELA	20 to 25 years 28 to 30 years when aggravating circumstances are present

Punishable crimes include:

- Facilitating impunity for gender-based crimes (Costa Rica, El Salvador, Bolivia)
- Delaying or impeding the investigation of gender-based crimes (Bolivia, Costa Rica, Nicaragua, Mexico, El Salvador)
- Denying requested protection from domestic violence (Peru)

## 2.8. Laws on prevention and protection, investigation and reparation

### Prevention and protection

As mentioned in paragraph 1 of this chapter, countries that have enacted comprehensive laws against gender-based violence employ a variety of measures that address prevention and protection for women against violence, including femicide/feminicide.

One of the measures available, the “gender violence alert mechanism,” was initially proposed in the Comprehensive Law of Mexico (Articles 22 and subsections of the comprehensive law).<sup>59</sup> It is defined as “a set of emergency governmental actions to confront and eradicate femicidal violence within a defined territory”. A gender violence alert mechanism was requested by human rights and civil society organisms and consists of a series of measures, like the creation of a multidisciplinary team to follow up on the situation; the implementation of preventive legal and security actions; the development of reports on the affected area and indicators of violence against women; the allocation of budgetary funding and communication to the public on.

Laporta<sup>60</sup> observes, in reference to the situation in Mexico, that it is well known that these alerts are never actually implemented in areas known for having disturbing levels of violence. These omissions, when the law specifically calls for tools to respond to existing problems, highlight the problem of a failure to comply with the law, and in turn require improvement in the enforcement of all norms

associated with gender-based violence.

Legislation in Colombia, in addition to the provisions in the comprehensive law, establishes an additional series of preventative measures in the law criminalizing femicide/feminicide, that take into account the standards established by the findings of the Inter-American Court of Human Rights, including:

- The integration of a gender perspective at all levels of formal public education.
- Education of public servants and specialized education for employees of the Public Prosecutor’s Office, police experts, and other agents who come into contact with the victims.

- The creation of a system that provides information on the definition of public policies for the prevention, protection, treatment and reparation of victims of gender-based violence.

Uruguay, in the Integral Law on Gender-Based Violence against Women (Law No.19.580), establishes as an exception to the international restitution of persons under 16 years of age, according to the agreements on international restitution of minors ratified by the country, understanding that the occurrence of gender-based violence against a minor or against the person who is in charge of them constitutes a serious risk.

Likewise, it incorporates into the Civil Code the loss of full right of parental authority in cases of conviction for femicide or with attempted femicide of the mother of the children of the convicted person.”

The six countries that do not have a comprehensive law against violence but that do classify femicide/feminicide as a crime (Brazil, Chile, Costa Rica, Ecuador, Honduras and the Dominican Republic) through the enactment of special laws, do not include provisions on protection and prevention in their legislation.

In these cases, the framework of protection and prevention is limited to intimate femicide/feminicide by the application of domestic violence laws and can be expressly named in criminal process law.

59. The Comprehensive law on violence against women in Bolivia (2013) includes a mechanism with similar characteristics.

60. Laporta Hernández, Elena. FEMINICIDE/FEMICIDE. Reflections on feminist law. op.cit.

## INVESTIGATION OF CRIMES OF FEMICIDE/FEMINICIDE

For a State to be in compliance with the obligation of due diligence required in the violation of human rights, combating impunity for the crimes of femicide/feminicide requires improving access to justice for victims and their family members, as well as ensuring that the crimes are properly investigated.

The law criminalizing femicide/feminicide in Colombia specifically dedicates several articles to this aspect of the issue, establishing the following:

### A. The guiding principles of due diligence with respect to the investigation and prosecution of the crime of feminicide are as follow (Article 6):

- Technical, specialized, exhaustive, impartial, agile, timely and effective.
- Competent, independent, impartial, exhaustive and opportune prosecution of the suspects without delay.
- Participation of the victims in the process.

### B. Actions that jurisdictional authorities are required to take to comply with the obligation of due diligence (Article 7):

- Search and identification of the victims of forced disappearance or unknown whereabouts.
- Investigation into the continuum of previous violence, even when not reported to the authorities.
- Determination of the gender-related subjective elements of the crime that motivated the commission of the crime.
- Execution of arrest orders and preventive detention measures.
- Use of all available means to obtain evidence.
- Identification of the location of the punishable act, the specifics of the situation, and the type of violation.
- Elimination of obstacles that could lead to impunity.
- Guarantee the safety of witnesses, family members and agents of justice.

### c. The mandatory investigation of all crimes of femicide/

### feminicide or the attempt thereof (Article 8).

- A complete investigation must be conducted, the withdrawal of the complaint is not grounds for the discontinuation of the investigation.

### d. Guarantee of technical legal assistance to the victim and her family members (Article 9).

- Technical legal assistance and legal representation of female victims of gender-based violence can be provided by the agencies specializing in public policy for women.

Mexico, in an effort to improve the investigation of gender-based violent crime, tasked the Public Defender of the Republic to create a publicly available register of crimes committed against women that includes the following information: classification of known criminal acts; the location of the crime; demographics of the victims and perpetrators; the location of the incident and disposal of the corpse; details on the type of crime; the relationship between the perpetrator and the victim; motive; the basic due diligence steps to be taken, as well as any challenges associated with execution the due diligence and any associated determinations; and appropriation, application and reparation for damages caused. (Article 47 of the General Law of Access of Women to a life free from violence in the reform of June 2012).

The office is additionally charged with the application of specialized protocols with a gender perspective in the immediate search for missing women and girls, the investigation of crimes based on discrimination, feminicide, human trafficking, deprivation of freedom and normal psychosexual development. The Law of the Criminal Competence in High Risk Processes in Guatemala (Decree. 21/2009) establishes tribunals for high-risk trials to ensure personal safety and includes the crime of femicide within its jurisdiction.

In March 2016, Guatemala approved the law to search for disappeared women, creating an inter-institutional mechanism to plan, coordinate, promote and evaluate actions aimed at the search, location and immediate protection of disappeared women, called the National Search Coordinator for Missing Women. It establishes permanent local search teams made up of institutional representatives and people residing in the locality where the woman is presumed to have disappeared. It

also creates a National Registry of Missing Women and a Registry of Perpetrators, which with a final judgement, have exercised any type of gender-based violence against women, in both the public and private spheres.

They have also created a data bank for DNA and other type of scientific evidence of missing women, of relatives and unidentified unidentified bodies of buried women.

