

# A Path Forward to #NiUnaMenos Based on an Intersectional Analysis of Laws Criminalizing Femicide/Feminicide in Latin America

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#### ABSTRACT

*Since 2007, eighteen Latin American countries have enacted laws that criminalize femicide/feminicide in an effort to address gender-based murders in the region and to uphold their obligations under international human rights law. However, the COVID-19 pandemic and its systemic lingering effects exacerbated the existent dangerous levels of gender-based violence in the region, resulting in an increase in gender-based murders. To address these murders, between 2020 and 2021, a quarter of the eighteen Latin American countries that criminalized femicide/feminicide have implemented or are in the process of implementing reforms to their laws criminalizing femicide/feminicide. Given this new trend to address the prevalence of gender-based murders, this Article analyzes the laws of nine Latin American countries from an intersectional gender lens perspective. The Article ultimately questions whether criminal law is an effective tool to prevent and eradicate feminicide, as well as to provide comprehensive reparations for survivors with multiple marginalized identities and their families for the multi-sided violence they have been forced to*

*endure due to patriarchal, racist, and colonial-capitalist systems of power. With a vision that women will be able to live their lives free from violence, this Article describes how the path forward requires a new approach grounded in the lived experiences of those that are disproportionality impacted by gender-based violence; and provides clear recommendations for States to ensure that they recognize the murders of women with multiple marginalized identities in order to protect their right to life.*

## I. INTRODUCTION

A “shadow pandemic” unfolded in Latin America in the midst of the COVID-19 pandemic.<sup>1</sup> With a goal of curbing the spread of the virus, leaders around the region responded to the global epidemic by introducing a variety of restrictions such as mandatory quarantines and curfews.<sup>2</sup> They did this in spite of evidence indicating that gender-based violence is exacerbated by conditions of social exclusion.<sup>3</sup> While home became the best place to keep people safe from the contagious virus, it was not safe for women who were forced to be confined with their violent partners during a time of increased tension with little to no resources to escape the dangerous environment.<sup>4</sup>

Prior to the COVID-19 pandemic, Latin America was already considered to be one of the worst regions in the world for women as they face a continuum of violence that can result in gender-based murder<sup>5</sup>, legally

1. María Noel Vaeza, *Violence Against Women: A Shadow Pandemic Aggravated by COVID-19*, EL NACIONAL (Mar. 8, 2021), <https://www.elnacional.com/opinion/violencia-contra-las-mujeres-una-pandemia-en-la-sombra-agravada-por-el-covid-19/> [<https://perma.cc/TJ7X-5M5N>].

2. ARTICULACIÓN REGIONAL FEMINISTA, LOS DERECHOS DE LAS MUJERES DE LA REGIÓN EN ÉPOCAS DE COVID-19 at 17–23 (May 15, 2020), <http://www.articulacionfeminista.org/a2/objetos/adjunto.cfm?aplicacion =APP003&cnl=26&opc=7&codcontenido=4411&cod campo=25> [<https://perma.cc/6LHB-FFV2>] (listing the various COVID-19 restrictions imposed by countries).

3. Marcella Lagarde y De los Rios, *Preface* to TERRORIZING WOMEN: FEMINICIDE IN THE AMERICAS xi, xx (Rosa-Linda Fregoso & Cynthia Bejarano, eds., Charlie Roberts, trans., Duke Univ. Press 2010); *see also* ARTICULACIÓN REGIONAL FEMINISTA, *supra* note 2, at 14.

4. ARTICULACIÓN REGIONAL FEMINISTA, *supra* note 2, at 13–14.

5. Abel Gilbert, *Los Femicidios, la Otra Pandemia de América Latina*, EL PERIÓDICO (Mar. 8, 2021, 10:21 AM), <https://www.elperiodico.com/es/internacional/20210308/8m-encuentra-america-latina-medio-11565151> [<https://perma.cc/3ZJL-BTNP>]; Patsilí

classified either as femicide or feminicide depending on the country.<sup>6</sup> In 2015, the United Nations Special Rapporteur on Violence Against Women identified feminicide as a global issue by creating a Femicide Watch program<sup>7</sup> and in 2018, the Follow-up Mechanism to the Belém do Pará Convention, the oversight body to the Belém do Pará Convention, declared femicide to be the “most serious manifestation of discrimination and violence against women” in Latin America.<sup>8</sup> In 2019 alone, there were 4,600 feminicides documented in the region.<sup>9</sup> With many Latin American countries still struggling with COVID-19 outbreaks, slow vaccination efforts,<sup>10</sup> and lingering systemic effects of the pandemic,<sup>11</sup> it is hard to know what the exact numbers might be two years since the inception of the COVID-19 epidemic. A UN report revealed that at least 4,091 feminicides took place in Latin America and the Caribbean in 2020<sup>12</sup> and reports of feminicide increased in 2021.<sup>13</sup> Additionally, hotlines have responded to a record number of calls further indicating that gender-based violence is plaguing the region.<sup>14</sup>

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Toledo Vásquez, FEMINICIDIO 24 (2009), <http://www.nomasviolenciacontramujeres.cl/wp-content/uploads/2015/09/P.-Toledo-Libro-Feminicidio.compressed.pdf> [<https://perma.cc/86NQ-QWGP>].

6. Patsilí Toledo Vásquez, FEMINICIDIO 24 (2009), <http://www.nomasviolenciacontramujeres.cl/wp-content/uploads/2015/09/P.-Toledo-Libro-Feminicidio.compressed.pdf> [<https://perma.cc/86NQ-QWGP>].

7. *UN Rights Expert Calls All States to Establish a ‘Femicide Watch’*, OHCHR (Nov. 24, 2015), <https://www.ohchr.org/en/press-releases/2015/11/un-rights-expert-calls-all-states-establish-femicide-watch> [<https://perma.cc/K47M-UL2H>].

8. ALICIA DEUS AND DIANA GONZALEZ, ANALYSIS OF FEMICIDE/FEMINICIDE LEGISLATION IN LATIN AMERICA AND THE CARIBBEAN AND A PROPOSAL FOR A MODEL LAW 24 (U.N. WOMEN 2018) [hereinafter U.N. WOMEN].

9. Gilbert, *supra* note 5.

10. See Avery Reyna, *Latin America’s Vaccination Efforts: What to Know*, COUNCIL ON FOREIGN RELATIONS (May 20, 2021, 4:50 PM), <https://www.cfr.org/in-brief/latin-americas-vaccination-efforts-what-know> [<https://perma.cc/U34M-GH97>].

11. The pressures that result in women experiencing gender-based violence have changed throughout the pandemic. At its onset, quarantine measures created an environment conducive for gender-based violence. Two years later, economic pressures due to loss of employment and inflation have been identified as possible sources of increased violence. *Addressing the Impact of COVID-19 on GBV: An Ongoing Challenge for 2022*, WORLD BANK GROUP (Mar. 31, 2022), <https://www.worldbank.org/en/events/2022/03/30/the-incidence-of-gender-based-violence-in-latin-america-and-the-caribbean> [<https://perma.cc/Y8BD-TLYY>].

12. *More Than 4,000 Femicides in Latin America Last Year*, BUENOS AIRES TIMES (Nov. 26, 2021), <https://www.batimes.com.ar/news/latin-america/more-than-4000-femicides-in-latin-america-last-year.phtml> [<https://perma.cc/UJH6-VXZ2>].

13. Reuters, *Mexican Women Protest Femicides as President Warns Against Violence*, N.Y. TIMES (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/world/americas/mexico-women-femicides.html> [<https://perma.cc/9694-C7RW>].

14. See ARTICULACIÓN REGIONAL FEMINISTA, *supra* note 2, at 34–37.

Since 2007, eighteen Latin American countries have enacted laws that criminalize femicide/feminicide in an effort to address gender-based murders in the region and to uphold their obligations under international law, yet impunity remains.<sup>15</sup> The COVID-19 pandemic has only served to exacerbate the multi-sided violence women face as history has shown that in times of natural disasters and pandemics, gender-related issues are not accounted for in relief efforts.<sup>16</sup> This has been evident during the COVID-19 pandemic as Latin American governments pulled back resources for gender-specific programs, such as canceling funding to shelters for women experiencing domestic violence in Mexico to dismissing fifty percent of staff at Integrated Protection Programs in Ecuador.<sup>17</sup> The Nicaraguan government even went as far as outlawing feminist organizations that provide shelters for survivors of gender-based violence.<sup>18</sup>

Women in Latin America are fed up, knowing that in a machista (sexist) society their lives do not matter to those in power. Mexico's President, Andrés Manuel López Obrador, even publicly claimed that ninety percent of hotline calls during the pandemic were fake.<sup>19</sup> So, women around the region protested, demanding justice for victims of femicide.<sup>20</sup> These

15. Gilbert, *supra* note 5.

16. See CAROLINE CRIADO PEREZ, *INVISIBLE WOMEN: DATA BIAS IN A WORLD DESIGNED FOR MEN* 298–99 (2019); see also Erin Adamson et al., *The Impact of Adjacent Laws on Implementing Violence Against Women Laws: Legal Violence in the Lives of Costa Rican Women*, 45 *LAW & SOC. INQUIRY* 432, 435–36 (2020) (describing multisided violence as comprising “various forms of violence, such as structural, political, every day, symbolic, and gender violence, as they exist in tandem in a constitutive fashion.”).

17. EQUIS: JUSTICIA PARA LAS MUJERES, *LAS DOS PANDEMIAS: VIOLENCIA CONTRA LAS MUJERES EN MEXICO EN EL CONTEXTO DE COVID-19* 26 (2020), <https://equis.org.mx/wp-content/uploads/2020/08/informe-dospandemiasmexico.pdf> [<https://perma.cc/4GRT-HWQN>]; ARTICULACIÓN REGIONAL FEMINISTA, *supra* note 2, at 54; see also Mexico: *In the Midst of a Femicide Crisis, the 2022 Budget Must Prioritize Public Policies to Deal with Gender-based Violence*, EQUALITY NOW (Oct. 21, 2021), [https://www.equalitynow.org/mexico\\_budget2022](https://www.equalitynow.org/mexico_budget2022) [<https://perma.cc/2R7M-5FN9>] (announcing efforts by national and international organizations to urge the State of Mexico to increase funding for gender-focused programs after the State cut funding to these programs in 2020).

18. Dánae Vilchez, *Nicaraguan Government Outlaws Feminist Groups Serving Vulnerable People*, OPEN DEMOCRACY (June 1, 2022, 11:16am), <https://www.opendemocracy.net/en/5050/nicaragua-feminist-women-human-rights-banned/> [<https://perma.cc/3L6G-Z94M>].

19. Natalie Kitroeff, *Mexico's President Says Most Domestic Violence Calls are 'Fake'*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/world/americas/violence-women-mexico-president.html> [<https://perma.cc/H8ZS-UR4S>].

20. See, e.g., Sandra Cuffe, *'I am tired of it': Femicides spark outrage across Guatemala*, ALJAZEERA (Oct. 10, 2020), <https://www.aljazeera.com/news/2020/10/10/i-am-tired-of-it-femicides-spark-outrage-across-guatemala> [<https://perma.cc/2Q7P-2XL4>];

calls have not gone unnoticed. Shortly after taking office in January 2021, Puerto Rico's Governor, Pedro Pierluisi, declared a state of emergency related to the increase in cases of gender-based violence.<sup>21</sup> Twenty-six years after the Beijing Declaration and Platform for Action, world leaders and members of civil society came together in March and July of 2021 at the Generation Equality Forum to embark on a five-year journey to accelerate gender equality, including accountability measures for States to eradicate gender-based violence.<sup>22</sup>

Between 2020 and 2021, a quarter of the twenty-two Latin American countries that criminalized femicide/feminicide have or are in the process of implementing reforms to combat femicide/feminicide.<sup>23</sup> Given the new

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Megan Janetsky, *Violence against women up amid Latin America COVID-19 lockdowns*, ALJAZEERA (Apr. 20, 2020), <https://www.aljazeera.com/features/2020/4/20/violence-against-women-up-amid-latin-america-covid-19-lockdowns> [https://perma.cc/7M84-P3DT]; Natalie Alcoba, *Rage boils over amid Argentina's unrelenting femicide crisis*, ALJAZEERA (Feb. 24, 2021), <https://www.aljazeera.com/news/2021/2/24/rage-boils-over-amid-argentinas-unrelenting-femicide-crisis> [https://perma.cc/GY2K-4CWR]; Nicole Acevedo, *Puerto Rico's new tipping point: Horrific femicides reignite fight against gender violence*, NBC NEWS (May 16, 2021 3:30 AM), <https://www.nbcnews.com/news/latino/puerto-rico-s-new-tipping-point-horrific-femicides-reignite-fight-n1267354> [https://perma.cc/A97Z-K7D8]; Jake Kincaid, *Clutching graveyard crosses, hundreds protest violence against women in Mexico*, REUTERS (Nov. 4, 2021), <https://news.trust.org/item/20211104002509-p8t4q/> [https://perma.cc/MW8T-PPW5] (reporting on the "Day of the Dead Women" march after the Día de los Muertos holiday to protest the feminicides of 762 women between January and September of 2021, which is a five percent increase from 2020); Yesica Balderrama, *Thousands of Women March Against Femicide in Mexico City*, LATINO REBELS (Mar. 10, 2022, 3:50pm), <https://www.latinorebels.com/2022/03/10/femicidemarchdf/> [https://perma.cc/8DAD-GLXW] (noting that women participated in protests in countries throughout Latin America such as Colombia, Venezuela, Ecuador, Mexico, and Chile on International Women's Day to continue to draw attention to the systemic murders of women); Haydn Welch, *Women This Week: Outcry Over Disappearances and Femicides Grow in Mexico*, Council on Foreign Relations (Apr. 29, 2022, 5:12PM), <https://www.cfr.org/blog/women-week-outcry-over-disappearances-and-femicides-grows-mexico> [https://perma.cc/B6XW-GFZ2] (documenting how hundreds of women participated in a protest in Mexico City to demand justice after an eighteen year old girl was found dead a month after being declared missing).

21. Acevedo, *supra* note 20.

22. U.N. WOMEN, *Trailblazing leaders commit to end gender-based violence, drive equality in technology and innovation, and ensure economic justice and rights for women and girls at the Generation Equality Forum*, U.N. WOMEN NEWS (July 2, 2021), <https://www.unwomen.org/en/news/stories/2021/7/news-gef-paris-leaders-commit-to-end-gbv-drive-equality-in-tech-and-ensure-economic-justice> [https://perma.cc/U5BK-VWLJ]; Ministère de l'Europe et des Affaires Étrangères, *Generation Equality Forum (2021)*, FR. DIPL. (July 2021), <https://www.diplomatie.gouv.fr/en/french-foreign-policy/united-nations/news-and-events/generation-equality-forum-2021/> [https://perma.cc/HTM4-LKSJ].

23. CÓDIGO PENAL (Criminal Code) art. 98–102 (2021) (Dom. Rep.) [hereinafter 2021 Criminal Code, Dom. Rep.]; Ley No. 1058, 20-11-2021, Ley de Reforma y Adición al Código Penal de la República de Nicaragua y a la Ley No. 779, Ley Integral Contra la Violencia hacia las Mujeres y de Reformas a la Ley 641, "Código Penal" [Reform Law and

trend of implementing reform to existing laws criminalizing femicide/feminicide in order to address the prevalence of gender-based murders and to build back better in the region, it is imperative that all future legal reforms addressing feminicide in Latin America build back equitably as required by States' international legal obligations. Section II of this Comment discusses the importance of centering on the experiences and identities of the most marginalized women in the region, because when laws addressing femicide/feminicide work for the most marginalized women, they work for all women.<sup>24</sup>

Taking an intersectional, victim-centered approach, Section III of this Comment will analyze the laws of nine Latin American countries that criminalize femicide/feminicide with a focus on countries that (1) have implemented reforms since 2020, (2) are currently in the process of implementing reforms, and (3) are not currently implementing reforms but are in a prime position to implement reform due to their current law's potential to recognize the femicide/feminicide of women with multiple marginalized identities. Section IV of this Comment will continue the analysis by questioning whether criminal law is an effective tool to prevent, eradicate, and provide remedies for feminicide. Lastly, Section V of this Comment proposes solutions, both inside and outside criminal law to prevent and eradicate feminicide, as well as to provide remedies to women for the multi-sided violence they have been forced to endure due to patriarchal, racist, and colonial-capitalist systems of power.