Uruguay, to facilitate access to justice, in its comprehensive law on gender-based violence, (Law No. 19,580) foresees:

- the application to all victims of gender-based violence of the rules provided by the Code of Criminal Procedure for victims and intimidated witnesses.

- the possibility that the victim designates specialized institutions to appear on her behalf and represent her in the exercise of their rights and interests.

- advanced proof at the request of the victim without the need of previous substantiation.

- hearings are not public when the victim so requires.

- the right to participate in the process with an emotional support companion.

-Reparation

Reparation for damages is a fundamental issue for retributive justice in the restoration of the rights of victims and their family members. However, specific legislation that addresses means and processes for reparations for damages caused by gender-based violence is rare.

Only Panama (article 71), Mexico (article 30) and Guatemala (articles 11 and 12) address the right to restorative reparations for damage in the sentencing document in their respective legislation.

Mexico requires comprehensive reparations for all crimes: Appropriate, effective and proportional to the damage caused, including:

- a. The restitution of the object taken of or payment thereof

- b. Compensation for material and moral harm (including

medical and psychiatric treatment)

- c. Payment of psychotherapeutic treatment

- d. Restitution of injuries caused

- e. Payment of lost income and wages

- f. Cost of the loss of opportunities, in particular of employment and social benefits

- g. Reparation to reestablish the good reputation of the victim on social media or in print

- h. Public apology, acceptance of responsibility and the guarantee of non-repetition when the act is committed by a public servant

Panama requires reparation in the sentencing document for the costs associated with medical or psychological treatment, therapy and physical and occupational rehabilitation, transport and temporary living expenses and care of minors when necessary, fees incurred for legal representation, lost income, moral damages, psychological damages, and any other loss. (Article 71)

Uruguay provides for a social security pension and a special family allowance for orphans as a result of domestic violence, which will be granted until the age of 21 or without term if they are unable to work when they are older.

The Integral Law on Gender-Based Violence Against Women (Law No. 19580), foresees a reparation fee assigned to the perpetrator in the same sentence, consisting of an amount equivalent to a minimum of 12 months wages of the convicted person or, at least, 12 months of the national minimum wage, without bias to the possibility of claiming full reparation of damage in civil justice procedures.

Although in a more limited but innovative way, Brazil, in its law No. 13.239 of December 2015, provides for reparation, free plastic surgery to repair the sequelae of injuries caused by acts of violence against women.

In Argentina, recently (July 2018), the so-called "Ley Brisa" was approved, which creates an economic reparation regime for children and adolescents up to the age of 21 and will continue if the person has a

disability when:

a) his/her parent has been charged and/or prosecuted and/or convicted as the perpetrator or co-perpetrator, instigator or accomplice of the crime of homicide of his/her parent.

b) the criminal action against his/her father, in the criminal case where the murder of his/her mother is investigated, has been declared dead. The benefit will be paid by the national government monthly, will have a value equivalent to a minimum pension and is compatible with other social benefits that beneficiaries can receive.









UNIA  
MS

MS

UNIA  
MS





## CHAPTER 3. CONCLUSIONS AND RECOMMENDATIONS

## Conclusions:

- As a result of the growing visibility of gender-based violence against women, femicide/feminicide, and its identification as a violation of human rights, 13 countries of the region have approved integral laws and 18 countries criminalized femicide/feminicide between 2006 and 2018.

- Countries with laws criminalizing femicide/feminicide that have not enacted comprehensive legislation have concentrated the response to this problem within their criminal justice system. The Belem do Para Convention requires states to develop measures of prevention, protection, investigation, and reparation, in addition to criminalizing violence against women.

- While departing from the doctrine of a minimum criminal law, the severity of the violation of rights inherent in femicides/feminicides requires the criminalization of this conduct to impose the appropriate punishment. It is also important to introduce elements into this normative framework that permit the integration of a gender perspective and intersectionality.

- Patriarchy and andocentrism are very strongly reflected in the criminal codes of the region, and this results in an adverse normative context for the adequate classification of types of crimes. This context becomes even more complex because the criminal doctrine has not integrated a gender perspective and opposes resistance to a favorable change in that sense.

- The types of crimes adopted in the region attempt to integrate the concept of femicide/feminicide constructed in anthropology and sociology. It is difficult to identify typical behavior in a complex phenomenon that includes multiple manifestations and whose distinctive elements are a misogynist motive and the context of discrimination and subordination of women that dominates society.

- To objectify the distinctive elements of femicide/feminicide, countries have identified a series of circumstances or different conduct. Some of these are clear manifestations of a misogynist motive and relationships based on gender discrimination.

Examples include:

- The victim was involved in a relationship that included domestic violence.
- The attacker unsuccessfully attempted to establish or reestablish an intimate partner relationship.
- The killings occurred within the framework of sexual violence or sex trafficking.
- The existence of genital mutilation and other grievous injuries and mutilation of the victim's corpse.

However, other circumstances or conditions established by the laws – if any of the modalities or particular characteristics of the killing of women in any country or region can be justified – are not necessarily inherent to femicide/feminicide, and in principle would require complementary elements of proof to establish a motive of misogyny or gender-based discrimination:

- The victim and her attacker were connected via a previous relationship in the workplace, a friendship or trust-based relationship.
- The exploitation of the victim's vulnerable situation.
- The denial of the victim's freedom of movement prior to her death
- Pregnancy
- The presence of the victim's children or other family members.
- The killing is a consequence of group rites.

- One topic of debate is the legislation that identifies the crime as intimate femicide whenever the attacker had a intimate partner relationship with the victim. This raises the question that if every time a man kills his female partner, is there a misogynistic motive, or are there analogous motives for a killing that takes place in a couple comprised

of two men or two women?

- Some legislation states that the presence of certain circumstances is sufficient to identify the crime as a femicide/feminicide. Others, however, require the demonstration of a misogynistic motive or an unequal power relationship in all situations and circumstances, increasing the requirements necessary to meet the standard.

- One problem common to all the definitions in the legislation is the use of ambiguous or excessively abstract language, which results in open crime types that could be targeted as damaging the principles of legality, criminality, and legal security.

- Some categories of femicide/feminicide developed in the doctrine and based on the systematization of the forms of the crime as they are manifested, are not reflected in the descriptions of the crimes. Femicides/feminicides that occur in stigmatized professions or activities, those that take place by association, those committed against children or underage women, lesbophobic and transphobic killings, systematic and anonymous femicides/feminicides (where there is no personal relationship between the attacker and the victim) and those that constitute an international crime (genocide, crimes against humanity and war crimes). Few countries include femicide/feminicides within the framework of human trafficking.

- International investigative standards established by international organizations and more specifically by the Inter-American Court of Human Rights have not been adequately integrated in the law. It is worth noting that the legislation enacted in Colombia establishes the guiding principles of due diligence for investigation and judgment, what actions must be taken by the authorities to comply with the obligation of due diligence and the measures necessary to guarantee technical legal assistance to victims and their families.

- With respect to reparations, while some

countries demonstrate some progress toward the adoption of measures to provide reparation to victims or their family members as part of the sentencing, this norm remains far from ensuring, in the words of the Inter-American Court of Human Rights, to “be designed to change this situation, so that their effect is not only of restitution, but also of rectification.”

## Recommendations:

1. Continue to urge countries that have not yet approved comprehensive laws to pass holistic legislation addressing gender-based violence, with provisions for prevention, investigation and punishment, as well as protection, care, and reparations for women and girls confronting violence. It is important for the State to implement comprehensive actions and not only to respond to human rights violations in the criminal sphere. A gender perspective and the concept of intersectionality should also be introduced in all areas of intervention.

2. Revise countries’ criminal codes to integrate a gender perspective in both the general content as well as in the protected legal assets and the definitions of punishable crimes, in order to erase the concept of “an honest woman”, “modesty” and other similar terminology, and include the protection of the right of women to live a life free from gender-based violence as a legal asset.

3. Revise ambiguous, open or excessively abstract language in existing legal definitions of femicide/feminicide that impinges on the legal principles of legality and criminality, and that impedes and obstructs the judgment of the offense, because the language of the law does not allow for the precise description of the type of crime or the evidentiary requirements.

4. Take into account the distinct modalities of femicide/feminicide, contemplating the possibility of introducing differentiated





types of crimes, to ensure precision in the definitions of types of crime and facilitate differentiated treatment in preventive and investigative policies.

An adequate typification must differentiate the different forms of femicide/feminicide and determine the elements that shape it according to its specificity. The murder of a woman, as a consequence or in the context of sexual violence, accounts for the misogynist motive alone and would not be necessary to prove other elements that corroborate it. On the other hand, to consider the murder of a pregnant woman femicide/feminicide, the evidence linking the fact of pregnancy with the death should be demanded; and although it is typified in some of the norms analyzed, it may be the case that the aggressor was unaware of the pregnancy and would also be sanctioned as a femicide/feminicide for that circumstance. Another example which would require a similar analysis, is if, for example, a woman is murdered in front of her daughters or sons in the context of a supermarket robbery. In this situation, it is likely that the event cannot be described having an a priori misogynistic motive.

5. It is particularly important to identify which of these crimes could be categorized as international crimes (that is, those with the characteristics of genocide, crimes against humanity, and war crimes) such as systematic sexual femicide/feminicide or femicide/feminicide used as a weapon of war.

6. Include provisions for the prevention and investigation of femicides/feminicides, as well as for the reparation of women and girl victims, in conformance with international human rights standards in the normative framework of every country.





**MI UNA  
MENOS**

#VivasNosQueremos



...luzes por  
...a vida...



## BIBILIOGRAPHY

ATENCIO, Graciela. FEMINICIDE/FEMICIDE. A PARADIGM FOR THE ANALYSIS OF GENDER BASED VIOLENCE. Available in Spanish at:  
[www.infogenero.net/documentos/FEMINICIDIO-feminicidio-paradigma%20para%20su%20analisis-Graciela%20Atencio.pdf](http://www.infogenero.net/documentos/FEMINICIDIO-feminicidio-paradigma%20para%20su%20analisis-Graciela%20Atencio.pdf)

CAPUTO, Jane, in Jill REDFORD and Diana E. H. RUSSELL: Femicide: THE POLITICS OF WOMAN KILLING. New York: Twayne Publishers, 1992.

CARCEDO, A., SAGOT, M., Coord.), FEMICIDE in Costa Rica, 1990-1999, Pan-American Health Organization, Program Women, Health and Development Program, San Jose, Costa Rica, 2000. Available at: <http://genero.bvsalud.org/lildbi/docsonline/5/4/445>

CARCEDO, A., (Coord.), WE DO NOT FORGET, NOR DO WE ACCEPT; FEMICIDE IN CENTRAL AMERICA, CEFEMINA, San Jose, Costa Rica, 2010.

INTERAMERICAN COURT OF HUMAN RIGHTS. Notebook of jurisprudence of the Interamerican Court of Human Rights No. 4: Gender and the Human Rights of Women. Available in Spanish at: [http://www.corteidh.or.cr/tablas/cuadernillos/4.%20Cuadernillo\\_mujeres.pdf](http://www.corteidh.or.cr/tablas/cuadernillos/4.%20Cuadernillo_mujeres.pdf), s/f.

FERRAJOLI, Luigi, On fundamental rights and their guarantees, National Commission on Human Rights, Mexico, 2006, p. 40.

IRIBARNE, Macarena. FEMINICIDE in Mexico, Eunomía. Revista en Cultura de la Legalidad Nº9, October 2015, March 2016. Available in Spanish at: [e-revistas.uc3m.es/index.php/EUNOM/article/view/2822](http://e-revistas.uc3m.es/index.php/EUNOM/article/view/2822)

LAGARDE, Marcela. Anthropology, feminism and policy: violence feminicide and the human rights of women University of Mexico.( UNAM) at Theoretical challenges and new practices Retos México.q

LAPORTA HERNÁNDEZ, Elena. El Feminicidio/femicidio. Reflexiones desde el feminismo jurídico. Tesina. Universidad Carlos III, Madrid. 2012. Disponible en: [http://e-archivo.uc3m.es/bitstream/handle/10016/18787/TFM\\_MEADH\\_Elena\\_Laporta\\_2012.pdf](http://e-archivo.uc3m.es/bitstream/handle/10016/18787/TFM_MEADH_Elena_Laporta_2012.pdf)?sóricos y nuevas prácticas. México.

MONARREZ, Julia. "Plot of injustice. Systematic sexual femicide in Ciudad Juárez". 2013. Digital edition.

MONÁRREZ, J., "Different representations of feminicide and the killing of women in Ciudad Juárez: 1993-2005", in MONÁRREZ, J., CERVERA, L., FLORES, C., RUBIO, R., Violence against women and civil insecurity in Ciudad Juárez, El Colegio de la Frontera Norte - Miguel Ángel Porrúa Editores, Mexico, 2010.