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Addition to the Criminal Code of the Republic of Nicaragua and to Law No. 779, Comprehensive Law against Violence against Women and Reforms to Law 641, "Criminal Code", LA GACETA, DIARIO OFICIAL [L.G.], 25 Jan 2021 (Nicar.) [hereinafter 2021 Reform, Nicaragua]; INFOSEGURA, *CENTRAL AMERICA AND THE DOMINICAN REPUBLIC: VIOLENCE AGAINST WOMEN THROUGHOUT THE LIFE CYCLE, 2020* 3 (2020), <https://infosegura.org/en/2021/06/22/violence-against-women-in-central-america-and-dominican-republic/> [<https://perma.cc/GV8T-89X3>]; Eleodina Ramírez Araos, *Aprobada con Urgencia Parlamentaria la Reforma de Ley del Derecho de la Mujer a una Vida Libre de Violencia*, ASAMBLEA NACIONAL DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA (Mar. 2, 2021), <http://www.asambleanacional.gob.ve/noticias/aprobada-con-urgencia-parlamentaria-la-reforma-de-ley-del-derecho-de-la-mujer-a-una-vida-libre-de-violencia> [<https://perma.cc/87DJ-BPJ5>].

24. Catherine MacKinnon, *Intersectionality as Method: Note*, 38(4) SIGNS: J. OF WOMEN IN CULTURE & SOC'Y 1019, 1025 (2013).

## II. CENTERING THE EXPERIENCES OF THE MOST MARGINALIZED WOMEN IN LATIN AMERICA

### A. *The Importance of Intersectionality as a Tool to Center the Experiences of the Most Marginalized Women and to Create Effective Legal and Policy Solutions*

Centering the experiences of the most marginalized women in Latin America requires understanding the multiple systems of oppression that women face as “femicidal violence flourishes under the hegemony of a patriarchal culture that legitimates despotism, authoritarianism, and the cruel, sexist—machismo, misogynist, homophobic, and lesbophobic—treatment reinforced by classism, racism, xenophobia, and other forms of discrimination.”<sup>25</sup> Intersectionality is a tool that allows individuals to understand the multiple systems of oppression women face based on how various aspects of their identities converge and make them more susceptible to gender-based violence that may culminate in their eventual murder. According to Kimberlé Crenshaw,<sup>26</sup> intersectionality is “a lens, a prism, for seeing the way in which various forms of inequality often operate together and exacerbate each other.”<sup>27</sup>

Thus, the deeper level of understanding attained by using intersectionality as a tool allows for the implementation of reforms that take multiple aspects of marginalized identities into account when framing solutions or providing resources.<sup>28</sup> As Kimberlé Crenshaw describes, “[t]he fact that minority women suffer from the effects of multiple subordination, coupled with institutional expectations based on inappropriate nonintersectional contexts, shapes and ultimately limits the opportunities for meaningful intervention on their behalf.”<sup>29</sup> Therefore, unless laws and resources take all aspects of marginalized women’s identities into account, they only work for women with privileged identities (cis-gender, white, educated, and upper-class women).<sup>30</sup>

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25. Lagarde y De los Rios, *supra* note 3, at xxi.

26. See, e.g., Katy Steinmetz, *She Coined the Term ‘Intersectionality’ Over 30 Years Ago. Here’s What It Means to Her Today*, TIME (Feb. 20, 2020 7:27 AM), (Kimberlé Crenshaw is notable for introducing the concept of intersectionality to feminist theory), <https://time.com/5786710/kimberle-crenshaw-intersectionality/> [<https://perma.cc/3ZL6-ESF3>].

27. *Id.*

28. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1250–51 (1991).

29. *Id.* at 1251.

30. See *id.*



*B. The Latin American Context*

Women in Latin America must navigate their daily lives through a complex web of political, economic, and cultural dynamics. The continued militarization of the region is marked by a history of colonization, dictatorships, and civil wars that used tactics of human torture on vulnerable civilians and the degradation of women to advance political messages.<sup>31</sup> In today's neoliberal capitalist era, state terror has been outsourced to law enforcement, corporate entities, paramilitary bands, private armies and privatized security forces “working for the globalized networks of the drugs, weapons, and human trafficking industries, [and] to the private armies of the ruling elite—all claiming the right to exercise sovereignty,” who continue to use similar torture practices.<sup>32</sup> Culturally, machismo, coupled with extreme homophobia, serve to remind women and members of the LGBTQ+ community that they have a specific gendered role to play in society, placing those that wish to defy or question those roles at a higher risk of violence.<sup>33</sup>

This context demonstrates that violence is deeply connected to obtaining and maintaining power over vulnerable communities in Latin America. Therefore, it makes sense that “[m]any of the murdered women are from the most marginalized sectors of society.”<sup>34</sup> Using intersectionality as a tool, coupled with an understanding of how political, economic, and cultural institutions use violence to maintain power, this Comment analyzes existing laws and proposals for reform that criminalize femicide/feminicide in nine Latin American countries and will recommend solutions from the perspective of a low-income, indigenous or Afro-descendant transgender woman (hereinafter, L.I.I.A.D.T.W.) living in a rural community.<sup>35</sup> Employing

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31. Rosa-Linda Fregoso & Cynthia Bejarano, *Introduction: A Cartography of Femicide in the Américas*, *TERRORIZING WOMEN: FEMINICIDE IN THE AMÉRICAS* 1, 13 (Rosa-Linda Fregoso & Cynthia Bejarano, eds., Duke Univ. Press 2010).

32. *Id.* at 14–15.

33. Karen Musalo, *El Salvador: Root Causes and Just Asylum Policy Responses*, 18 *HASTINGS RACE & POVERTY L. J.* 178, 198 (2021).

34. Marina Prieto-Carrón et al., *No More Killings! Women Respond to Femicides in Central America*, 15 *GENDER & DEV.* 25, 27 (2007).

35. See FOLLOW-UP MECHANISM TO THE BELÉM DO PARÁ CONVENTION, THIRD HEMISPHERIC REPORT ON THE IMPLEMENTATION OF THE BÉLEM DO PARÁ CONVENTION: PREVENTION OF VIOLENCE AGAINST WOMEN IN THE AMERICAS PATHS TO FOLLOW 107, 111–24 (2017) [hereinafter MESECVI, THIRD HEMISPHERIC REPORT], <https://www.oas.org/en/mesecvi/docs/TercerInformeHemisferico-EN.pdf> [<https://perma.cc/7R2Z-TD7M>] (noting that many States have limited data and records on how violence against women intersects with other

this specific perspective acknowledges and concretizes who women with multiple marginalized identities are in Latin America and grounds legal analysis based on lived experiences.

*C. Examples of the Multisided Violence Marginalized Women Face Before and After their Experience with Gender-Based Violence and Intersectionality as a Tool to Access Justice*

*1. The Case of Valentina Rosendo Cantú*

Valentina Rosendo Cantú was an indigenous woman and a member of the Me ‘phaa indigenous group, originally from the Caxitepec community, in the state of Guerrero, Mexico.<sup>36</sup> She lived an hour’s walk away from Barranca Bejuco in an isolated mountainous area and did not speak Spanish.<sup>37</sup> On February 16, 2002, she was washing clothes at a nearby stream when she was approached by eight soldiers.<sup>38</sup> Two soldiers asked her if she knew the whereabouts of “the hooded men” they were looking for while another threatened her with a weapon.<sup>39</sup> Ms. Cantú informed them that she did not know the individuals they were looking for.<sup>40</sup> Refusing to believe her, one soldier hit Ms. Cantú in the stomach with a weapon causing her to fall and become unconscious.<sup>41</sup> After regaining consciousness, the soldiers pulled her by the hair, continued to question her, and threatened to kill her and others in her community.<sup>42</sup> Shortly thereafter, one soldier removed Ms. Cantú’s skirt and underwear and two soldiers subsequently raped her.<sup>43</sup>

Due to Ms. Cantú’s status as an indigenous woman who did not speak Spanish, she then experienced additional violence by institutions that imposed barriers to her access to justice. After her attack she sought medical help multiple times, walking eight hours to get to a hospital in order to address the pain from the attack.<sup>44</sup> Between February 27, 2002 and August 30, 2002, she went through a series of legal hoops, only for her petition for relief to

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aspects of their identities and provides available data to demonstrate rates of violence in relation to vulnerable aspects of women’s identities per country).

36. Rosendo Cantú et al. v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 216, ¶ 72 (Aug. 31, 2010).

37. *Id.* at ¶¶ 72, 179 (iv).

38. *Id.* at ¶ 73.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at ¶ 75.

be denied twice.<sup>45</sup> During her legal battle, she was denied access to interpreters and was constantly revictimized.<sup>46</sup> Two years after her attack, the Military Public Prosecutor's Office refused accountability, holding it could not prove that military personnel committed an illegal act.<sup>47</sup> Ms. Cantú finally received access to justice on August 31, 2010, when the Inter-American Court of Human Rights (IACHR) declared Mexico accountable for the lack of due diligence in the investigation and failure to punish the perpetrators for the gender-based violence inflicted upon her.<sup>48</sup>

## 2. *The Case of Vicky Hernández*

Vicky Hernández was a twenty-six-year-old transgender woman, social activist, and HIV-positive sex worker living in Honduras.<sup>49</sup> On June 28, 2009, Ms. Hernández was killed on the night of a coup d'état during a forty-eight-hour curfew.<sup>50</sup> Ms. Hernández learned of the curfew while at a friend's home that night but left soon after hearing news of the curfew.<sup>51</sup> Military forces shot Ms. Hernández in the head that night leaving her body in the street until morning.<sup>52</sup>

Several indicators revealed that Ms. Hernández's murder was motivated by gender: (1) the context of discrimination and violence against LGBTQ+ persons in Honduras, (2) a condom left next to her body, (3) the exhibition of her body in the middle of the street, and (4) the irregular nature of her wounds.<sup>53</sup> Evidence of gender-based discrimination in the investigation of the murder included officials repeatedly identifying Ms. Hernández as male and failing to use Ms. Hernández's preferred name.<sup>54</sup> Additionally, authorities failed to include an autopsy report, interview key witnesses, follow up on leads, and authorities reduced the charges to a crime of passion.<sup>55</sup> On June 26, 2021, the IACHR issued a landmark ruling holding that Honduras

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45. *Id.* at ¶¶ 76–79, 90, 145, 179(iv).

46. *Id.* at ¶ 78; *see id.* at ¶ 77.

47. *Id.* at ¶ 147.

48. *Id.* at ¶ 121.

49. *Vicky Hernández et al. v. Honduras, Fondo, Reparaciones y Costas, Sentencia, Inter-Am. Ct. H.R. (ser. C) No. 422, ¶ 40 (Mar. 26, 2021).*

50. *Id.* at ¶ 29, 36.

51. *Id.* at ¶ 42, 45.

52. *Id.* at ¶¶ 42–46.

53. *Id.* at ¶ 112.

54. *Id.* at ¶ 62.

55. *Id.* at ¶¶ 59, 62, 76.

violated Ms. Hernández's right to life and ordered Honduras to train law enforcement in investigating anti-LGBTQ+ violence, to adopt a procedure for the legal recognition of transgender people, to provide financial relief to Ms. Hernández's family, and to create a scholarship program for transgender women.<sup>56</sup>

Using the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará Convention) as the legal foundation in both case decisions, the IACHR considered the context and additional discrimination Ms. Cantú and Ms. Hernández experienced as indigenous and transgender women respectively, which allowed men in power to use Ms. Cantú and Ms. Hernández's bodies to exert their power and to get away with it.<sup>57</sup> State laws criminalizing femicide/feminicide, do not require or incentivize criminal justice systems to employ an intersectional analytical framework.<sup>58</sup> Therefore, centering the experiences of the most marginalized women in the region through an intersectional lens is imperative for laws and policies to be effective tools in the prevention and eradication of femicide perpetrated against all women, not just some women.<sup>59</sup>

#### *D. Femicide vs. Feminicide: Moving Towards an Intersectional Definition of Gender-Based Murders in the Law*

There is an ongoing debate as to whether the killing of a woman because she was a woman should be categorized as femicide or feminicide.<sup>60</sup> While both terms seek to differentiate the murder of women because of their gender from homicide, femicide and feminicide have substantially different meanings. Oftentimes femicide and feminicide are used interchangeably, however, it is critical to have an intentional conceptualization of the issue within the law as “conceptual definitions are important in law, not only for the language used in legal regulations . . . , but also for the interpretation of the laws within the criminal justice system.”<sup>61</sup>

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56. *Honduras: Court Finds State Responsible for Trans Killing*, HUMAN RIGHTS WATCH (July 2, 2021, 12:44 PM), <https://www.hrw.org/news/2021/07/02/honduras-court-finds-state-responsible-trans-killing#> [<https://perma.cc/2S7L-FZ24>].

57. *See Cantú v. Mexico Preliminary Objections, Merits, Reparations, and Costs*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 225, ¶¶ 70–71 (May 15, 2011); *Hernandez*, Inter-Am. Ct. H.R. (ser. C) No. 422, ¶¶ 29–35.

58. *See* U.N. WOMEN, *supra* note 8, at 56–57.

59. MESECVI, THIRD HEMISPHERIC REPORT, *supra* note 35, at 203–04.

60. Fregoso & Bejarano, *supra* note 30, at 3.

61. U.N. WOMEN, *supra* note 8, at 12–13. The author of this Comment solely uses the term “femicide” when a source or law uses the term “femicide,” otherwise the author will use the term feminicide throughout the Comment for the reasons outlined in this section.

Femicide was added to the feminist dictionary in the 1970s.<sup>62</sup> Diana Russell first defined femicide as “the misogynous killing of women by men”<sup>63</sup> and most recently redefined it as the killing of females because they are female in order to broaden the concept to include all forms of gender-based killings.<sup>64</sup> Femicide distinguishes itself from homicide by highlighting the gender of the victim and translates simply into the homicide of a woman.<sup>65</sup> However, this definition equates the biological sex of the victim with gender identity and fails to recognize the systemic nature of this violence.<sup>66</sup>

On the other hand, feminicide expands the definition to include state impunity.<sup>67</sup> In recognizing institutional complicity in these murders, the term feminicide creates the space “to map the power dynamics and relations of gender, sexuality, race, and class underlying violence and in so doing, shift the analytic focus to how gender norms, inequities, and power relationships increase women’s vulnerability to violence.”<sup>68</sup> The term feminicide recognizes that there are multiple forms of discrimination embedded within institutions that create a culture of impunity and nurture systemic feminicidal violence.<sup>69</sup> Therefore, conceptualizing gender-based murders as feminicide within the law is better aligned with the implementation of intersectionality as an analytical legal tool in order to understand the layers of discrimination taking place when women become victims of feminicide and institutional responses after the murders.<sup>70</sup>

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62. *Id.* at 13.

63. Jane Radford, *Introduction to FEMICIDE: THE POLITICS OF WOMEN KILLING* 3, 3 (Jill Radford & Diana E. H. Russell, eds., 1992).

64. U.N. WOMEN, *supra* note 8, at 14.

65. Lagarde y De los Rios, *supra* note 3, at xv.

66. *See* Fregoso & Bejarano, *supra* note 31, at 3.