MONARREZ, Julia. Analytical elements of systematic sexual feminicide, Presented at the International Seminar: Femicide, Law and Justice, Mexico, December 2004. Available at: <http://www.FEMINICIDE.net/index.php?option=comcontent&view=article&id=85%3AJULIA+MON%C3%81RREZ%3A+FEMINICIDE+SEXUAL+SIST%C3%89MICO&catid=2%3AFEMINICIDE&Itemid=3>



PINERO, Aleida. A A Theoretical approach to the concept of femicide/feminicide. Master Thesis. ULTRECHT UNIVERSITY, 2015. Available at: [GEMMA-Master%20Thesis- dspace.library.uu.nl/.../GEMMA-Master%20Thesis-ALEIDA%20](http://dspace.library.uu.nl/handle/1874/34444)

RUSSELL, D. E. H. (2006), "Definition of feminicide and related concepts" At: RUSSELL, D. E. H. y HARMES R. A., *Feminicide: a global perspective*, Mexico, Center for Interdisciplinary Research in Science and Humanities, National Autonomous University of Mexico.

RUSSELL, Diana E. et al: *Femicide: the politics of woman killing*. New York: Twayne Publishers, 1992. Also at <http://www.dianarussell.com/femicide.html>

RUSSEL, Diana. "The origin and importance of the term femicide". December 2011. Available at: [http://www.dianarussell.com/origin\\_of\\_femicide.html](http://www.dianarussell.com/origin_of_femicide.html)

SEGATO, L.Rita, "What is a FEMICIDE? Notes for an emerging debate", *Serie Antropología*, Brazil, 2006.

SEGATO, Rita. "FEMI-GENO-CIDIO AS A CRIME IN INTERNATIONAL HUMAN RIGHTS: the right to name suffering in law". PDF. Argentina. Available in Spanish at: <http://www.feminicidio.net/sites/default/files/femigenocidio.pdf>

TOLEDO, Patisili, *Feminicide*, Office in Mexico of the United Nations High Commissioner for Human Rights, Mexico, 2009

SMAUS, G., "A feminist analysis of criminal law", in BERGALLI, R., (Ed.), *Contradictions between the law and social control*, Editorial M.J. Bosch, S.L., Goethe Institut, Barcelona, 1998, p. 89.

VAN SWAANINGEN, R., "Feminism, criminology and criminal law: a controversial relationship", *Papers d'estudis i formació*, nº 5, 1989, pp. 94-95.

#### LIST OF CONSULTED WEB PAGES:

[oig.cepal.org/es/leyes](http://oig.cepal.org/es/leyes)

[www.belemdopara.org](http://www.belemdopara.org)

[www.corteideh.or.cr](http://www.corteideh.or.cr)

[www.feminicidio.net](http://www.feminicidio.net)

<http://www.oas.org/es/mesecvi/> [www.ohchr.org/SP](http://www.ohchr.org/SP)

<http://uhri.ohchr.org/es/>





ALTO al feminicidio





## ANNEX: CRIMINALIZATION OF FEMINICIDE/ FEMICIDE AND ASSOCIATED CRIMES

ARGENTINA  
BOLIVIA  
BRAZIL  
CHILE  
COLOMBIA  
COSTA RICA  
DOMINICAN REPUBLIC  
ECUADOR  
EL SALVADOR  
GUATEMALA  
HONDURAS  
MEXICO  
NICARAGUA  
PANAMA  
PARAGUAY  
PERU  
URUGUAY  
VENEZUELA

## ARGENTINA

### CRIMINAL CODE

**ARTICLE 79.** - A sentence of reclusion or imprisonment for 8 to 25 years for the death of another will be applied, so long as this code does not impose another penalty.

**ARTICLE 80.** – Life sentence or imprisonment. In addition to the provisions available in Article 52, to any person who kills:

1° An ancestor, descendent, spouse, exspouse, or the person with whom he or she maintains or maintained a couple relationship, whether cohabitating or not. *(Paragraph superseded by art. 1° of Law N° 26.791 B.O. 14/12/2012)*

2° With cruelty, malice aforethought, poison or other insidious method

3° For payment or promised remuneration.

4° For pleasure; lust; hatred of racial origin, religious beliefs, gender, sexual orientation, sexual identity or expression thereof *(paragraph superseded by art. 1° of Law N° 26.791 B.O. 14/12/2012)*

5° By means that could create danger to the public.

6° Premeditation by two or more persons.

7° To plan, facilitate, commit or hide another crime that ensures the outcome or results in impunity for self or another, or for not having succeeded in the intended crime in attempting another crime.

8° Member of the public security, police or correctional forces by function, responsibility or status. *(Paragraph incorporated by art. 1° of Law N° 25.601 B.O. 11/6/2002)*

9° Abuse of office, when a member of the security or police forces, or correctional service. *(Paragraph incorporated by art. 1° of Law N° 25.816 B.O. 9/12/2003)*

10° Of a person's military superior before the enemy or armed troops. *(Paragraph incorporated by art. 2° of Annex*

*I of Law N° 26.394 B.O. 29/8/2008. Validity: Law will take effect SIX (6) months following enactment. (A training and education program on the content and application of the law will occur in the period preceding its effective date.)*

11. A woman when the act is gender-based violence committed by a man. *(Paragraph included by art. 2° of Law N° 26.791 B.O. 14/12/2012)*

12. With the intent to cause suffering to a person with whom the perpetrator has or had a relationship as defined in paragraph 1. *(Paragraph incorporated by art. 2° of Law N° 26.791 B.O. 14/12/2012)*

In the case of paragraph 1 of this article, in the event of extraordinary attenuating circumstances, the judge can apply a penalty of 8 to 25 years of prison or reclusion. *This option does not apply to those who have committed previous acts of violence against the women victim. (Paragraph substituted by Art 3 of Law N° 26.791 B.O. 14/12/2012)*

## BOLIVIA

### CRIMINAL CODE

#### ARTICLE 154 BIS. (NON-FULFILLMENT OF DUTIES OF PROTECTION OF WOMEN IN VIOLENT SITUATIONS)

The public servant, who by action or omission in the execution of a public function, facilitates impunity for or impedes the investigation of the crime of violence against women, will be sentenced to perform 90 to 120 days of community service and be disqualified from public service for a period of 1 to 4 years.

**Article 252 bis. (FEMINICIDE).** He who kills a woman, in any of the following circumstances, will be sentenced to prison for a term of 30 years without the possibility of parole:

1. The perpetrator is or was the spouse or partner of the victim, or was linked to her by an analogous affectionate or intimate relationship, whether cohabitating or not;

2. The victim refuses to establish a relationship, fall in love with, or provide affection or intimacy to the perpetrator;

3. When the victim is pregnant;

4. When the victim is in a position of subordination or dependency with respect to the perpetrator, or has a friendship, work relationship or acquaintanceship with the perpetrator.

5. The victim is in a vulnerable situation;

6. When prior to the death, the woman was the victim of physical, psychological, sexual or economic violence committed by the same attacker;

7. When the act is preceded by a crime against the victim's individual or sexual freedom;

8. When the death is connected to human trafficking;

9. When the death is a result of rites, group challenges or cultural practices.

**ARTICLE 256° (HOMICIDE-SUICIDE).** The person who compels another person to commit suicide or assists in that person's attempted or successful suicide, will be sentenced to reclusion for a term of 2 to 6 years.

If injuries are sustained as a result of the suicide attempt, the sentence of reclusion will be 1 to 5 years.

When consent for a double suicide is obtained from the victim, the surviving person will be sentenced to 2 to 6 years of reclusion.

When suicide is a consequence of a violent situation, the attacker will be sentenced to imprisonment for 10 years.

If the victim of any of the cases listed in this article is a child or adolescent, the sentence will be increased by two thirds.

*Language taken from the "Comprehensive Law*

*to guarantee women a life free from violence".*

**BRAZIL** 

CRIMINAL CODE

**CHAPTER I**  
**CRIMES AGAINST LIFE**

**Simple Homicide**

Art. 121. Killing a person:

Sentence- reclusion, 6 to 20 years.

**Reduction of sentence**

§ 1º If the perpetrator commits the crime with a motive of relevant social or moral value, or under extreme emotional duress or undue provocation of the victim, the judge can reduce the sentence one sixth to one third.

(...)

**Feminicide** (Included in Law Nº 13.104 of 2015)

VI – Against a woman because she is a woman. (Included in Law Nº 13.104 of 2015)

VII – Against an authority or agent as described in Article 142 and 144 of the Federal Constitution, employees or agents of the national prison system and of the National Public Security Forces, in the execution of their functions, against a spouse, companion, or blood relative, to the third degree, under the following conditions: (Included in Law Nº 13.142 of 2015)

Sentence - reclusion, 12 to 30 years

§ 2o-A If the motive is gender-based when the crime occurs: (Included in Law Nº 13.104 of 2015)

I – Domestic and Family-based violence: (Included in Law Nº 13.104 of 2015)

II – Contempt or discrimination for the victim's status as a woman: (Included in Law Nº 13.104 of 2015)

(...)

**Increase of Sentence**

(...)



§ 7o The sentence for the crime of feminicide is increased by 1/3 (one third) when the following conditions are present: (Included in Law N° 13.104 of 2015)

I – The victim is pregnant and within 3 months post-partum: (Included in Law N° 13.104 of 2015)

II – The crime is committed against a person under 14 years of age, over 60 years of age or suffers from a disability: (Included in Law N° 13.104 of 2015)

III – The crime is committed in the presence of any member of the victim's family: (Included in Law N° 13.104 of 2015)

## CHILE



### CRIMINAL CODE

**Art. 390.** He who, knowing the relationships that bind them, kills his father, mother or child, any of his ancestors or descendants, or anyone who is or has been his spouse or live-in partner, will be punished for the crime of parricide, punishable by a maximum felony sentence of qualified life in prison.

If the victim of the crime described in the preceding paragraph is or has been the spouse or live-in partner of the perpetrator, the crime will be considered femicide.

*Language taken from the law, "modifies the Criminal Code and Law Ley N° 20.066 on Domestic Violence, establishing "femicide", increasing the applicable penalties for this crime and reforming the norms on parricide, Law 20.480 of 2010*

## COLOMBIA



### CRIMINAL CODE

**ARTICLE 104 A. FEMINICIDE.** He who causes the death of a woman because she is a woman, because of her gender identity, or when any of the following circumstances have occurred currently or previously, will be sentenced to 250 to 500 months in prison.

a. Having or having had a family relationship, intimate or cohabitational relationship, friendship, companionship, workplace relationship, and is the perpetrator of a cycle of physical, sexual, psychological or patrimonial violence with the victim that precedes the crime committed against her.

b. Exercises gender-based oppression or control over the body and life of a woman and over decisions about her life and sexuality.

c. Commits the crime while exploiting a relationship of unequal power over the women, expressed as personal, economic, sexual, military, political or socio-cultural hierarchy.

d. Commits the crime in order to generate terror or humiliation to those considered enemies.

e. Pre-existing incidents of threats or violence against the victim at home, within the family, in the workplace, or at school by the perpetrator or gender-based violence committed by the perpetrator against the victim, regardless of whether she reported the violence to the authorities or not.

f. The victim is missing or incommunicado or is deprived of freedom of movement prior to her murder, regardless of the length of time.

**ARTICLE 104 B. PUNITIVE AGGRAVATING CIRCUMSTANCES OF FEMINICIDE.** A sentence of 500 to 600 months of prison shall be imposed if the feminicide is committed:

a) When the perpetrator is a public servant and commits the crimes while abusing his position.

b) When the punishable conduct is committed against a woman under 18 years of age or a woman over 60 years of age, or a woman who is pregnant.

c) When the act is committed by more than 2 persons.

d) When the victim is physically, psychologically or sensorally disabled, is in a situation of forced displacement,

forced socioeconomic condition or is a member of a marginalized ethnic group or sexual orientation.

e) When the punishable offense is committed in the presence of any member of the victim's family.

f) When the crime is committed following a sexual attack, as part of a rite, includes acts of genital mutilation or any other type of attack or physical or psychological suffering.

g) Is committed under any of the punitive aggravating circumstances described in numbers 1, 3, 5, 6, 7 and 8 of Article 104 of this Code.

*Language taken from the Law, "By which Femicide is classified as a separate crime and other provisions are enacted. (Rosa Elvira Cely)", N° 1.761 July 2015.*

## COSTA RICA



LAW FOR THE CRIMINALIZATION OF VIOLENCE AGAINST WOMEN N° 8.589 of 2007.

### ARTICLE 21.- FEMICIDE

He who kills a woman with whom he maintains a marriage, or a declared or undeclared relationship will incur a sentence of 20 to 35 years of prison.

### ARTICLE 41.- IMPEDING ACCESS TO JUSTICE

The person who, in the exercise of a public function, facilitates, by illegal act, impunity or impedes a police, judicial or administrative investigation of acts of physical, sexual, psychological, or patrimonial violence committed against a woman, will be sentenced to prison for a term of 3 months to 3 years and be disqualified from public service for a period of 1 to 4 years.