67. Lagarde y De los Rios, *supra* note 3, at xxiii.

68. Fregoso & Bejarano, *supra* note 31, at 1, 3–4.

69. *Id.* at 5.

70. For the aforementioned reasons, this Comment will characterize the murder of a woman because of her status as a woman as feminicide. The term femicide will only be used in the legal analysis of State laws that legally recognize the crime as femicide.

### III. THE RISE OF LEGAL REFORMS TO PREVENT, PUNISH, AND ERADICATE FEMINICIDE

#### *A. The Evolution of International Law in Setting the Stage for Comprehensive Legal Reform Centered on the Experiences of Women Who Are Most Marginalized*

Adopted by the United Nation's General Assembly in 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) became the first legally-binding treaty focused on addressing discrimination against women in pursuit of equality.<sup>71</sup> However, CEDAW fails to explicitly enumerate a state's duty to eradicate gender-based violence.<sup>72</sup> In the 1990s world leaders began to recognize the necessity of addressing gender-based violence in order to end gender discrimination. The Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights on June 23, 1993, recognized and condemned violence against women to ensure women's human rights.<sup>73</sup> Later that year, "concerned that violence against women is an obstacle to the achievement of equality, development and peace," the United Nation's General Assembly adopted the Declaration on the Elimination of Violence against Women.<sup>74</sup> In 1994, the Belém do Pará Convention further established violence

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71. Comm. on the Elimination of Discrimination against Women, Progress Achieved in the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women ¶¶ 1–36, A/CONF.177/7 (June 21, 1995).

72. G.A. Res. 34/180, Convention on the Elimination of all Forms of Discrimination against Women (Dec. 18, 1979) [hereinafter CEDAW].

73. The declaration states that, "the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response." World Conference on Human Rights, *Vienna Declaration and Programme of Action*, ¶ 38, U.N. Doc. A/CONF.157/23 (June 25, 1993).

74. G.A. Res. 48/104 ¶ 4, Declaration on the Elimination of Violence Against Women (Dec. 20, 1993) [hereinafter DEVAW].

against women as a human rights issue by enacting the first international treaty to formally define violence against women.<sup>75</sup>

The Belém do Pará Convention 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.”<sup>76</sup> State parties to the Belém do Pará Convention have a duty to pursue all appropriate measures and policies to prevent, punish, and eradicate gender-based violence by: applying due diligence efforts, refraining from participation in any practices that inflict violence against women, drafting legislation, adopting legal measures, amending or repealing existing laws, establishing fair and effective legal procedures, and establishing the necessary legal and administrative mechanisms to ensure access to restitution and remedies for victims of gender-based violence.<sup>77</sup> All eighteen Latin American States to criminalize femicide/feminicide ratified the Belém do Pará Convention therefore accepting the aforementioned duties to address gender-based violence and femicide by extension.<sup>78</sup>

Additionally, since the turn of the century, the CEDAW Committee issued several general recommendations extending the duty of State Parties to CEDAW to combat gender-based violence, declaring that “[g]ender-based violence against women constitutes discrimination against women.”<sup>79</sup> Article 2(e) of CEDAW requires State parties take all appropriate measures to eliminate gender discrimination.<sup>80</sup> As such, States must be diligent and take all measures to prevent, investigate, prosecute, punish, and provide

75. Org. of Am. States [OAS], *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women*, art. 1, 3, 5 (June 9, 1994), <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf> [<https://perma.cc/3CXF-FHQ5>] [hereinafter Belém do Para Convention]; About the Belém do Pará Convention, OAS, <https://www.oas.org/en/mesecvi/convention.asp#:~:text=The%20Inter%2DAmerican%20Convention%20on,and%20that%20violence%20against%20women> [<https://perma.cc/H9AR-W9RF>]; U.N. WOMEN, *supra* note 8.

76. Belém do Pará Convention, *supra* note 75, art. 1.

77. *Id.* art. 7.

78. ORG. OF AM. STATES, INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT, AND ERADICATION OF VIOLENCE AGAINST WOMEN, STATUS OF SIGNATURES AND RATIFICATIONS, <https://www.oas.org/en/mesecvi/docs/Signatories-Table-EN.pdf> [<https://perma.cc/8G86-5PK3>].

79. Comm. on the Elimination of Discrimination against Women, General Recommendation No. 35, ¶ 21, U.N. Doc. CEDAW/C/GC/35 (July 14, 2017), [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_G\\_C\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_G_C_35_8267_E.pdf) [<https://perma.cc/65YJ-Z3AB>] [hereinafter CEDAW Gen. Rec. 35].

80. CEDAW, *supra* note 72, art. 2(e).

remedies for acts that constitute gender-based violence against women.<sup>81</sup> If not, States may be held accountable for acts and omissions by state actors and non-state actors, so long as the acts are attributable to the State and constitute gender-based violence against women.<sup>82</sup>

General Recommendation twenty-eight states that “[i]ntersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2 [of CEDAW].”<sup>83</sup> Taking an intersectional approach translates into an understanding that ethnicity, race, socioeconomic status, language, urban/rural location, and gender identity are connected with women’s experience of violence.<sup>84</sup> General Recommendation thirty-five further acknowledges the inter-connected structural causes of gender-based violence and the adverse impacts of displacement, migration, increased globalization, militarization, and armed conflict on women.<sup>85</sup>

All Latin American States to criminalize femicide/feminicide ratified CEDAW.<sup>86</sup> Therefore, each State has a duty to legally recognize intersecting forms of discrimination, its compounded negative impact on women, and to take all appropriate measures through laws, policies, and programs to prevent gender-based discrimination.<sup>87</sup> The CEDAW Committee underscored that addressing the intersectional nature of gender-based violence requires pursuing “all appropriate means without delay.”<sup>88</sup> Therefore, to stay in compliance with international law, all Latin American State parties to CEDAW need to focus on and address the needs of the most marginalized women in their efforts to end gender-based violence.

### *B. Analysis of Laws that Criminalize Femicide/Feminicide in Latin America*

In the last fourteen years, as a result of the developments in international law, eighteen Latin American countries have enacted laws and legal reforms to criminalize femicide/feminicide.<sup>89</sup> In Latin America, Costa Rica became

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81. CEDAW Gen. Rec. 35, *supra* note 79, at ¶ 24(b).

82. *Id.* at ¶¶ 22, 24(a).

83. Comm. on the Elimination of Discrimination against Women, General Recommendation No. 28, ¶ 18, U.N. Doc. CEDAW/C/2010/47/GC.2 (Oct. 19, 2010), <https://www2.ohchr.org/english/bodies/cedaw/docs/cedaw-c-2010-47-gc2.pdf> [hereinafter CEDAW Gen. Rec. 28].

84. CEDAW Gen. Rec. 35, *supra* note 79, at ¶ 12.

85. *Id.* at ¶ 14.

86. U.N. HUM. RTS. TREATY BODIES, *Ratification Status for CEDAW—Convention on the Elimination of All Forms of Discrimination against Women*, UN TREATY BODY DATABASE, <https://tbinternet.ohchr.org/layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en> [<https://perma.cc/4RFQ-9AJ8>].

87. CEDAW Gen. Rec. 28, *supra* note 83, at ¶ 18.

88. CEDAW Gen. Rec. 35, *supra* note 79, at ¶ 21.

89. Gilbert, *supra* note 5.



the first country to criminalize femicide in 2007.<sup>90</sup> Thirteen countries criminalized femicide/feminicide within their criminal codes, eight took a more comprehensive approach and five focused solely on the criminalization of femicide/feminicide.<sup>91</sup> Six countries criminalized femicide/feminicide within special laws, which act as stand-alone provisions outside existing civil or criminal codes.<sup>92</sup>

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90. Toledo Vásquez, *supra* note 6, at 97.

91. The laws of Argentina, Bolivia, Colombia, Ecuador, Mexico, Panama, Peru, and Uruguay criminalize femicide/feminicide within their criminal codes but take a slightly more comprehensive approach. Código Penal [Cód. Pen.] [Criminal Code] art. 80 (1984) (Arg.) [<https://perma.cc/Q6VH-982G>]; Código Penal [Cód. Pen.] [Criminal Code] art. 252 bis. (1972) (Bol.) [<https://perma.cc/Z4KM-6AJS>]; Código Penal [Cód. Pen.] [Criminal Code] art. 104 (2000) (Colom.) [hereinafter Criminal Code, Colombia] [<https://perma.cc/M9TX-42AN>]; Código Orgánico Integral Penal [Cód Org. Int. Pen. Ecu] [Comprehensive Organic Criminal Code] art. 141–42 (2014) (Ecuador) [<https://perma.cc/43MP-LTS8>]; Código Penal Federal [CPF] [Federal Criminal Code] art. 325, Diario Oficial de la Federación [DOF] 08-14-1931, últimas reformas DOF 12-11-2021 (Mex.); hereinafter Criminal Code, Mexico] [<https://perma.cc/S62Q-P8FW>]; Código Penal de la República de Panamá [Criminal Code to the Republic of Panama] art. 132(A) (2016) (Pan.); Código Penal [Cód. Pen.] [Criminal Code], Decreto Legislativo [Legislative Decree] 635 art. 108(B), Diario Oficial, 05 Sept. 1984, (Peru) [<https://perma.cc/4KEW-RSTZ>]; Código Penal [Cód. Pen.] No. 9155 [Criminal Code No. 9155] art. 311–12, Decreto No. 698/697, 26 Oct. 1967 (Uru.) [hereinafter Criminal Code, Uruguay] [<https://perma.cc/FRL3-QM2B>]. The laws of Brazil, Chile, the Dominican Republic, and Honduras only criminalize femicide/feminicide.; Lei No. 13.104, de 9 de Março de 2015, Diário Oficial da União [D.O.U.] t. 46, 1 de 10.03.2015 (Braz.) [<https://perma.cc/V9WZ-QGKV>]; Código Penal [Cód. Pen.] [Criminal Code] art. 390 bis. (1874) (Chile) [hereinafter Criminal Code, Chile] [<https://perma.cc/9EDW-L7FK>]; Código Penal [Cód. Pen.] [Criminal Code] art. 98–102 (2021) (Dom. Rep.) [hereinafter 2021 Criminal Code, Dom. Rep.] [<https://perma.cc/P5W7-PVES>]; Código Penal de Honduras [Criminal Code], Decreto del Congreso Nacional [Congressional Decree] 23-2013 art. 118(A), La Gaceta No. 30, 092, Apr. 6, 2013 (Hond.) [<https://perma.cc/RN5U-U53R>].

92. Costa Rica, El Salvador, Guatemala, Nicaragua, Paraguay, and Venezuela criminalize femicide within special laws. Law 8589, Penalización de la Violencia Contra las Mujeres [The Criminalization of Violence against Women] art. 21, 30 mayo 2007, GACETA NACIONAL No. 103 (Costa Rica) [hereinafter 2007 Law, Costa Rica] [<https://perma.cc/36AB-URS5>]; Ley Especial Integral para una Vida Libre de Violencia para las Mujeres [LEIV] [Special Comprehensive Law for a Life Free from Violence for Women] art. 45–46, Decree 520, DIARIO OFICIAL [D.O.] No. 2, Vol. 390, Jan. 4, 2011 (El Sal.) [hereinafter Ley Especial Integral, El Salvador] [<https://perma.cc/M9HH-5C8Y>]; Ley contra el Femicidio y otras Formas de Violencia contra la Mujer [Law Against Femicide and Other Forms of Violence Against Women] art. 6, Decreto del Congreso [Congressional Decree] No. 22-2008 (2008) (Guat.) [<https://perma.cc/S6PM-2B9Q>]; 2021 Reform, Nicaragua, *supra* note 23, [<https://perma.cc/Z7Y4-TXKY>]; Ley No. 5777, De Protección Integral a las Mujeres, Contra Toda Forma de Violencia [Comprehensive Protection Law on all Forms of Violence Against Women] art. 50, 27 Dec 2016, Gaceta Oficial No 252,

Countries selected for this section's analysis fit one of the three following categories: (1) the state implemented reforms to its laws criminalizing femicide/feminicide between 2020 and mid-2021, (2) the state is in the process of implementing reforms to its law criminalizing femicide/feminicide, or (3) the state is in a prime position to implement reforms to its law criminalizing femicide/feminicide to make it stronger and more comprehensive in its definition of the crime. This analysis of each law will determine the extent the current or proposed language of each law recognizes the feminicide of a L.I.I.A.D.T.W. living in a rural community in order to grant recourse.

### 1. Chile

Chile first criminalized feminicide in 2010 when Law 20.480 amended the Criminal Code to include Article 390 bis.<sup>93</sup> However, the 2010 law only categorized the murder of a woman as feminicide when proof existed that the perpetrator was or had been a spouse or a cohabiting partner.<sup>94</sup> Six years later, President Michelle Bachelet authored a bill that expanded the definition of feminicide to recognize murders committed by boyfriends and partners that do not cohabit with the victim.<sup>95</sup> At the start of the COVID-19 pandemic, Chile passed Law 21.212 further reforming the classification of feminicide in Articles 390 bis. and 390 ter. of the Criminal Code.<sup>96</sup> Whereas the old law based aggravated homicide on the relationship

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29 Dec. 2016 (Para.) [<https://perma.cc/R93K-XLF2>]; Ley Orgánica sobre el Derecho de las Mujeres a una Vida Libre de Violencia [Organic Law on the Right of Women to a Life Free from Violence] art. 57, Gaceta Oficial No. 40.548, 25 Nov. 2014 (Venez.) [hereinafter, 2014 Law, Venezuela] [<https://perma.cc/XJ7P-EEQF>]. See also Karen Musalo et al., *Crimes Without Punishment: Violence Against Women in Guatemala*, 21 HASTINGS WOMEN'S L.J. 161, 194 (2010) (defining special laws as laws enacted as "stand-alone provisions, outside the state's civil or criminal code) [<https://perma.cc/MQ8J-5NJD>].

93. Rebecca Bintrim, *Fighting Gender Violence: What Brazil, Argentina, and Others Are Doing*, AM. Q. (Jan. 4, 2017), <https://www.americasquarterly.org/article/fighting-gender-violence-what-brazil-argentina-and-others-are-doing/> [<https://perma.cc/6CNN-7VEV>]; see also Law No. 20480, Modifica el Código Penal y la Ley No. 20.066 sobre Violencia Intrafamiliar, Estableciendo el "Femicidio", Aumentando las Penas Aplicables a este Delito y Reforma las Normas del Parricidio [Modifies the Criminal Code, Law No 20.066 regarding Interfamily Violence, Establishes Femicide, Increasing the Applicable Penalties for this Crime and Reforms Parricide Norms] art. 1 (2010) Ministerio De Justicia (Chile).