### ARTICLE 42.- AGGRAVATED NON-COMPLIANCE OF DUTIES

He who fails to comply with the duties of his position will be disqualified from public service for a period of 2 to 6 years, if the noncompliance of duties results in a situation that places the personal integrity or economic necessity of the woman victim at risk.

## DOMINICAN REPUBLIC



### CRIMINAL CODE OF 2014

**Article 100. FEMINICIDE.** He who has, has had, or attempts to have a couple relationship, and kills a woman, commits the crime of FEMINICIDE, punishable by 30 to 40 years in prison.

**Article 99.** Aggravated homicide. In the following cases, homicide will be punished by 30 to 40 years in prison, without prejudice of that established in articles 49 and 50 of this code:

- 1) If it precedes, accompanies or follows another homicide, or other felony;
- 2) If it is intended to prepare or facilitates the commission of another crime or infraction, assists the flight, or ensures the impunity of the perpetrator of the crimes;
- 3) Is committed with premeditation or as an ambush, in which case the crime will be considered a murder;
- 4) If it is committed against the following persons:
  - a) A child or adolescent;
  - b) An ancestor or descendent of any degree, or adopted mother or father, if the link is apparent and known to the perpetrator;
  - c) A second-degree family member, if the link is apparent or known by the perpetrator;
  - d) A person at high risk because of age, illness, physical or psychological disability, or pregnancy, if the state is apparent or known by the perpetrator;
  - e) The President or Vice-President of the Republic; a Senator or Representative; a judge serving in the Judicial branch, Constitutional Tribunal, or Superior Electoral Tribunal; a member of the Central Electoral Committee or the Chamber of Accounts; the Public Defender; a member of the Ministry of the Public; or any other person responsible for administration or responsible for a public service mission and who is executing their public function, if the role of the victim is apparent or known to the perpetrator;
  - f) The victim is a plaintiff, civil actor or witness to a previous crime, if the homicide is committed to impede testimony

or legal activity or to declare themselves a witness for the prosecution, or during the legal proceedings or suit or testimony already filed;

g) An arguing attorney, that has argued or pretends to argue, during a trial the perpetrator is part of;

h) The spouse, ex-spouse, cohabitating partner, formerly cohabitating partner of the perpetrator;

i) Any person because of their gender or sexual preference or orientation.

## ECUADOR



COMPREHENSIVE ORGANIC CRIMINAL CODE OF 2014.

**ARTICLE 141.- FEMICIDE.** - The person who kills a woman because she is a woman, within the context of a power relationship manifested in any type of violence, will be sentenced to prison for a term of 22 to 26 years.

**ARTICLE 142.- AGGRAVATING CIRCUMSTANCES OF FEMICIDE** – When one or more of the following circumstances take place concurrently, the maximum term of the sentence established in the preceding paragraph will be imposed:

1. The attempt to establish or reestablish a couple or intimate relationship with the victim.

2. The existence or prior existence of a family relationship, marital relationship, cohabitational relationship, intimate relationship, dating relationship, friendship, companionship, work relationship, school relationship or any other type of relationship that implies trust, subordination, or superiority.

3. If the crime is committed in the presence of the children or any family member of the victim.

4. The corpse of the victim is left exposed or disposed of in a public place.

## EL SALVADOR



SPECIAL COMPREHENSIVE LAW FOR A LIFE

## FREE FROM VIOLENCE FOR WOMEN

### ARTICLE 45.- FEMINICIDE

He who causes the death of a woman based on hate or contempt for her status as a woman, will be sentenced to prison for a term of 20 to 35 years.

Hate or contempt for women is defined as occurring under any of the following circumstances:

a) When death is preceded by any violent incidents committed by the perpetrator against the women, whether she reported them to the authorities or not.

b) When the perpetrator exploits a high-risk situation or the physical or psychological vulnerability of the woman victim.

c) When the perpetrator exploits a situation of gender-based unequal power.

d) When the death of the woman is preceded by any acts defined as crimes against sexual freedom by the perpetrator.

e) Death is preceded by mutilation.

### ARTICLE 46.- AGGRAVATED FEMINICIDE

The crime of femicide will be punished by a sentence of 30 to 50 years in prison, in the following cases:

a) If committed by a government official, public or municipal employee, public authority, or agent of an authority.

b) If committed by 2 or more persons.

c) If committed in the presence of any family member of the victim.

d) When the victim is under 18 years of age, a senior citizen or suffers from a physical or mental disability.

e) If the perpetrator holds a position of superiority, based on a relationship of trust, friendship, a domestic nature, educational environment, or workplace.

**ARTICLE 47.- IMPEDING ACCESS TO JUSTICE**

He who, in the execution of a public function, facilitates, promotes or tolerates impunity or impedes the investigation, prosecution and punishment of the crimes established in this law, will be sentenced to a prison term of 2 to 4 years and will be disqualified from public service for the same time period.

**ARTICLE 48.- FEMICIDE BY SUICIDE BY INCITEMENT OR ASSISTANCE**

He who incites a woman to commit suicide or assists her to commit suicide, will be sentenced to a term of 5 to 7 years in prison, if any of the following circumstances are demonstrated:

a) The suicide is preceded by any of the types or modalities of violence described in the present law or any other law.

b) That the inducer has exploited a high-risk situation or any physical or psychological condition of the victim by committing any of the types of modalities of violence described in this or any other law.

c) That the inducer has exploited a superiority created by any pre-existing or existing relationships between him and the victim.

**GUATEMALA****LAW AGAINST FEMICIDE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN**

**ARTICLE 6. FEMICIDE.** He who, within the framework of unequal power relationships between men and women, kills women because she is a woman, commits the crime of femicide, upon the demonstration of any of the following circumstances:

a. Having unsuccessfully attempted to establish or reestablish a couple or intimate relationship with the victim.

b. At the time the act was committed, maintained or had maintained a family relationship, marital relationship, cohabitational relationship, intimate or dating relationship, friendship, companionship, or work relationship with the victim.

c. As a result of repeated incidents of violence against the victim.

d. As a result of group rites, using weapons of any kind or not.

e. Degrading the corpse of the victim for sexual satisfaction, committing acts of genital mutilation or any other type of mutilation.

f. Because of misogyny.

g. When the act is committed in the presence of the children of the victim.

h. Concurrent with any of the qualifying circumstances listed in Article 132 of the Criminal Code.

The person responsible for this crime will be sentenced to prison for a term of 25 to 50 years and will be unable to reduce the sentence for any reason. Persons convicted of this crime will not be eligible for any alternative measures.

**HONDURAS****CRIMINAL CODE**

**Article 118-A.** The man or men who kill a woman based on her gender, with hate or contempt for her status as a woman, commit the crime of femicide, punishable by a sentence of 30 to 40 years of imprisonment, when 1 or several of the following circumstances take place concurrently:

1) When the perpetrator of the crime maintains or has maintained a couple relationship with the victim, be it matrimonial, a free consensual union, or any other type of relationship in which they have cohabitated or not, including those in which they maintain or have maintained a sentimental relationship;

2) When the crime is preceded by acts of domestic violence, with a history of reporting or not

3) When the crime is preceded by a situation that involves

sexual violence, sexual harassment, or persecution of any nature; and

4) When the crime is committed with cruelty or there are humiliating, or degrading injuries or mutilations inflicted on the victim's body prior to or after death.

Incorporated by Law Dto 23/2013

## MEXICO



### CRIMINAL CODE

**Article 325.** He who deprives a woman of her life because of her gender commits the crime of femicide. The following circumstances establish the existence of a gender-based motive:

I. The victim presents signs of sexual violence of any kind;

II. The perpetrator has inflicted offensive or degrading injuries or mutilations to the victim's body prior to or after death, or commits acts of necrophilia;

III. There are prior incidents or information on any form of violence committed by the perpetrator against the victim at home, at work or in school,

IV. The victim and the perpetrator had a sentimental, intimate, or trust-based relationship;

V. There is evidence the perpetrator made threats related to the criminal act, harassed or injured the victim;

VI. The victim was missing or incommunicado prior to death, regardless of how long;

VII. The corpse of the victim was exposed or displayed in a public place.

The crime of femicide is punishable by a sentence of 40 to 70 years of prison and incurs a fine equal to 500 to 100 days.

In addition to the penalties described in this article, the perpetrator will lose all rights associated with the victim, including those of heredity.

In the event femicide is not proven, the laws defining homicide will apply.

The public servant who maliciously, or by negligence, delays or obstructs access to or administration of justice will be punished and sentenced to 3 to 8 years of prison and incur a fine of 500 to 100 days. In addition, he will be dismissed from his job and disqualified for 3 to 10 years from accepting any other public job, responsibility or commission.

*Language taken from the Law "By which provisions of the Federal Criminal Code are reformed and added, the General Law of Access for Women to a Life Free from Violence and the Organic Law of Federal Public Administration, the Organic Law of the Attorney General of the Republic," 2012*

## NICARAGUA



### COMPREHENSIVE LAW AGAINST VIOLENCE AGAINST WOMEN AND REFORMS TO THE LAW No. 641, "CRIMINAL CODE"

#### ART. 9 FEMICIDE

He who, within the context of an unequal power relationship between men and women, kills a woman in the public or private sphere, in any of the following circumstances, commits the crime of femicide:

a) Has unsuccessfully attempted to establish or reestablish a couple or intimate relationship with the victim;

b) At the time the act takes place, maintains or has maintained a family relationship, conjugal relationship, cohabitational relationship, intimate or dating relationship, friendship, companion, work relationship, educational relationship, or guardian relationship with the victim;

c) As a result of repeated acts of violence against the victim;

d) As a result of group rites, gang activity, with the use of weapons or not;

e) Abuse of the corpse for sexual satisfaction, or genital mutilation, or any other form of mutilation;



f) Because of misogyny;

g) When the act occurs in the presence of the child or children of the victim;

h) When the act occurs during the commission of any of the qualifying circumstances listed in the crime of murder as defined in the Criminal Code.

When the act takes place in the public sphere, it is punishable by a sentence of 15 to 20 years in prison. When it occurs in the private sphere, it is punishable by a sentence of 20 to 25 years in prison. In both cases, the maximum sentence applies if 2 or more of the abovementioned circumstances are present.

The sentences established above will be increased by a third, to a maximum of 30 years in prison, when any of the circumstances associated with murder are also present.

#### ART. 16. VIOLENCE AGAINST WOMEN IN THE EXERCISE OF PUBLIC FUNCTIONS

He who, in the exercise of a public function, regardless of responsibility, maliciously delays, impedes, denies required treatment or blocks the woman's access to her right to a timely response in the institution that receives her, with the intention of managing a transaction related to the rights guaranteed by this law, will be subject to a sentence of 200 to 500 days fine and suspension of professional duties for a period of 3 to 6 months. Without prejudice to the associated administrative responsibility.

If the aforementioned acts are committed as a result of negligence, the fine imposed will be equal to 100 to 200 days and a suspension of professional duties for a maximum period of 3 months.

If the life and integrity of the woman are put in danger as a result of the aforementioned actions, the sentence will be from 6 months to 1 year, with a suspension of professional duties for the same period.

#### PANAMA



#### CRIMINAL CODE

Article 132-A. He who causes the death of a woman in

any of the following circumstances will be punished by a sentence of 25 to 30 years in prison:

1. In a couple relationship or in the case of an unsuccessful attempt to establish or reestablish such a relationship or physical intimacy or there are family links with the victim.

2. In the existence of a relationship of trust with the victim, either work-related, teacher-student, caregiver or any other relationship that could imply subordination or superiority.

3. When the incident occurs in the presence of the victim's children.

4. When the perpetrator has exploited a risky situation or the physical or psychological vulnerability of the victim.

5. As a result of group rites or as revenge

6. For the humiliation or abuse of the corpse of the victim, to satisfy sexual desires, or acts of genital mutilation or any other type of mutilation.

7. When the corpse of the victim is exposed, deposited or disposed of in a public or private place or when she has been missing/incomunicado, regardless of length of time, prior to her death.

8. To hide a rape.

9. When the victim is pregnant.

10. For any reason generated by virtue of the victim being a woman or within the context of an unequal power relationship.

Article 135. Anyone who incites or assists in the suicide of another person will incur a prison sentence of 1 to 5 years, if the suicide attempt results in death.

The sentence will be 12 to 15 years in prison accompanied by a multidisciplinary therapeutic treatment conducted in a State or private health facility with specialized care when the perpetrator incites a woman to commit suicide by abusive treatment.

*Introduced by Article 41 of the "Law Adopting Measures of Prevention Against Violence Against Women, and Reforming the Code", N° 82 de 2013*

## PARAGUAY



### COMPREHENSIVE PROTECTION LAW ON ALL FORMS OF VIOLENCE AGAINST WOMEN

No. 5777 December 2016.