94. Bintrim, *supra* note 93.

95. *Id.*

96. Art. 390 bis: "The man who kills a woman who is or has been his spouse or partner, or with whom he has or has had a child in common, will be punished with the penalty of greater imprisonment in its maximum degree to qualified perpetual imprisonment. The same penalty will be imposed on the man who kills a woman because of having or having had a relationship with her of a sentimental or sexual nature without living together." 390 ter: "The man who kills a woman because of her gender shall be punished with the penalty

of the victim and aggressor, the most recent reform of the law requires proof of either an intimate relationship between the victim and aggressor or a gender-based motive that must fit within one of the five enumerated circumstances.<sup>97</sup>

Article 390 bis. of the Criminal Code recognizes femicide when a man kills a woman who is or has been his intimate partner regardless of whether they live or lived together.<sup>98</sup> However, under this Article a transgender woman may not have access to relief if her partner murders her. This is because of an intratextual analysis that suggests “woman” focuses on the victim’s status as a woman through her biological sex as opposed to Article 390 ter., which recognizes femicide when a man “kills a woman because of her gender.”<sup>99</sup> Article 390 ter. further defines gender-based intent to murder by enumerating five qualifying conditions.<sup>100</sup> Article 390 ter. (4) states that a murder is gender-based when it is “carried out due to the sexual orientation, gender identity, or gender expression of the victim.”<sup>101</sup> Under this circumstance, transgender women would have access to relief as their identity as a women is a gender-based identity and not a sex-based identity.<sup>102</sup>

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of imprisonment in its maximum degree to perpetual imprisonment. It will be considered that there is a gender reason when death occurs in any of the following circumstances: (1) Be a consequence of the refusal to establish a relationship of a sentimental or sexual nature with the author; (2) Be a consequence of the victim exercising or having practiced prostitution, or other occupation or trade of a sexual nature; (3) The crime has been committed after having committed any form of sexual violence against the victim, without prejudice to the provisions of Article 372 bis; (4) Having been carried out due to the sexual orientation, gender identity or gender expression of the victim; or (5) Having been committed in any type of situation in which there are circumstances of manifest subordination due to unequal power relations between the aggressor and the victim, or motivated by an evident intention to discriminate.” U.N. WOMEN, *supra* note 8.

97. U.N. WOMEN, *supra* note 8, at 38; CÓDIGO PENAL [CÓD. PEN.] [Criminal Code] art. 390 bis-ter. (1874) (Chile)[hereinafter Criminal Code, Chile].

98. Criminal Code, Chile, *supra* note 97, art. 390 bis.

99. *Id.* art. 390 bis-ter.

100. *Id.* art. 390 ter.

101. *Id.* art. 390 ter. (4).

102. *See id.*; Planned Parenthood, SEX AND GENDER IDENTITY, <https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity> [<https://perma.cc/Q7BG-PF7Z>] (the article explains how “sex” is the label of male or female one is assigned to at birth by a doctor based on the genitals and chromosome one is born with; and how “gender” is a social and legal status that embodies societal expectations about how people should behave based on their gender. Gender identity is how an individual feels inside and how they express their gender).

Furthermore, Article 390 ter. (5) defines a murder “committed in any type of situation in which there are circumstances of manifest subordination due to unequal power relations between the aggressor and victim, or motivated by an evident intention to discriminate” as femicide.<sup>103</sup> The drafters’ use of “circumstances of manifest subordination” suggests that courts can take a victim’s multiple marginalized identities into account when determining a power dynamic between the victim and aggressor because “circumstances” is written in the plural format, allowing for each marginalized identity to be seen as a circumstance that places her in a position of never-ending vulnerability.<sup>104</sup> Therefore, under this Article, L.I.I.A.D.T.W. living in rural communities might have access to relief.

This law does not guarantee that L.I.I.A.D.T.W. living in rural communities will have access to redress because the aforementioned interpretation of Article 390 ter. (5) is based on a gender-informed, intersectional understanding of gender, racial, and economic power dynamics that is not often utilized by criminal courts.<sup>105</sup> In order for this law to guarantee the recognition of the femicide of a woman with multiple marginalized identities, the language needs to explicitly recognize racial and ethnic discrimination. The language needs to be framed to encourage an intersectional analysis to recognize the compounded discrimination that ultimately motivates an aggressor to kill a woman with multiple marginalized identities. With these language changes, the law would be stronger in its ability to encompass the gender-based murders of women with multiple marginalized identities.

## 2. Colombia

In 2015, Colombia enacted Law 1.761 which amended Article 104 of its Criminal Code to recognize the crime of femicide.<sup>106</sup> The law was named after Rosa Elvira Cely, a thirty-five-year-old single mother who was battered, impaled, and raped by a classmate in Bogotá National Park in 2012.<sup>107</sup> The attack and the subsequent “chain of negligence” by service

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103. Criminal Code, Chile, *supra* note 97, at 390 ter. (5).

104. *See id.*

105. *See* Anna-Cat Brigida, *Inside a Court Room Specialized in Justice for Gender Violence*, VICE (Sept. 11, 2018 6:46 AM), <https://www.vice.com/en/article/qvadzq/violence-against-women-court-femicide-el-salvador> [<https://perma.cc/RJ2V-5MGW>].

106. Bintrim, *supra* note 93; L. 1.761, julio 06, 2015, 49565 DIARIO OFICIAL [D.O.] 19 (Colom.).

107. *Id.*; M.J. Carmona & G. Corredor, *Colombia Pone Nombre a la Violencia Contra sus Mujeres* [Columbia Names the Violence Against its Women], EL PAÍS (Sept. 8, 2015 1:07PM), [https://elpais.com/elpais/2015/09/04/planeta\\_futuro/1441358826\\_165946.html](https://elpais.com/elpais/2015/09/04/planeta_futuro/1441358826_165946.html) [<https://perma.cc/9URT-9QYV>].

providers ultimately led to her death.<sup>108</sup> On the day of the attack the ambulance she called never arrived, and once she reached the hospital, she had to wait an additional four hours for an operation.<sup>109</sup> She died five days later due to an infection from the impalement.<sup>110</sup>

To combat and eliminate gender-based murder, Article 104(A) of the Rosa Elvira Cely law defines feminicide as the murder of a woman because she is a woman or because of her gender-identity.<sup>111</sup> Delineating the murder of a woman based on her gender identity makes it so the murder of a transgender woman is explicitly recognized.<sup>112</sup> The law enumerates additional circumstances which classify a murder as feminicide,<sup>113</sup> and the law is unique in that it recognizes the militarization of the country and the use of gender-based violence in war tactics to demonstrate power over enemies through the use of female bodies.<sup>114</sup>

108. M.J. Carmona & G. Corredor, *Colombia Pone Nombre a la Violencia Contra sus Mujeres* [Columbia Names the Violence Against its Women], EL PAÍS (Sept. 8, 2015 1:07PM), [https://elpais.com/elpais/2015/09/04/planeta\\_futuro/1441358826\\_165946.html](https://elpais.com/elpais/2015/09/04/planeta_futuro/1441358826_165946.html) [<https://perma.cc/9URT-9QYV>].

109. *Id.*

110. *Id.*

111. L. 1761/2015, julio 6, 2015, DIARIO OFICIAL [D.O.] (Colom.), <https://www-global-regulation-com.sandiego.idm.oclc.org/translation/colombia/8177153/which-creates-the-criminal-kind-of-femicide-as-a-stand-alone-crime-and-enacting-other-provisions.-%2528rosa-elvira-cely%2529.html?q=Rosa%20Elvira%20Cely> [<https://perma.cc/8FDJ-DWK8>] (“Whoever causes the death of a woman, because of her condition of being a woman or because of her gender identity or where she has attended or preceded any of the following circumstances, will incur in prison from two hundred fifty (250) months to five hundred (500) months: (a) Having or having had a family, intimate or coexistence relationship with the victim, friendship, companionship or work and being the perpetrator of a cycle of physical, sexual, psychological or patrimonial violence that preceded the crime against her; (b) Exercising on the body and the life of the woman acts of gender or sexual instrumentalization or actions of oppression and domination over her vital decisions and her sexuality; (c) Committing the crime in taking advantage of the power relations exercised over women, expressed in the personal, economic, sexual, military, political or sociocultural hierarchy; (d) Committing the crime to generate terror or humiliation to whoever considers himself an enemy; (e) That there is a history or indications of any type of violence or threat in the domestic, family, work or school environment by the active subject against the victim or of gender violence committed by the perpetrator against the victim, regardless of whether the fact has been reported or not; or (f) That the victim has been held incommunicado or deprived of his freedom of movement, whatever the time prior to the death of the victim.”) (Melissa Padilla trans.).

112. *See id.*

113. *Id.*

114. *Id.* at 104(A)(c).

Furthermore, under Article 104(B)(d), the murder “committed on a woman in a situation of physical, mental or sensory disability or forced displacement, socioeconomic condition or prejudice related to ethnic condition or sexual orientation” is considered to be a circumstance of punitive aggravation of femicide with a higher penalty for punishment.<sup>115</sup> This Article recognizes the femicide of a woman in poor socioeconomic conditions and the femicide of an indigenous or Afro-Colombian woman through her ethnic condition; however, the use of “or” in Article (B)(d) suggests that criminal courts do not have the incentive to analyze marginalized women’s experiences from an intersectional standpoint.<sup>116</sup> In other words, the focus is only on one aspect of a woman’s marginalized identity and not on how each part of her identity played a role in making her a target for the crime. Unless courts are adequately trained to apply an intersectional legal analysis or Article 104(B)(d) is amended to include “and/or”, this law is not likely to provide relief for a low-income, indigenous, or Afro-descendant transgender woman living in a rural community murdered because of multiple intersecting marginalized identities.

### 3. Costa Rica

In 2007, Costa Rica passed Law 8.589, the Law on Criminalization of Violence against Women, becoming the first country in Latin America to categorize femicide as a crime.<sup>117</sup> Article 21 defines femicide as the murder of a woman by someone who has or had a legally-recognized relationship with the victim.<sup>118</sup> This law, however, is quite limited as it only focuses on cases of intimate femicide.<sup>119</sup> It fails to recognize the femicide of transgender women or women who are murdered due to compounded discrimination against their intersecting marginalized identities.<sup>120</sup>

In 2018, President Carlos Alvarado pronounced gender-based violence a national emergency.<sup>121</sup> In response, Costa Rica approved an amendment to its current law criminalizing femicide and violence against women in early 2021.<sup>122</sup> However, based on the current critiques of Law 8.589 by

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115. *Id.* at 104(B)(d).

116. *See id.*

117. Bintrim, *supra* note 93

118. 2007 Law, Costa Rica, *supra* note 92, [<https://perma.cc/93J2-FVJB>] (“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.”) (Melissa Padilla trans.).

119. *Id.*; *see also* U.N. WOMEN, *supra* note 8 (defining intimate femicides as cases where the aggressor “is the partner, ex-partner or family member who lives with the woman victim”).

120. *See* 2007 Law, Costa Rica, *supra* note 92, art. 21.

121. Adamson et al., *supra* note 16, 433.

122. INFOSEGURA, *supra* note 23.

Deputy Aida María Montiel, who spearheaded the country's reform efforts, the new law will only seek to expand the definition of femicide to include additional kinds of intimate relationships between the victim and the aggressor such as in instances where they are divorced or in courtship.<sup>123</sup> Additionally, the official summary of a legislative hearing discussing the reform does not mention the inclusion of additional circumstances that will qualify as femicide.<sup>124</sup> Therefore, unless the legislature takes any of the recommendations mentioned in this Comment, the new law will likely not recognize the femicide of L.I.A.D.T.W. living in rural communities.

#### 4. Dominican Republic

In 2014, the Dominican Republic recognized femicide as a crime in Article 100 of the reform of its Criminal Code.<sup>125</sup> However, in 2019, the Dominican Republic had the fourth highest rate of femicide in the region, following Brazil, Mexico, Honduras.<sup>126</sup> To curb the widespread violence against women in the country, it included a much more comprehensive definition of the crime in its recent reform passed in early 2021.<sup>127</sup> The new law criminalizing femicide is structured much like Chile's law, in that the murder must be predicated on "hatred or contempt" of the woman's gender, demonstrated by the murder fitting within the purview of one of the enumerated circumstances.<sup>128</sup>

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123. Tania Santamaria, *Aida Montiel Presenta Proyecto Para Reformar Ley Penalización de la Violencia Contra las Mujeres [Aida Montiel Presents a Project to Reform the Penal L. for Violence Against Women]*, EL MUNDO (Feb. 26, 2020), <https://www.elmundo.cr/costa-rica/aida-montiel-presenta-proyecto-para-reformar-ley-de-penalizacion-de-la-violencia-contra-las-mujeres/> [<https://perma.cc/QSM7-D6P4>].

124. See ASAMBLEA LEGISLATIVA DE LA REPÚBLICA DE COSTA RICA COMISIÓN PERMANENTE ESPECIAL DE LA MUJER, EXPEDIENTE NO. 21.793 [LEGIS. ASSEMBLY FOR THE REPUBLIC OF COSTA RICA PERMANENT SPECIAL COMM'N FOR WOMEN, CASE NO. 21.793] (Sept. 9, 2020), [http://www.asamblea.go.cr/glcp/prov\\_actas/Dictamen%20Exp.%2021.793.pdf](http://www.asamblea.go.cr/glcp/prov_actas/Dictamen%20Exp.%2021.793.pdf) [<https://perma.cc/2F2B-3KN9>].

125. Bintrim, *supra* note 93.

126. U.N. Econ. Comm'n for Lat. Am. and the Caribbean, *Femicidio [Femicide]*, OBSERVATORIO DE IGUALDAD DE GÉNERO DE AMÉRICA LATINA Y EL CARIBE [EQUALITY OBSERVATORY FOR GENDER IN LAT. AM. AND THE CARRIBEAN], <https://oig.cepal.org/es/indicadores/femicidio> [<https://perma.cc/Z692-3QJR>].

127. 2021 Criminal Code, Dom. Rep., *supra* note 91; See CÓDIGO PENAL [CRIMINAL CODE] art. 100 (2014) (Dom. Rep.) [hereinafter 2014 Criminal Code, Dom. Rep.].

128. 2021 Criminal Code, Dom. Rep., *supra* note 91, art. 98.

The law classifies nine scenarios as femicide.<sup>129</sup> Of the nine scenarios, Art. 98(5), recognizes femicide when the murder is “committed taking advantage of power relations exercised on women, expressed in personal, economic, sexual, political, or sociocultural hierarchy.”<sup>130</sup> This section can be interpreted to recognize the femicide of low-income, indigenous or Afro-Dominican transgender women as it enumerates the myriad of institutions that enable and perpetuate discrimination against a woman with multiple marginalized identities.<sup>131</sup>

A court may consider the murder of a low-income, indigenous or Afro-Dominican transgender woman to be femicide through an analysis of the unequal power relations founded on a “sociocultural hierarchy” where a colonial-capitalist machista culture heavily discriminates against individuals that do not conform to traditional racial preferences and gender norms,<sup>132</sup> but this analysis is likely to be considered too far of a stretch for courts that do not have experience applying a gender-lens or intersectional analysis of issues.<sup>133</sup> Furthermore, the language does not lend itself to incentivizing a court to apply an intersectional analysis because the use of “or” does not address or acknowledge how the mentioned institutions consolidate to make certain women more vulnerable.<sup>134</sup> Without specific language acknowledging unequal power structures associated with race, ethnicity, and gender identity and “and/or” language to capture the compounded nature of the discrimination that leads to murder, the ability for this law to provide recourse to a

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129. *Id.*

130. *Id.* art. 98(5).

131. *See id.*

132. *See id.*

133. *See* Brigida, *supra* note 105.

134. *See* 2021 Criminal Code, Dom. Rep., *supra* note 91, art. 98(5) (Art. 98 Femicide: “The attempt on life, which causes death of a woman out of hatred or contempt, based on her gender regardless of age, couple relationship, regardless of where it occurs, commits femicide. Femicide will be punished with a penalty of thirty to forty years in prison and fines of thirty to forty minimum wages of the public sector. It is presumed that there is hatred or contempt for the condition of woman when any of the following circumstances occurs: (1) That it exists, has existed or has been intended to be established between the aggressor and the victim a sentimental, affective or trust relationship; (2) That death has been preceded by an incident of violence against the woman, regardless of whether the fact has been denounced or not; (3) When the death of the victim has been committed as a means to facilitate, consummate or conceal acts of violence against another woman; (4) When the perpetrator has a history of violence against women, in the public or private sphere; (5) When the act is committed taking advantage of power relations exercised on women, expressed in personal hierarchy, economic, sexual, political or sociocultural; (6) When the victim shows signs of sexual violence, genital mutilation or any other type of cruelty before or after deprivation of life or acts of necrophilia; (7) That the victim has been held incommunicado, whatever the previous time to the deprivation of life; (8) That the body of the victim be exposed or exhibited in a public place; (9) As a result of group rites regardless of whether a weapon was used.”) (Melissa Padilla trans.).



L.I.A.D.T.W. who is a victim of femicide is precarious and largely dependent on the criminal court's interest and ability to apply an intersectional analysis of the law.

### 5. *El Salvador*

In 2010, El Salvador passed the Special Comprehensive Law for a Life Free from Violence for Women to combat gender-based violence.<sup>135</sup> Under this law, of gender-based murder qualifies as femicide if the murder is committed out “hate or contempt” for the victim’s status as a woman.<sup>136</sup> Hate or contempt can be demonstrated if the murder was committed in one of the five enumerated situations.<sup>137</sup>

There are two circumstances enumerated in the law that recognize the femicide of women with multiple marginalized identities. The first circumstance, in Article 45(b) acknowledges a murder where the perpetrator “exploits a high-risk situation or the physical or psychological vulnerability of the woman victim” as femicide.<sup>138</sup> This ambiguous language could be used to provide relief to an indigenous or Afro-Salvadorian transgender woman because her brown or black skin color is a physical trait that makes her physically and psychologically vulnerable to discrimination. Additionally, a transgender woman must navigate living in a society that places her at a high-risk for violence due to transphobic machista sentiment. However, this analysis may be considered too far-reaching for biased courts that are not trained in applying a gender lens or intersectional analysis of the causes of gender-based violence.<sup>139</sup>

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135. Bintrim, *supra* note 93; Karen Musalo, *El Salvador-A Peace Worse Than War: Violence, Gender and A Failed Legal Response*, 30 YALE J.L. & FEMINISM 3, 56 (2018).

136. Ley Especial Integral, El Salvador, *supra* note 92, art. 45 (Art. 45 Femicide: “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.”) (Melissa Padilla trans.).

137. *Id.*

138. *Id.* art. 45(b).

139. *See* Musalo, *supra* note 135, at 81.

The second circumstance occurs under Article 45(c) which recognizes femicide “when the perpetrator exploits a situation of gender-based unequal power” to commit the murder.<sup>140</sup> This Article could be used to recognize the femicide of a transgender woman in the context of her aggressor being a cis-gender man that seeks to exert power over someone who is not confirming to traditional gender norms. However, this Article only focuses on unequal power dynamics derived by the gender of the aggressor and the victim.<sup>141</sup> Therefore, it does not have the ability to recognize unequal power dynamics relating to race, class, and/or ethnicity.<sup>142</sup> Thus, without clear and specific language recognizing unequal power dynamics based on race, ethnicity, and class, the current law leaves L.I.I.A.D.T.W. living in rural communities at the mercy of the courts to understand the multi-layered power dynamics that were at play during her murder.

## 6. Mexico

The first documented cases of femicide in Latin America began in 1993 in Ciudad Juárez with the discovery of the mutilated bodies of women who had been raped and murdered outside the city.<sup>143</sup> In 2006, after the Committee for the Elimination of All Forms of Discrimination Against Women (the CEDAW Committee) visited Mexico, it recommended in its observations report that the State accelerate amendments to its Criminal Code that would typify femicide as a crime.<sup>144</sup> However, leaders did not take real action until the Inter-American Court of Human Rights (IACHR) held Mexico liable for its failure to act with due diligence in responding to the systemic murders of women, shown in the landmark 2009 judgment, *González et al. v. Mexico (Cotton Field Case)*, concerning the murder of three women in Ciudad Juárez.<sup>145</sup> Three years later, in 2012, Article 21 of the General Law of a Woman’s Right to a Life Free of Violence amended Article 325 of Mexico’s Criminal Code to criminalize femicide.<sup>146</sup>

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140. Ley Especial Integral, El Salvador, *supra* note 92, art. 45(c).

141. *See id.*

142. *See id.*

143. Prieto-Carrón et al., *supra* note 34, at 25.

144. Vásquez, *supra* note 5, at 9.

145. Paulina García-Del Moral, *Transforming Femicidio: Framing, Institutionalization and Social Change*, 64(7) CURRENT SOCIO. 1017, 1027–28 (2015), <https://sandiego.idm.oclc.org/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=sih&AN=118921218&site=eds-live&scope=site>; Paulina García-Del Moral, *Femicidio: Trawl in Action*, 110 AJIL UNBOUND 31, 34 (2016), <https://sandiego.idm.oclc.org/login?url=https://www.jstor.org/stable/27003175>.

146. Ley General de Acceso de las Mujeres a Una Vida Libre de Violencia (General Law of a Woman’s Right to a Life Free of Violence) [LGAMVLV] art. 21, Diario Oficial de la Federación [DOF] 02-01-2007, últimas reformas DOF 06-14-2012 (Mex.) [<https://>

Article 325 of Mexico's Criminal Code requires that an aggressor kill a woman because of her gender, enumerating seven circumstances that establish the existence of a gender-based motive to kill.<sup>147</sup> The use of "gender" is limiting as it does not encapsulate feminicides committed because of the victim's gender identity as a transgender woman.<sup>148</sup> Additionally, the enumerated circumstances primarily focus on the harm imposed on the victim and not on her status or identity.<sup>149</sup>

The language can nevertheless be interpreted to provide some relief for women with multiple marginalized identities. Article 325(III) recognizes femicide when "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."<sup>150</sup> The use of "any form of violence" can be interpreted to recognize any previous violence inflicted against a woman or girl for her race, ethnicity, class, or any other social condition except for gender identity.<sup>151</sup> In recognizing the accumulation of previous discriminatory violence in conjunction with the gendered violence that culminated in the victim's death, criminal courts now have the ability to understand how the intersection of the victim's multiple identities motivated the aggressor to commit murder. Therefore, under Mexico's current Criminal Code, transgender women would not have access to recourse, but low-income, indigenous or Afro-descendant cisgender women living in a rural community might have access to relief if: (1) there is evidence of a history of violence on behalf of the aggressor in the limited contexts of the home, the workplace, or at school and (2)

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/perma.cc/C8FP-N88D]; see also García-Del Moral, *supra* note 145, at 1028, <http://www.ordenjuridico.gob.mx/Documentos/Federal/pdf/wo17079.pdf> [<https://perma.cc/C8FP-N88D>].

147. Criminal Code, Mexico, *supra* note 91, art. 325 (Art. 325: Femicide: "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.") (Melissa Padilla trans.).

148. See Planned Parenthood, *supra* note 102.

149. See Criminal Code, Mexico, *supra* note 91, art. 325(I–VII).

150. *Id.* art. 325(III).

151. See *id.*

if criminal courts have the skills to apply an intersectional analysis of the circumstances leading to the murder.

### 7. Nicaragua

Nicaragua first criminalized femicide in 2012 under Article 9 of the Comprehensive Law Against Violence Against Women.<sup>152</sup> Following the recent trend to reform femicide criminalization laws, Nicaragua approved reforms to the Comprehensive Law and Criminal Code on January 20, 2021.<sup>153</sup> One of the most notable changes is the codification of harsher punishments for certain cases of femicide within the category of aggravated homicide.<sup>154</sup>

For a murder to be classified as a femicide, the aggressor must kill a woman in the context of an unequal power relationship, and the murder must be committed within one of the five enumerated circumstances.<sup>155</sup> These enumerated circumstances focus on the context of the violence and the harm imposed on the victim.<sup>156</sup>

However, the new reform adds Article 140 bis (10) to the Criminal Code, which recognizes aggravated homicide as an act “committed out of hatred, motivated by intolerance and discrimination, referring to sexual orientation, and/or sexual identity, gender expression, ethnic origin, social and economic condition, nationality, religion, ideology, skin color, disability or profession of the victim.”<sup>157</sup> The inclusion of this Article recognizes that the intent to commit femicide may be driven by more than just a victim’s gender.<sup>158</sup> Through the use of “and/or” language the law recognizes that

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152. See Bintrim, *supra* note 93; Ley No. 779, 22-02-2012, Ley Integral Contra la Violencia hacia las Mujeres y de Reformas a la Ley 641, “Código Penal” [Comprehensive Law against Violence against Women and Reforms to Law 641, “Criminal Code”] art. 9, LA GACETA, DIARIO OFICIAL [L.G.], 22 Feb 2012 (Nicar.) [hereinafter 2012 Ley Integral, Nicaragua].

153. 2021 Reform, Nicaragua, *supra* note 23.

154. See Louise Richards, *NicaNotes: Violence against Women: Lessons from Nicaragua*, ALL. FOR GLOB. JUST. (Apr. 1, 2021), <https://afgj.org/nicanotes-violence-against-women-lessons-from-nicaragua> [<https://perma.cc/4LLX-2CHE>].

155. 2012 Ley Integral, Nicaragua, *supra* note 152.

156. *See id.*

157. 2021 Reform, Nicaragua, *supra* note 23, art. 140(bis.)(10) (Article 140 bis Aggravated Murder: “A reviewable life sentence will be imposed when any of the following circumstances concur: . . . (10) That the act is committed out of hatred, motivated by intolerance and discrimination, referring to sexual orientation, and/or sexual identity, gender expression, ethnic origin, social and economic condition, nationality, religion, ideology, skin color, disability or profession of the victim.”) (Melissa Padilla trans.).

158. *See id.*

an aggressor's intent may be driven by a combination of multiple forms of discrimination and requires that courts take note of this phenomenon.<sup>159</sup>

Additionally, the explicit enumeration of identity markers that are historical sources of discrimination—such as gender expression, ethnic origin, economic condition, and skin color—removes ambiguity and requires courts to acknowledge them in cases where discrimination is present. Therefore, under Nicaragua's new reform, L.I.I.A.D.T.W. would have access to justice. The reform's focus on punishment, however, limits the victim's family's access to additional forms of necessary and comprehensive relief.<sup>160</sup>

### 8. Uruguay

Uruguay has developed a reputation for implementing progressive policies and maintaining “relatively high levels of human development.”<sup>161</sup> However, it has not implemented significant efforts to address gender-based violence in the country.<sup>162</sup> In 2018, a United Nations study, revealed that Uruguay has the second-highest rate of intimate femicide by current or former partners in Latin America despite the 2017 amendment to Uruguay's Criminal Code.<sup>163</sup> Article 3 of Law 19.538 amended Article 312 of the Criminal Code to recognize femicide as a special aggravating circumstance to homicide.<sup>164</sup>

Article 312(8) recognizes femicide as a murder “against a woman because of hatred, contempt or scorn, because of her status as a woman.”<sup>165</sup> Under

159. *See id.*

160. *See id.*; *see also* U.N. WOMEN, *supra* note 8, at 51.

161. Diana Cariboni, *Uruguay's 'Shadow Pandemic' of Violence Against Women Is Out of Control*, OPENDEMOCRACY (June 10, 2020, 8:00 AM), <https://www.opendemocracy.net/en/5050/uruguays-shadow-pandemic-of-violence-against-women-is-out-of-control/> [https://perma.cc/62TJ-JFEL].

162. *Id.*

163. *See id.*

164. Alexis Wheeler, *Uruguay Parliament approves increased penalties for killings based on gender*, JURIST (Apr. 20, 2017, 02:00:45 PM), <https://www.jurist.org/news/2017/04/uruguay-parliament-approved-increased-penalties-for-killings-based-on-gender/> [https://perma.cc/J8QP-GTNL].

165. Criminal Code, Uruguay, *supra* note 91, art. 312(7)-(8) (Art. 312 Special Aggravating circumstances: “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, 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 had refused to establish or resume with the author a couple relationship, infatuation,

the law, hatred and contempt for the women's status can be established if the murder falls within one of three enumerated circumstances.<sup>166</sup> Nevertheless, the requirement that the murder be committed because of the status of being a woman and not because of her gender identity is limiting as it focuses on the victim's biological sex recognizing femicides as crimes committed only against cis-gender women.<sup>167</sup>

Article 312(7), on the other hand, recognizes any murder committed as "an act of discrimination based on sexual orientation, gender identity, race or ethnic origin, religion or disability" as a special aggravating circumstance separate from femicide.<sup>168</sup> Under this Article, transgender, indigenous, or Afro-descendant women might have access to relief but the murder would not be considered to be femicide unless it also fell within the context of the three enumerated circumstances outlined in Article 312(8).<sup>169</sup>

While provision seven of Article 312 explicitly enumerates several marginalized identities that are subject to discrimination, the law's distinction between murders committed to discriminate and femicide does not adequately reflect reality, as women with multiple marginalized identities experience compounded discrimination that result in their murder.<sup>170</sup> In other words, a marginalized woman is not only discriminated against because she is a woman—she is discriminated against because she is a transgender woman of color from a different ethnic community.<sup>171</sup> In order to acknowledge discrimination against women with intersecting marginalized identities, Article 312(7) should include a conjunctive/disjunctive connector such as "and/or," and should be incorporated into the definition of femicide in provision 8. Until these changes are made, L.I.A.D.T.W. may have access to relief, but the murder would not be classified as femicide, and the court's understanding of her murder would not reflect the stark reality she lived in.

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affection or intimacy; or (c) Prior to the death of the woman, the author would have committed any behavior against her that violates her sexual freedom.") (Melissa Padilla, trans.).

166. *Id.*

167. Planned Parenthood, *supra* note 102.

168. Criminal Code, Uruguay, *supra* note 91, art. 312(7) (Art. 312 Special Aggravating Circumstances: "7. As an act of discrimination based on sexual orientation, gender identity, race or ethnic origin, religion or disability." (Melissa Padilla, trans.).

169. *See id.* art. 312(7)–(8).

170. *See Crenshaw, supra* note 28, at 1245–50.

171. *See id.*

### 9. Venezuela

Venezuela first criminalized femicide in Article 57 of the Organic Law on the Right of Women to a Life Free from Violence in 2014.<sup>172</sup> The 2014 Organic Law requires femicide be the murder of a woman be based on a motive of hatred or contempt for women in a context of gender-based subjugation committed in one of the five enumerated scenarios.<sup>173</sup> Like Uruguay's law, Venezuela's requirement that the murder be based on hatred for the woman's biological status as a woman does not encompass the murder of transgender women.<sup>174</sup>

Nevertheless, Article 57(4), recognizes femicide when “[i]n the context of relationships based on gender-based control or subjugation . . . [t]he perpetrator exploited the victim's high-risk situation or physical or psychological vulnerability.”<sup>175</sup> A court with the skills to apply a gender-lens and intersectional analysis could interpret this Article to recognize femicides committed against low-income, indigenous and Afro-Venezuelan women as their ethnic and racial identities in combination with their financial precarity make them more physically and psychologically vulnerable to physical and institutional violence.<sup>176</sup> However, the disjunctive language may serve to limit a court's analysis in understanding the complex systems and forms of discrimination at play in making a victim vulnerable to femicide. Under the 2014 law, a transgender woman cannot be a victim of femicide, and a low-income, indigenous or Afro-descendant cisgender woman has a limited possibility that her femicide will be recognized by the State's criminal courts.

In early 2021 the Venezuelan government acknowledged that femicide rates are increasing in the country with one femicide taking place every

172. Bintrim, *supra* note 93; 2014 Law, Venezuela, *supra* note 92.

173. 2014 Law, Venezuela, *supra* note 92 (“Art. 57 Femicide: 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 relationships based on 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.”) (Melissa Padilla trans.).

174. *See id.*; *see also* Planned Parenthood, *supra* note 102.

175. 2014 Law, Venezuela, *supra* note 92, art. 57(4).