#### Art. 50. Femicide.

Whoever kills a woman because of her status as a woman and under any of the following circumstances, will be punished with imprisonment from 10 to 30 years when:

- a) The perpetrator maintains or has maintained an intimate, co-habiting, intimate partner or emotional relationship with the victim at any time;
- b) There is a kinship relation between the victim and the perpetrator, within the fourth degree of kinship and second degree of affinity.
- c) The death occurs as a result of having previously committed a cycle of physical, sexual, psychological or patrimonial violence against the victim, regardless of whether the events have been reported or not;
- d) The victim has found themselves in a situation of subordination or dependence with respect to the perpetrator, or the perpetrator has taken advantage of a situation of physical or mental vulnerability of the victim to commit the act;
- e) Previously, the perpetrator has committed punishable acts against sexual autonomy of the victim; or,
- f) The act was motivated by the victim's refusal to establish or reestablish a permanent or casual intimate relationship.

## PERU



### CRIMINAL CODE

#### ARTICLE 108-B.- FEMINICIDE

He who kills a woman because she is a woman under any of the following circumstances will be subject to a sentence not less than 15 years:

1. Domestic violence;
2. Coercion, harassment or sexual harassment;

3. Abuse of power, trust, or any other position or relationship that confers authority on the perpetrator;

4. Any form of discrimination against women, regardless of whether a marital or cohabitational relationship with the perpetrator currently exists or existed in the past

The following aggravating circumstances will incur a sentence of no less than 25 years in prison:

1. If the victim was a minor;
2. If the victim was pregnant;
3. If the victim was under the care or responsibility of the perpetrator;
4. If the victim was previously subjected to rape or mutilation;
5. If when the act occurred, the victim was suffering from any kind of disability;
6. If the victim was intended to be used in human trafficking.
7. When any of the aggravating circumstances listed in Article 108 are present.

The sentence will be life imprisonment when 2 or more aggravating circumstances are present. (1)

"If the perpetrator has children with the victim, the provisions established in paragraph 5 of Article 36 will be subject to disqualification."(2)

(1) Article incorporated by Article 2 of Law N° 30068, published July 18, 2013.

(2) Article amended (\*) NOTA SPIJ by Article 1 of Law N° 30323, published May 7, 2015.

#### ARTICLE 377. OMISSION, REFUSAL OR DELAY OF OFFICIAL FUNCTIONS

The public official who illegally limits, refuses or delays any function related to his or her position will be punished and sentenced to not more than 2 years in prison and a fine equal to 30 or 60 days.

When the omission, refusal or delay of official functions is in

reference to a request for personal protection or domestic violence, the sentence will be no less than 2 years and no more than 5 years in prison.

#### ARTICLE 378. DENIAL OF OR DEFICIENT POLICE SUPPORT

The police officer who delays, omits, or denies legally required assistance by the competent civil authority, without justified cause, will be subject to a prison sentence of not more than 2 years.

If the assistance is required by an individual in a dangerous situation, the penalty will be no less than 2 years, and no more than 4 years.

If the assistance is associated with a request for personal protection or a case of domestic violence, the sentence established in the second paragraph will be imposed.

*Language taken from the Law to Prevent, Punish, and Eradicate Violence Against Women and Members of the Family Unit* No.30364

## URUGUAY



### CRIMINAL CODE

#### Article 310 (Homicide)

The person who, with the intention of killing, brings death to someone, will be punished with 20 months of prison to 12 years of penitentiary.

#### Article 312 (Special aggravating circumstances)

The penalty of penitentiary from 15 to 30 years will be applied, when the homicide was committed:

1. With brutal ferocity, or with serious cruelty.
2. For remuneration price or promise.
3. Through fire, flood, submersion, or other offenses provided for in paragraph 3 of Article 47.
4. To prepare, facilitate or carry out another crime, even when it has not been carried out.
5. Immediately after having committed another crime, to ensure the outcome, or for not having been able to achieve the proposed purpose, or to conceal the crime, to suppress the evidence, to procure impunity or to procure it from one of the criminals.

6. The habituality, the contest and the recidivism, in these last two cases, when the previous homicide had been executed without the circumstances provided in number 4 of the preceding article.

7. As an act of discrimination based on sexual orientation, gender identity, race or ethnic origin, religion or disability. (\*)

8. (Femicide) Against a woman because of hatred, contempt or scorn, because of her status as a woman. Without prejudice to other manifestations, it will be considered that they are indications that presume the existence of the motive of hatred, contempt or contempt, when:

a) Death would have preceded an incident of physical, psychological, sexual, economic or other violence perpetrated by the perpetrator against the woman, regardless of whether the act was denounced or not by the victim.

b) The victim would have refused to establish or resume with the author a couple relationship, infatuation, affection or intimacy.

c) Prior to the death of the woman, the author would have committed any behavior against her that violates her sexual freedom.

In all cases, presumptions will admit evidence to the contrary. (\*)

Numbers 7) and 8) added / s by: Law Nº 19,538 of 09/10/2017 Article 3.

## VENEZUELA



### ORGANIC LAW ON THE RIGHT OF WOMEN TO A LIFE FREE FROM VIOLENCE (Reform of 2014)

**Article 57.** He who intentionally causes the death of women based on a motive of hatred or contempt for women, commits the crime of femicide, punishable by 20 to 25 years in prison.

The following circumstances are considered as constituting hatred or contempt of women:

In the context of relationship of gender- based control or subjugation

1. The victim presents signs of sexual violence
2. The victim presents signs of degrading injuries and mutilation that occurred pre- or post- mortem.
3. The corpse of the victim was exposed or displayed in a public place.
4. The perpetrator exploited the victim's high-risk situation or physical or psychological vulnerability.
5. A demonstrated pre-existing violent occurrence as established in the law, whether reported or not reported by the victim.

A person convicted of a crime violating human rights loses the right to legal process and the application of alternative measures of fulfilling his sentence.

**Article 59.** He who has incited a woman to commit suicide will be punished. If the suicide succeeds, the penalty will be from 10 to 15 years in prison. If the suicide fails, the sentence will equal that applied in the law for the equivalent physical harm inflicted.

In both cases, a motive of hatred or contempt for women must be demonstrated.

*Language taken from the Reform Law of 2014*

**House of the United Nations  
building #128, 3rd floor  
City of Knowledge, Clayton, Panama.**

**Phone.: +507 305 4890**

**[www.lac.unwomen.org.es](http://www.lac.unwomen.org.es)**