176. *See* Brigida, *supra* note 105.

thirty-four hours.<sup>177</sup> Recognizing this reality, on March 2, 2021, the Venezuelan parliament approved to reform the Organic Law in its first discussion on the issue.<sup>178</sup> According to Deputy Pedro Infante, President of the Permanent Commission for Comprehensive Social Development, the new reform will also recognize ethnic and cultural violence.<sup>179</sup> However, there are no indicators that the new reform will recognize violence inflicted due to gender identity or the compounded discrimination experienced by women with multiple marginalized identities.<sup>180</sup> Based on this information, it is likely that Venezuela will not recognize the femicide of L.I.I.A.D.T.W. unless it considers all the recommendations provided to its neighboring countries in this Comment.

### 10. Findings Overview

Of the nine countries whose laws and reforms of laws criminalizing femicide/feminicide were analyzed, Nicaragua is the only country whose current law explicitly recognizes the femicide of a L.I.I.A.D.T.W.. Nicaragua's law specifically acknowledges how the intersection of a woman's gender identity, economic status, ethnicity, and race make her vulnerable to becoming a victim of feminicide. The laws and proposed reforms of the eight other analyzed countries in this Comment do not have an intersectional definition of the crime and some do not recognize that gender identity, economic status, ethnicity, and race are contributing factors to this form of violence. This lack of recognition is evidenced in the failure to incorporate language that specifically recognizes these identities as subject to multiple layers of discrimination that culminate in the murder of a woman with multiple intersecting marginalized identities.

Additionally, seven of the laws require an intersectional analysis of the text to recognize the femicide/feminicide of a L.I.I.A.D.T.W.. Although such an interpretation of the text is possible, this is problematic because most criminal courts do not have the ability or incentive to interpret these

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177. Yazmín Antía, *AN Aprobó en Primera Discusión Reforma a la Ley Contra Violencia a las Mujeres [AN Approved in First Discusión Reform to the Law Against Violence Against Women]*, EL UNIVERSAL (Mar. 3, 2021, 4:58 PM), <https://www.eluniversal.com/politica/91670/an-aprobo-en-primera-discusion-reforma-a-la-ley-contra-violencia-a-las-mujeres> [https://perma.cc/M4PP-JTZX].

178. *Id.*

179. Ramírez Araos, *supra* note 23.

180. Ramírez Araos, *supra* note 23; see also *Celaup Organizó Foro Sobre Reforma de la Ley Orgánica Sobre el Derecho de la Mujer a una Vida Libre de Violencia [Celaup Organized Forum on Reform of the Organic Law on the Right of Women to a Life Free of Violence.]*, UNIVERSIDAD METROPOLITANA (July 2, 2021), <https://www.unimet.edu.ve/celaup-organizo-foro-sobre-la-reforma-de-la-ley-organica-sobre-el-derecho-de-la-mujer-a-una-vida-libre-de-la-violencia/> [https://perma.cc/9FD7-5MUM].



laws in such a way.<sup>181</sup> Therefore, it is critical to determine the extent criminal law within a criminal justice system is an effective strategy to prevent and eradicate femicide, as well as to provide remedies for the physical, psychological, and institutional violence imposed on women and their families.

#### IV. CRITIQUE OF CRIMINAL LAW TO PREVENT, ERADICATE, AND ISSUE REMEDIES FOR CRIMES OF FEMICIDE

Early radical feminism was predicated on the notion that the State as a patriarchal institution perpetuates systemic gender inequity.<sup>182</sup> While many grassroots feminists aligned with this view, radical feminist sentiments shifted toward utilizing criminal law to criminalize acts of violence that physically subordinate women such as rape, domestic violence, sex trafficking, and femicide.<sup>183</sup> Criminal law, however, implicates the power of the State to address the very crimes it perpetuates.<sup>184</sup> Thus, there are several problems with using criminal law as a strategy to eliminate gender-based violence.

##### *A. Lack of Complexity*

The emergence of carceral feminism<sup>185</sup> has come with the necessity for feminists to build consensus with other feminist and non-feminist leaders to define gender-based crimes.<sup>186</sup> However, the need for consensus results in a loss of complexity.<sup>187</sup> Although consensus is necessary to make laws and move them forward in a nation's political and legislative machinery, the lack of complexity has multiple negative implications when it comes to addressing femicide.

For one, the lack of complexity results in a lack of understanding of the root causes of gender-based violence and the nature of the harms imposed

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181. See Brigida, *supra* note 105.

182. PRABHA KOTISWARAN, FEMINIST APPROACHES TO CRIMINAL LAW, in THE OXFORD HANDBOOK OF CRIMINAL LAW 61, 76 (Marjus D. Dubber & Tatiana Hörnle, eds., 2014).

183. *Id.*

184. *Id.*

185. *Id.* at 77 (defining carceral feminism as “feminist insistence on criminalization” based on Elizabeth Bernstein’s definition in *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Anti-Trafficking Campaigns*).

186. *Id.*

187. *Id.*

on women.<sup>188</sup> This is evident in all but one of the analyzed laws that criminalize femicide/feminicide in Latin America; these laws do not recognize the complex identities and the political, economic, and cultural contexts that leave women with multiple marginalized identities at a higher risk of becoming victims of femicide.<sup>189</sup> As a result, these laws are ill-equipped to prevent, eradicate, and provide relief for the feminicides of women with multiple marginalized identities.<sup>190</sup>

Furthermore, without a victim-centered and intersectional understanding of the identities of victims of gender-based violence, the radical feminist perspective embedded in criminal laws addressing issues of gender-based violence only serve to create norms on what these crimes should look like and who they should affect.<sup>191</sup> For example, in the context of rape, a victim's resistance was taken to mean that she did not consent.<sup>192</sup> However, a lack of resistance does not necessarily mean that there was consent and the idea that a woman must resist to establish de facto lack of consent contributed to the idea that only certain situations of rape and the rapes of certain women were worthy of societal recognition and legal remedies by extension.<sup>193</sup>

Similarly, laws that criminalize femicide/feminicide create certain kinds of norms and expectations. For example, Costa Rica's law tends to presume that femicide only happens in the context of intimate relationships.<sup>194</sup> Under this law, if a woman is raped and murdered by a stranger it will not be considered femicide. Additionally, all analyzed laws but Nicaragua's law criminalizing femicide/feminicide in Latin America are based on the presumption that a woman is murdered solely because of her gender or sex.<sup>195</sup> In other words, the crimes of femicide/feminicide defined in most of the analyzed laws do not recognize that a woman can be murdered because of her gender and/or sex in addition to her race, ethnicity, and any other aspect of her identity. Lastly, all laws in Latin America that criminalize femicide/feminicide create expectations as to how these murders should

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188. See Carmen Hein de Campos, *Access to Justice and the Permissive State: The Brazilian Experience*, 65 U. MIA. L. REV. 893, 900–01 (2011), <https://repository.law.miami.edu/umlr/vol65/iss3/7> [<https://perma.cc/L892-W89A>].

189. See *id.*

190. See Steinmetz, *supra* note 26.

191. See KOTISWARAN, *supra* note 182, at 77–78.

192. See *id.* at 77.

193. See *id.*

194. 2007 Law, Costa Rica, *supra* note 92.

195. See Criminal Code, Chile, *supra* note 91; Criminal Code, Colombia, *supra* note 91; 2007 Law, Costa Rica, *supra* note 92; 2021 Criminal Code, Dom. Rep., *supra* note 91; Ley Especial Integral, El Salvador, *supra* note 92; Criminal Code, Mexico, *supra* note 91; 2021 Reform, Nicaragua, *supra* note 23; Criminal Code, Uruguay, *supra* note 91; 2014 Law, Venezuela, *supra* note 92.

look by virtue of enumerating a limited number of circumstances in which the murder must be carried out.<sup>196</sup>

Criminal law tends to set norms which responds to and reinforces stereotypes.<sup>197</sup> This is present in laws that criminalize femicide/feminicide by reducing the definition of the crime to account only for the gender-based murders of cis-women.<sup>198</sup> The biological focus on a victim's status as a woman not only reduces her worth to her body but it also serves to exclude transgender, nonbinary, and intersex individuals.<sup>199</sup> Therefore, criminal law's tendency to create norms based on stereotypes legitimizes systemic inequity by "identifying 'deserving' victims who have experienced 'real' harm."<sup>200</sup>

An additional harmful stereotype perpetuated by the use of criminal law is the reduction of individuals who identify as women and are subject to gender-based violence as victims.<sup>201</sup> This victimhood trope serves to perpetuate a vicious cycle that operates behind the erasure of women's agency and replaces it with paternalistic notions that women need to be saved and protected. As Prabha Kotiswaran describes it, "States could not be, however, bothered with the niceties of feminist theorizing and are often content with the most simplistic notion of gender inequality, resulting in paternalist and protections policies, all while paying lip service to women's rights and securing legitimacy."<sup>202</sup> Although Nicaragua's law criminalizing femicide is the most progressive, of those discussed here, in regards to its ability to recognize the intersectional nature of gender discrimination resulting in feminicide, it too is focused on protecting women by punishing aggressors as its law does not include any measures for comprehensive remedies.<sup>203</sup>

196. See Criminal Code, Chile, *supra* note 97; Criminal Code, Colombia, *supra* note 91; 2007 Law, Costa Rica, *supra* note 92; 2021 Criminal Code, Dom. Rep., *supra* note 91; Ley Especial Integral, El Salvador, *supra* note 92; Criminal Code, Mexico, *supra* note 91; 2021 Reform, Nicaragua, *supra* note 23; Criminal Code, Uruguay, *supra* note 91; 2014 Law, Venezuela, *supra* note 92; see also KOTISWARAN, *supra* note 182, at 2–3.

197. Eugenio Raúl Zaffaroni, *El Discurso Feminista y el Poder Punitivo* [The Feminist Discourse and the Punitive Power], in *Las Trampas del Poder Punitivo* 19, 30 (Haydee Birgin & Alessandro Baratta eds., 2000) [<https://perma.cc/26CG-F6WK>].

198. Vásquez, *supra* note 5, at 147.

199. *Id.*

200. KOTISWARAN, *supra* note 182, at 77.

201. Vásquez, *supra* note 5, at 147; KOTISWARAN, *supra* note 182, at 78.

202. KOTISWARAN, *supra* note 182, at 77.

203. 2021 Reform, Nicaragua, *supra* note 23; see also U.N. WOMEN, *supra* note 8, at 51–52 (naming states that include reparation for damages in their laws criminalizing femicide/feminicide, in which Nicaragua is not mentioned).

The focus on punishment in this context does not prevent future harm and does little to ensure that victims of feminicide and their families have access to comprehensive remedial support and services.<sup>204</sup> It is as if the notion of punishment is a practice States have internalized to feel like they are upholding their international human rights obligations to eradicate systemic gender discrimination, while continuing to thrive on systemic inequity. This leads to a second critique that criminal law reinforces patriarchal systems of power while upholding State power.

*B. Criminal Law Reinforces Patriarchal Institutions and State Power*

One of the ways that criminal law maintains existing systems of power is by requiring objective and definitive standards in the definition of a crime.<sup>205</sup> Many scholars provide warnings regarding criminal law's difficulty to accept and grasp a rich, comprehensive conceptual model of gender-based murders in an arena that requires precise and definitive standards.<sup>206</sup> For example, almost half of the analyzed laws criminalizing femicide/feminicide lack misogyny as a *mens rea* element which is critical to the definition of the crime, as misogyny was initially used by feminist scholars to differentiate femicide and feminicide from homicide.<sup>207</sup>

Misogyny is at the core of what makes feminicide a gender-based crime. Misogyny is the hatred of women, explicit or implicit.<sup>208</sup> The robbery of a woman followed by her murder is not feminicide, but if the act involves rape, it is. The inclusion of rape is an indicator that the aggressor felt he could take advantage of a woman for being a woman prior to or after the robbery in order to make her submit. Misogyny is an instantiation of societal oppression of women.<sup>209</sup> When an aggressor commits an act of gender-based violence, he not only acts on his behalf but on the behalf of

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204. See, e.g., Gilbert, *supra* note 5 (supporting that the idea of punishing aggressors for the crime of feminicide as means to prevent and deter future acts of feminicide is not a strong argument based on the culture of impunity that is so prevalent).

205. See Vásquez, *supra* note 5, at 147.

206. Vásquez, *supra* note 5, at 33; Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151, 2207 (1995) (arguing that feminist legal theory needs to develop a language of process and details to be successful in implementing criminal laws).

207. Laws criminalizing femicide/feminicide in Chile, Colombia, Costa Rica, and Mexico do not have a *mens rea* element pertaining to the aggressor's hatred or contempt towards the female gender or misogyny. See Criminal Code, Chile, *supra* note 91; Criminal Code, Colombia, *supra* note 91; 2007 Law, Costa Rica, *supra* note 92; Criminal Code, Mexico, *supra* note 91.

208. *Misogyny*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/misogyny> [<https://perma.cc/B68R-4AM6>].

209. See Mary Becker, *Patriarchy and Inequality: Towards a Substantive Feminism*, 1999 UNIV. OF CHI. LEGAL F. 21, 23, 29 (1999).

society, protecting the traditional patriarchal order that has been culturally and sociologically engrained in him. Therefore, laws that do not include this baseline *mens rea* element are not capable of acknowledging the cultural and societal root causes of this violence and will likely not be as successful in preventing and eradicating femicide.

Although the laws of the Dominican Republic, El Salvador, Nicaragua, and Venezuela, rightfully include misogyny as a *mens rea* element, the struggle and conflict with criminal law is that the murder of a woman based on misogyny is not an objective, well-defined element as it requires a subjective analysis grounded in a gendered lens and intersectional analysis to fully understand the intent behind the aggressor's actions and manifestations.<sup>210</sup> Criminal law, however, has historically been devised and enforced by men who have not been incentivized to apply these perspectives.<sup>211</sup> Therefore, a court and its actors are only able to grant and advocate for relief insofar as there is an interest in being trained to recognize the various ways elements of femicide, specifically misogyny, manifest themselves in reality.<sup>212</sup>

This tension was evident in the Colombian Supreme Court of Justice case of Sandra Patricia Correa, who was murdered by her ex-partner, Alexander de Jesús Ortiz Ramírez.<sup>213</sup> The issue was whether Ms. Correa's murder qualified as femicide, an aggravated form of homicide, when her ex-partner stabbed her to death because of jealousy.<sup>214</sup> The ex-partner voluntarily turned himself in after the murder and was initially charged with aggravated homicide on the basis that he murdered a woman for being a woman.<sup>215</sup> After being sentenced to 280 months in prison by the Fourth Criminal Court of Medellín, he appealed, arguing that the aggravating factor of femicide did not apply.<sup>216</sup> The Court of Appeals, stating that femicide is a crime motivated by misogyny, held that this was not a crime of femicide because the ex-partner's motivation was jealousy, not misogyny.<sup>217</sup>

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210. See Vásquez, *supra* note 5, at 148.

211. Schulhofer, *supra* note 206, at 2154.

212. See Vásquez, *supra* note 5, at 148.

213. Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Penal. marzo 4, 2015, M.P: P. Salazar Cuéllar, Radicación 41457 (p. 1, 2) (Colom.) [hereinafter Corte Suprema].

214. Corte Suprema, *supra* note 213, at 5; see also Criminal Code, Columbia, *supra* note 91, art. 104(A).

215. *Id.* at 6.

216. Corte Suprema, *supra* note 213, at 4.

217. *Id.* at 15.

In determining whether Ms. Correa's murder was motivated by misogyny, the Supreme Court of Justice considered the totality of the circumstances surrounding the murder because Ms. Correa's ex-partner was controlling and had a history of violence.<sup>218</sup> Three years before the murder, the ex-partner stabbed Ms. Correa nine times in what her sister called an attack of jealousy.<sup>219</sup> Although the police were notified, they classified it as a personal injury, releasing the ex-partner prematurely and allowing the abuse to continue.<sup>220</sup> Ms. Correa eventually managed to kick her ex-partner out of their home, after he punched her several times a couple of months before her murder.<sup>221</sup> He, however, always stayed close.<sup>222</sup> He would call her all the time to make sure she was alone.<sup>223</sup> He would keep track of her Facebook activity and would show up at her house threatening to kill her and to kidnap their child.<sup>224</sup> On November 17, 2012, Ms. Correa's abuse finally came to an end when she was stabbed in the chest by her ex-partner, resulting in her death.<sup>225</sup>

Before making a decision, the Supreme Court of Justice considered arguments from four attorneys: (1) the prosecuting attorney, (2) the defense attorney, (3) the attorney representing Ms. Correa's family, and (4) the public attorney representing the state.<sup>226</sup> Although the lower court had already recognized the crime to be femicide, the prosecution argued that the aggravated factor of femicide did not apply because the murder was an isolated crime of passion.<sup>227</sup> This argument demonstrates how a lack of training in applying a gender lens and intersectional analysis significantly limits one's understanding of what constitutes misogyny and acts motivated by misogyny in the context of gender-based violence, thereby significantly limiting its application to narrow circumstances.<sup>228</sup> The defense presented a similar argument, arguing that the murder and previous stabbing were insufficient to establish "systematic and constant violence" required to kill a woman for being a woman.<sup>229</sup> Based on these arguments, both attorneys adopted a narrow approach and considered acts of jealousy to be different from acts motivated by one's hatred of the female gender.<sup>230</sup>

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218. *See id.* at 22–28.

219. *Id.* at 22.

220. *Id.* at 7.

221. *Id.* at 24.

222. Corte Suprema, *supra* note 213, at 24.

223. *Id.*

224. *See id.* at 24–25.

225. *Id.* at 2–3.

226. *Id.* at 8.

227. *Id.* at 10.

228. *See* Corte Suprema, *supra* note 213, at 9–10.

229. *Id.* at 13 (quoting the defense attorney) (Melissa Padilla trans.).

230. *See id.* at 10, 13.

Alternatively, the public attorney argued that a woman's murder based on jealousy is femicide as it signals the intent to subordinate a woman:

When a man maintains or maintained "a relationship. . .with a woman in the context of jealousy, monitors her movements, controls her comings and goings, who she associates with, how she dresses, [and] where she lives, he is objectifying her because his relationship with this woman is in terms of *property*." Jealousy is thus "nothing more than the expression of ownership that is exercised or intended to be exercised over the objectified person and for the owner the ultimate act of control is the complete ownership of the object, which is nothing more than its destruction, and in the case of a woman, means her death." [E]xpressions like "if you are not mine you belong to no one," "if I see you with another man, I will kill you," or "you cannot be with anyone else unless it is over my dead body" are typical of the objectification of women.<sup>231</sup>

Based on the public attorney's argument, classifying Ms. Correa's murder as a crime of passion would undermine the ex-partner's deeply-rooted gender-based hatred of Ms. Correa for being a woman, which motivated him to demonstrate his power over her as his property.<sup>232</sup> Unlike the oppositions' arguments, it is evident that the public attorney's argument came from implementing a gender perspective, as she unraveled the unquestioned, deeply engrained gendered power dynamics that governed Ms. Correa's relationship.

Ultimately, it was the public attorney's analysis and argument that led the Supreme Court of Justice to recognize femicide as murder of women committed in the context of discrimination and subordination.<sup>233</sup> The opinion of the Court was written by one of the only two women on the Court, Justice Patricia Salazar Cuéllar.<sup>234</sup> In her opinion, Justice Patricia Salazar Cuéllar recognized that the ex-partner's behavior was tied to "ancestral machismo" that thrives in Colombian society, and held that Ms. Correa was murdered because she was a woman.<sup>235</sup> The decision set a precedent for a gender lens interpretation of the criminal code and created an opportunity for the legislature to reclassify femicide as a distinct

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231. *Id.* at 11 (quoting the state attorney's argument that acts motivated by jealousy are rooted in misogyny in order to control a woman) (Melissa Padilla trans.).

232. *See id.*

233. *Id.* at 20, 25–26 (holding that there was no history of love in the relationship but rather "subjugation of a woman by a man who considered her his subordinate" and property) (Melissa Padilla trans.).

234. Noelle Jolin, *Gender-Based Violence in Colombia: New Legislation Targets Femicides and Acid Attacks*, 91 TUL. L. REV. 371, 391 (2016).

235. Corte Suprema, *supra* note 213, at 22, 26.

crime, as opposed to an aggravated form of homicide.<sup>236</sup> This case shows the importance of members of the criminal justice system acknowledging the gendered-dynamics at play when women are murdered as a result of men viewing women as subordinate to them. Further, the case vividly demonstrates what is at stake when those in the criminal justice system do not have the skills to apply a gender perspective and intersectional legal analysis in cases of gender-based violence.

Furthermore, the inability to apply a gender and intersectional analysis of gender-based crimes contributes to another way in which criminal law maintains existing systems of power, namely the revictimization of women who experience violence fueled by impunity that leads to institutional complicity in the systemic murders of women. Revictimization is the cumulative process by which criminal justice institutions continually victimize women who have experienced violence by virtue of requiring them to relive the details of the violence, allocating blame on the victim for the violence, subjecting them to be silenced, or failing to address their concerns such that they are forced to continue to experience violence.<sup>237</sup>

One of the biggest hurdles women face is filing reports of abuse that will actually be taken seriously by local authorities.<sup>238</sup> Revictimization is a product of impunity as women are forced to continue to be the victims of violence after developing a fear of reporting violence to authorities with a history of dismissing cases of gender-based violence.<sup>239</sup> This was evident

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236. *La Historia del Primer Asesinato que la Corte Declaró como Femicidio*, EL TIEMPO (Mar. 10, 2015, 10:01 AM), <http://www.eltiempo.com/politica/justicia/fallo-sienta-precedente-para-casos-de-femicidio/15368895> [<https://perma.cc/G4ZY-BXCS>] (stating that this was the first time the Supreme Court of Justice found a case of femicide which created a precedent for courts to impose higher penalties in similar murders of women based on hate and discrimination); see also Anastasia Moloney, *Colombia's Highest Court Hands Down First Femicide Conviction*, REUTERS (Mar. 11, 2015, 12:34 PM), <http://www.reuters.com/article/us-colombia-femicide-women-s-rights-idUSKBN0M71WQ20150311> [<https://perma.cc/7FMW-5NU2>] (noting the efforts of women lawmakers in proposing a bill that makes femicide a distinct crime); Secretaría Distrital de la Mujer, *Un año de la conquista histórica de la Ley Rosa Elvira Cely*, Secretaría Distrital de la Mujer (Jan. 2, 2016 3:52PM), <http://portalantiguo.sdmujer.gov.co/inicio/1017-un-ano-de-la-conquista-historica-de-la-ley-rosa-elvira-cely-contra-el-femicidio> [<https://perma.cc/2KSX-972R>] (noting that on July 6, 2015, four months after the Supreme Court of Justice's ruling, Colombia's president signed into law the "Rosa Elvira Cely" law, which makes femicide a distinct crime from homicide in its criminal code).

237. See Jennifer K. Wesely, *Considering the Context of Women's Violence: Gender, Lived Experiences, and Cumulative Victimization*, 1 No. 4 FEMINIST CRIMINOLOGY 303, 314 (2006).

238. See Brigada, *supra* note 105 (noting that women do not report gender-based violence because they are often not believed by the police).

239. See *id.*; see also Julie Goldscheid, *Gender Violence Against Afro-Colombian Women: Making the Promise of International Human Rights Law Real*, 4 COLUM. HUM. RTS. L. REV. ONLINE 249, 259–60 (2020) (noting an incident where an Afro-Colombian



in the case of Ms. Correa who was forced to live with her abuser for three years after he stabbed her nine times because the police dismissed the case as a personal injury and quickly released the aggressor.<sup>240</sup> Had the police actually investigated the abuse early on, there is a chance that Ms. Correa would still be alive today. If severe underreporting of gender-based violence were appropriately addressed in a context where women's stories are believed, it could encourage reporting and prevent further violence that results in femicide.<sup>241</sup>

If a victim or their family is successful in filing a report, they must then overcome the bias of the court. Within the courts, judges' biases result in the blaming of victims for their behavior or way of dressing, judicial decisions stating that women cannot be raped by their partners, or in rulings that issues of domestic violence should be resolved at home.<sup>242</sup> Additionally, few cases of femicide result in a sentence.<sup>243</sup> For example, of the 278 reported femicide cases in Argentina in 2018, only seven resulted in a sentence.<sup>244</sup> Similarly, of the 18,707 cases Costa Rica admitted for violations of the Law on the Criminalization of Violence against Women, only 1,017 were resolved.<sup>245</sup>

To address the problem of impunity and revictimization, some countries such as Guatemala, El Salvador, Chile, and Brazil have established specialized courts which are tribunals focused on hearing gender-based crimes.<sup>246</sup> Judges and police officers in these courts are trained to consider the context in

woman was raped in public and the police did not arrive to provide her with support and a case where an Afro-Colombian girl was left without support and in the custody of her abusive father after her mother poisoned herself to end the abuse).

240. Corte Suprema, *supra* note 213, at 2, 5, 22.

241. See Goldscheid, *supra* note 239, at 260 (noting that local advocates are frustrated with local authorities' failure to respond to complaints of gender-based violence but fear being targeted by police for their advocacy work helping victims of gender-based violence); see also Musalo, *supra* note 33, at 199 (noting that "eighty percent of incidents of violence against women go unreported").

242. Brigada, *supra* note 105.

243. FOLLOW-UP MECHANISM TO THE BELÉM DO PARÁ CONVENTION, THIRD FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE COMMITTEE OF EXPERTS OF MESECVI 70 (2020), <https://www.oas.org/en/mesecvi/docs/Tercer-Informe-Seguimiento-EN.pdf> [<https://perma.cc/WU9V-QWT6>] [hereinafter MESECVI, THIRD FOLLOW-UP REPORT].

244. *Id.* at 76.

245. *Id.* at 69.

246. Brigada, *supra* note 105; Sydney Bay, Comment, *Criminalization Is Not the Only Way: Guatemala's Law Against Femicide and Other Forms of Violence Against Women and the Rates of Femicide in Guatemala*, 30 WASH. INT'L L.J. 369, 370 (2021).

which the victim experienced violence and to consider all evidence from a gender lens.<sup>247</sup> The special training officials receive in these courts has resulted in greater sentencing and resolutions of these cases.<sup>248</sup> Whereas only ten percent of femicide cases resulted in sentencing in the ordinary criminal courts, over thirty percent of femicide cases in the specialized courts resulted in a sentence.<sup>249</sup>

These efforts indicate that the implementation of a gender and intersectional analysis has helped to ensure that victims have access to justice. Despite the favorable empirical evidence, the limited number of specialized courts located primarily in urban centers remains a barrier to justice.<sup>250</sup> The limited number of specialized courts make it difficult for women in rural areas, who are primarily indigenous, to access justice because in jurisdictions that lack specialized courts, ordinary courts must receive and hear cases of gender-based violence.<sup>251</sup>

In addition to the limited number of specialized courts, there are procedural limitations that impede victims and their families from accessing justice. In Guatemala and El Salvador, for example, any case of gender-based violence must first be heard at a lower-level court.<sup>252</sup> The lower-level court is then tasked with referring the case to the specialized court if it finds that the issue is a gender-based violence issue within the jurisdiction of the specialized court.<sup>253</sup> This procedure is problematic because ordinary criminal courts do not have the same gender lens training that specialized courts have, and ordinary criminal courts are not well-suited to identify gender-based crimes.<sup>254</sup> Despite the potential progress these specialized courts can offer, the lack of financial investment in these courts and procedural rules are remaining gatekeeping mechanisms that reflect a culture that does not value the lives and experiences of women.

Lastly, the use of criminal law to address gender-based violence reinforces existing patriarchal systems of power by focusing on punishment instead of prevention and remediation. In a context of impunity and institutionalized machismo which create barriers to justice, laws predicated on punishment

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247. Brigada, *supra* note 105.

248. Bay, *supra* note 246, at 388.

249. *Id.*

250. *Id.* at 390; Héctor Ruiz, *No Justice for Guatemalan Women: An Update Twenty Years After Guatemala's First Violence Against Women Law*, 29 HASTINGS WOMEN'S L.J. 101, 110 (2018).

251. Ruiz, *supra* note 250, at 110, 114.

252. *Id.* at 110.

253. Katherine Mobilia, Note, *Salvation for the Women of El Salvador: Recognizing A Violation of International Human Rights for the Sake of Ending Femicide*, 43 FORDHAM INT'L L.J. 1329, 1379 (2020); Ruiz, *supra* note 250, at 110.

254. See Mobilia, *supra* note 253, at 1379.

do not deter gender-based violence. For example, in an interview with Vice News, a man who has been paid to carry out twenty feminicides said he decided to make killing his profession because he knew he will never be punished for his acts.<sup>255</sup> Therefore, the view that criminal laws serve to deter violence and recognized criminal acts by virtue of their ability to punish violators,<sup>256</sup> is void in this context.<sup>257</sup>

In addition to their failure to prevent violence, laws criminalizing femicide/feminicide that focus on punishment maintain patriarchal systems of power by focusing on the aggressor as an actor with agency and the woman as a passive victim.<sup>258</sup> This dynamic, as mentioned earlier, reinforces gendered stereotypes by submitting to the awful reality that women's lives are not valued. The current dynamic does little to empower women and equip them with the agency necessary to leave violent situations or to change a deeply engrained machista culture. This issue is evidenced by States' low investment of measures and policies meant to prevent gender-based violence and to provide comprehensive remedies for victims and their families.<sup>259</sup> Only three of the eighteen countries criminalizing femicide/feminicide in Latin America have provisions that address the right to restorative reparations for damages in the sentencing of gender-based crimes.<sup>260</sup> For example, Mexico requires comprehensive reparations for all gender-based crimes and Uruguay provides a social security pension and a special family allowance for children that become orphans as a result of domestic violence.<sup>261</sup> Although remedial measures are not proactive in terms of preventing femicide, they have the ability to provide immediate relief that can translate to increased agency for victims and their families.

Therefore, based on all the arguments outlined above, it is imperative that criminal law be changed to effectively address issues of gender-based

255. Vice News, *Women are Being Killed with Impunity in Mexico*, YOUTUBE (Aug. 17, 2020), <https://www.youtube.com/watch?v=NO3uj81X7O8&t=724s> [<https://perma.cc/PWC6-WFU5>].

256. E.g., Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*, THE SENTENCING PROJECT 2, at 1–2 (2010), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf> [<https://perma.cc/X88Y-8YHJ>].

257. See Vice News, *supra* note 255.

258. See KOTISWARAN, *supra* note 182, at 79.

259. See MESECVI, THIRD HEMISPHERIC REPORT, *supra* note 35, at 43.

260. U.N. WOMEN, *supra* note 8, at 51.

261. *Id.*

violence and that solutions be implemented outside criminal law to prevent and eradicate gender-based violence and femicide.

## V. RECOMMENDATIONS FOR REFORM

### A. *Solutions Within Criminal Law*

In order to effectively address, prevent, and eradicate femicide using criminal law, criminal law must understand and reflect the complexities behind gender-based violence.<sup>262</sup> Currently, all analyzed laws, except Nicaragua's law criminalizing femicide/femicide, do not have language conducive for understanding and recognizing the compounded forms of discrimination that are at play when a L.I.A.D.T.W. is murdered. However, intersectionality can also be used as a tool in the development, adjudication, and enforcement of criminal laws.

Using intersectionality in the law-making process enables a bottom-up approach that focuses on the experiences of those that are most marginalized to create laws that recognize multiple realities and thus work for everyone.<sup>263</sup> This approach can be achieved by creating comprehensive laws that go beyond punishing aggressors by promoting prevention and remediation efforts that respond to and reflect the layers of vulnerability marginalized women and their families face when dealing with gender-based violence and femicide.<sup>264</sup>

Lawmaking from this perspective requires a commitment to obtaining quantitative and qualitative data to better understand who is disproportionately impacted by gender-based violence, how they experience that violence, the context in which they experience violence, and what remedies are needed to end the violence and ensure that women can live their lives in dignity. Currently, states are deficient in collecting data, especially data on gender-based violence and how it overlaps with other historically discriminated identity groups.<sup>265</sup> In order to ensure laws that criminalize femicide/femicide prove effective, States must allocate more resources and require higher standards in the collection of data on gender-based violence.

Intersectionality can also be used in the adjudication of cases of gender-based violence. States' development of specialized courts to adjudicate crimes of gender-based violence is an example of how an intersectional gender lens analysis is critical to ensuring that victims and their families have access to relief and justice.<sup>266</sup> Therefore, all States should seek to establish

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262. See Goldscheid, *supra* note 239, at 266.

263. See MacKinnon, *supra* note 24, at 1020, 1024–25.

264. U.N. WOMEN, *supra* note 8, at 56.

265. MESECVI, THIRD HEMISPHERIC REPORT, *supra* note 35, at 107.

266. Brigada, *supra* note 105.

and invest in specialized courts that are accessible in every region of each respective State.

In order to address barriers to access for women in rural regions, State funded transportation services should be accessible for women to reach legal services and tribunals. To further decrease the barriers to accessing justice for all women, States should: (1) provide state funded child care services for children while a mother is accessing legal services; (2) provide income support for any lost wages incurred while accessing legal services; and (3) implement employment statutory protections to ensure women cannot be fired or endure any employer retaliation for accessing legal services or taking time off to appear before a tribunal. To overcome procedural barriers to access to justice, States should train all officials in ordinary courts to apply an intersectional gender analysis in the investigation and adjudication of gender-based violence claims or, otherwise, make specialized tribunals courts of first instance to ensure women's claims of gender-based violence are being effectively addressed.

Lastly, using intersectionality as a tool in the enforcement of laws translates to a victim-centered approach to enforcement. An effective, victim-centered approach is informed by an intersectional understanding of the harm imposed on a victim and her family to provide redress for personal and societal damages based on their specific needs.<sup>267</sup> For example, not all survivors of gender-based violence want their partners arrested or incarcerated, so they do not report the violence.<sup>268</sup> Recognizing that reparations for victims are a right and a state obligation, States must establish reparation programs that meet varying needs because a one-size-fits-all approach contributes to the harm imposed on victims of gender-based violence and may potentially further discriminate against victims.<sup>269</sup>

An example of a comprehensive remedy for a low-income, indigenous, or Afro-descendant transgender survivor of gender-based violence may come in the form of monetary compensation for the harm in addition to:

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267. Jorge Calderón Gamboa, *Seeking Integral Reparations for the Murders and Disappearances of Women in Ciudad Juárez: A Gender and Cultural Perspective*, HUM. RTS. BRIEF 31, 34 (2007) (comparing an integral reparation program to the relationship of a doctor and a patient to demonstrate that remedies are victim-specific and should be tailored to meet the needs of individuals).

268. Goldscheid, *supra* note 239, at 266.

269. See Calderón Gamboa, *supra* note 267, at 34; see also Steinmetz, *supra* note 26 (noting that remedies are not meaningful if they are not informed by the experiences of victims, especially victims with multiple marginalized identities whose experience with violence is rooted in multiple aspects of subordination).

access to education, access to professional development opportunities, access to affordable, quality health services—including mental health services, access to a safe, affordable home, and/or a request that the aggressor be required to participate in rehabilitation program. The program could include trainings on how to deal with issues of anger, aggression, and jealousy. Comprehensive remedies for the family of a L.I.I.A.D.T.W. who was the victim of femicide may include monetary damages for the family, access to a safe, affordable home, access to mental health services, access to affordable child care in cases where guardians need support caring for the children of a victim, and/or a request that the aggressor be incarcerated. The aforementioned lists illustrate general examples and may vary depending on the specific cases and the needs of the victims and their families.

The key to implementing a victim-centered approach to the enforcement of laws, is criminal justice institutions developing mechanisms by which victims and their families can be involved in informing the State about how to deal with the aggressor and in designing their relief from the State. This approach will guarantee that victims and their families have agency in the process and are better situated to cope with the trauma they are experiencing long term.

Altogether, drafting, adjudicating, and enforcing criminal laws informed by intersectionality would allow for the implementation of a criminal justice system that is centered on the experiences and needs of victims as opposed to the punishment of aggressors. This transformative shift is essential to building a criminal law canon and criminal justice institutions that understand the root causes of femicide and how it impacts women with multiple marginalized identities so that institutions are better equipped to respond to, prevent, and eradicate gender-based violence.

### *B. Solutions Outside Criminal Law*

In addition to changes that should be made within criminal law, States should explore solutions outside of criminal law to respond to, prevent, and eradicate femicide. Policy is one solution. Whereas criminal law is limited to addressing and preventing criminal acts when appropriately enforced, policy can cast a wider net in terms of the implementation of programs and initiatives that aim to prevent gender-based violence in a myriad of societal sectors.<sup>270</sup>

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270. See *Law*, MIRRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/law> [<https://perma.cc/DZE4-YHPS>] (defining law as “a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling body”); *Policy*, MIRRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/policy> [<https://perma.cc/W8HY-8EPC>] (defining policy as “a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body”).

Incorporating creative and innovative problem solving, government entities can collaborate with individuals to develop comprehensive policies and programs aimed at changing Latin America's toxic machista culture that is at the root of femicide and gender-based violence.<sup>271</sup> Examples of such programs include, but are not limited to: implementing age-appropriate, pleasure-based sex education curricula within schools to educate young people as to what healthy relationships look like, working with media outlets to provide engaging content that does not reflect traditional gendered relationships and norms, and partnering with companies such as *maquiladoras* to implement corporate social responsibility policies regarding women in the workplace to ensure female employees have access to safe transportation to and from work, living wages, quality, affordable healthcare, and quality, affordable childcare.

The aforementioned examples are just a few policy solutions that aim to intercept and confront gendered socialization in critical sectors of social development such as in relationships, schools, and media.<sup>272</sup> The examples address scenarios within a context that perpetuates learned social norms (i.e. a workplace culture that does not value the labor or lived experience of its female employees), as research indicates that low-income, often migrant, female employees of *maquiladoras* are more prone to suffer gender-based violence because they work long hours and commute home at night in remote, poorly lit areas.<sup>273</sup>

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271. See Lagarde y De los Rios, *supra* note 3, at xxi (noting that gender-based violence is reinforced by the “acceptance and tolerance . . . [by] supremacist, macho, and misogynist men”).

272. See Education Team, *That 8-Letter Word: Including Pleasure in Sex Education*, PLANNED PARENTHOOD OF THE ST. LOUIS REGION AND SOUTHWEST MISSOURI (July 2, 2018, 7:27 PM), <https://www.plannedparenthood.org/planned-parenthood-st-louis-region-southwest-missouri/blog/that-8-letter-word-including-pleasure-in-sex-education> [<https://perma.cc/8R33-8T3V>] (noting that age-appropriate sex education is all about teaching individuals to think about pleasure as non-taboo and to normalize the concept of pleasure as means of fostering communication and healthy relationships); see also CEDAW Gen. Rec. 35, *supra* note 79, at ¶ 37 (recommending that states implement measures to encourage media to stop promoting harmful portrayals of women).

273. Prieto-Carrón et al., *supra* note 34, at 27; see CEDAW Gen. Rec. 35, *supra* note 79, at ¶ 39 (encouraging States to implement incentives that will foster corporate social responsibility as a means to end gender-based violence by acknowledging corporate responsibility and complicit of acts of gender-based violence); see also CRIADO PEREZ, *supra* note 16, at 29–46 (noting that gender gaps in transportation data have resulted in transportation infrastructure that disproportionately negatively impacts women as plans only reflect the transportation routes of men, which look very different from the routes of women who also have to carry the burden of unpaid work).

Beyond implementing policies that can tackle and change societal gender norms, States can implement legislative oversight mechanisms to ensure proposed laws and policies do not have discriminatory impacts on women and peoples with multiple marginalized identities. Laws are often created in a vacuum to address specific issues without much awareness as to how the proposed law will interact with existing laws once implemented.<sup>274</sup> Oftentimes, this lack of context can have significant negative ramifications in terms of undermining marginalized peoples' rights and protections enacted laws seek to implement or restore.

Although eighteen Latin American countries have laws criminalizing femicide/feminicide, adjacent laws often serve to undermine their implementation.<sup>275</sup> For example, in Costa Rica, prior to 1990, land could only be titled in the name of a male head of household.<sup>276</sup> Whenever a woman would attempt to leave an abusive marriage, a judge could advise her to not leave the marriage because she would not have any legal right over land she acquired with her husband.<sup>277</sup>

In 1990, the Law of Promotion of Women's Social Equality required that all property be titled in the names of both spouses.<sup>278</sup> Seventeen years later, Costa Rica criminalized the murder of a wife by her husband as a means to prevent femicide.<sup>279</sup> Prima facie, it would appear that the Law of Promotion of Women's Social Equality and Article 21 of Costa Rica's law criminalizing femicide are working in tandem to prevent gender-based violence by empowering women economically through the ownership of land and by making it illegal for a partner to commit femicide. However, the Law of Promotion of Women's Social Equality is not retroactive, meaning that women who acquired land with their partners before 1990 did not have a legal right to the land they acquired with their partners, making them even more vulnerable to gender-based violence because of financial incentives to stay in a violent relationship or otherwise risk losing access to property that should also belong to them.<sup>280</sup> Although this is only one example, adjacent laws regarding employment, court procedure, and citizenship often tend to interfere with the rights and protections afforded by laws that seek to prevent, punish, and protect women from gender-based violence.<sup>281</sup>

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274. See Adamson et al., *supra* note 16, at 432.

275. *Id.* at 449.

276. *Id.*

277. *Id.*

278. *Id.*

279. 2007 Law, Costa Rica, *supra* note 92, at 2–4.

280. See Adamson et al., *supra* note 16, at 450.

281. *Id.* at 449.



To address this problem, it is imperative that States implement legislative oversight systems to inspect and analyze proposed legislation and identify how each law would work within the greater legislative ecosystem to ensure that proposed laws do not undermine critical legislation meant to promote gender, racial, and economic equality. One way that a legislative oversight system might operate is through the development of an independent legislative committee comprised of individuals trained in conducting intersectional analyses of laws. It is critical that individuals employed to serve on this committee have the aforementioned training in order to identify how proposed laws working in tandem with existing laws may affect individuals with multiple marginalized identities.<sup>282</sup>

Given how active legislatures are in proposing legislation, it is critical that legislative oversight committees have the ability to run through hundreds, if not, thousands, of pieces of legislation. That is no small feat, but technological advancements produce effective and practical solutions. Humanist scholars are increasingly turning to computer-assisted methods of analyzing textual data.<sup>283</sup> As such, computational legal studies is an emerging field in which legal scholars run corpora (bodies of text) through coding programs to identify certain stylistic or substantive features of bodies of text ranging from judicial opinions to laws.<sup>284</sup> Not only does such a system allow one to process more textual data than a single human can, but as Dr. Varsava notes, “computational methods facilitate a bird’s-eye view or macroscopic view of textual data, enabling researchers to perceive a text or body of texts all at once.”<sup>285</sup>

Using such a system, a committee would be able to constantly run existing and proposed legislation through sets of pre-defined algorithms to identify features of laws that are critical for in-depth analysis.<sup>286</sup> For example, a corpus can include existing laws and proposed laws that would

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282. It is important to note that individuals operating these systems do not need to be academics as there are many grassroots activists who are engaged in intersectional policy advocacy work. If States should choose to contract with academics to conduct intersectional legal analyses of laws, it is imperative that the selected academics actively partner with grassroots activists to ensure they are informed by the perspectives of those with the lived experience.

283. Nina Varsava, *Computational Legal Studies, Digital Humanities, and Textual Analysis*, COMPUTATIONAL LEGAL STUDIES: THE PROMISE AND CHALLENGE OF DATA-DRIVEN LEGAL RESEARCH 29 (Ryan Whalen ed., 2020).

284. *See id.* at 3, 10.

285. *Id.* at 2.

286. *See id.* at 2, 10–11.

be run through a pre-set algorithm to identify which, if any, laws are related to gender-based violence, how they relate to gender-based violence, and how they could potentially conflict with one another in their implementation. After the system highlights the group of laws sought out by the algorithm, a staff of experts can conduct an intersectional analysis of the flagged laws to determine whether or not their implementation in tandem with existing laws would meet the legislative objective of promoting gender equity or the prevention of gender-based violence. The committee would then be tasked with reporting its findings and recommendations regarding proposed and existing legislation to the legislature.

In addition to granting such a committee oversight powers, States should consider granting the committee the power to dismiss or amend proposed laws that run counter to the legislature's objectives. This power poses other issues to ensure the committee is independent enough to be insulated from political pressure. However, it is worth considering given that issues of gender, race, and economic equality tend to be politically controversial, making the enactment of laws aimed at addressing the foregoing inequities precarious based on the immediate political makeup of a state's legislature as opposed to the legislature's greater commitment to addressing gender, race, and economic inequity.

Although legislatures may fear losing some of their power to a quasi-independent legislative oversight committee, having a process similar to the one outlined above could have a significant impact. If States dedicated resources to building a legislative infrastructure to ensure that proposed laws can be effectively implemented to work with existing laws and to overcome historically prejudiced and discriminatory laws, then it is likely that the Costa Rican legislature would have been able to identify problems with not allowing the retroactive application of the Law of Promotion of Women's Social Equality. This example evidences that tackling, preventing, and eradicating femicide, will require much more than one-off laws addressing gender-based violence. Rather, this aim requires an ongoing State commitment backed by strong, newly transformed institutional infrastructure and resources dedicated to understanding the causes of gender-based violence, its impacts on all members of society, especially on individuals with multiple marginalized identities, and the effective implementation of laws and policies informed by the lived experiences of those that experience the violence. This is the path forward!

## VI. CONCLUSION

The COVID-19 pandemic exposed many societal inequities in areas in which States merely implemented Band-Aid solutions or that States ignored altogether. Gender-based violence and the systemic murder of women is

one of those areas. As such, States have had a propensity to turn to criminal law as a means to prevent, punish, and eradicate gender-based violence; yet an intersectional, victim-centered understanding of femicide and analysis of laws criminalizing femicide/femicide suggests that the current criminal law approach is not the most effective solution. However, changes can be implemented to transform criminal law into a tool that better serves victims of femicide and gender-based violence. Additionally, solutions outside criminal law may be more effective in preventing and eradicating femicide by virtue of their ability to tackle the societal and cultural root causes of this violence.

As the trend towards reforming laws criminalizing femicide/femicide emerges in Latin America as part of post COVID-19 recovery plans, it is critical to know the direction States are going in and to guide the reformation process to ensure new laws reflect and recognize the compounded forms of violence and discrimination women with marginalized identities experience. The path forward requires a new approach grounded in the lived experiences of those disproportionality impacted by gender-based violence and least able to access justice and remedies.

Grounded in the experiences of the most marginalized women in Latin America, this Comment includes the analysis of State laws that have not yet undergone reform but are well-situated to implement minor reforms to develop comprehensive definitions of femicide/femicide within their legal frameworks. In providing examples of steps that State legislatures can take to develop better, more equitable laws, this Comment encourages well-situated States to implement immediate reform and create pressure for other states to follow because addressing the intersectional nature of gender-based violence “is an obligation of an immediate nature”<sup>287</sup> that Latin American States are obligated to address under international law in order to achieve gender equality.

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287. CEDAW Gen. Rec. 35, *supra* note 79, at ¶ 21.

