# VIOLENCE, RIGHTS, POLICIES AND CONCEPTS: THE POLICY TO COMBAT FEMICIDE IN LATIN AMERICA

VINICIUS FERREIRA BAPTISTA
Universidade Federal Rural do Rio de Janeiro

Eje Temático n. 12 Género, Diversidades, Disidencias, Juventudes y Violencias

Trabajo preparado para su presentación en el XI Congreso Latinoamericano de Ciencia Política (ALACIP), organizado conjuntamente por la Asociación Latinoamericana de Ciencia Política y la Asociación Chilena de Ciencia Política, Santiago, Chile, 21, 22 y 23 de julio 2022

**TRABAJO PREPARADO PARA SU PRESENTACIÓN EN EL XI CONGRESO LATINOAMERICANO DE CIENCIA POLÍTICA (ALACIP), ORGANIZADO CONJUNTAMENTE POR LA ASOCIACIÓN LATINOAMERICANA DE CIENCIA POLÍTICA Y LA ASOCIACIÓN CHILENA DE CIENCIA POLÍTICA, SANTIAGO, CHILE, 21, 22 Y 23 DE JULIO 2022**

# Violence, rights, policies and concepts: the policy to combat femicide in Latin America

**Vinicius Ferreira Baptista**

**Abstract:** the aim of the analysis carried out in the present study is to help better understanding the specific criminal offense known as feminicide within its applicability set based on comparison terms within the scope of Law in Latin America between 2007 and 2020. In methodological terms, we have developed a comparative study on rights. We started from Brazilian understandings about homicide; women murdering; and prevention, protection and punishment mechanisms to, then, compare these factors to Latin American countries. We have closely emphasized criminalization without necessarily articulating it with programs and policies focused on fighting violence, without cohesion, in the theoretical use of the adopted terms; furthermore, we have emphasized the difficulty in determining offenders' sex.

**Keywords**: Feminicide; Femicide; Women Homicide; Criminal Law; Women's Death.

## 1. INTRODUCTION

The object of analysis in the current study lies on understanding the specific criminal offense known as feminicide in the set of its applicability, based on comparative terms withing Law scope in Latin America. However, it is necessary pointing out how feminicide is articulated in Latin America, based on the perspective about the legislative "wave" observed in the early 21st century. The aim of the study is to identify similarities and differences in order to feature the women's death phenomenon in the region and how it evolved to fight violence towards women. Such a proposition is relevant because, from 2010 on, it was possible witnessing the rise of the largest number of legislations about this topic and the need of understanding how countries set the very basis to interpret this phenomenon and its criminalization.

We have assessed how feminicide emerges in the legal and political-institutional understanding as a crime that echoes social disapproval, but that, after all, presents distortions in the terminologies and definitions adopted in Latin America. The study covered the time-period between 2007 and 2020; Costa Rica and Chile were the first and last countries to create such a legislation, respective. This study is not a mere description of legal bases, but an analytical study based on comparative studies about rights that aimed at evidencing similarities and differences in Latin American legal institutes. Thus, we have started from the Brazilian understanding of homicide; women murdering; and prevention, protection and punishment mechanisms, to compare these factors to countries in Latin America.

We divided the text into four sections, besides the introduction, methodology and final considerations. The two first sections address the Brazilian conceptual and legal bases of women homicide and murdering in order to further criticize the concepts of a political etymology of violence over feminist basis. The third and fourth sections simultaneously approach feminicide in Brazil and its international profile in Latin America. Finally, the last section provides the analysis of eighteen countries in Latin America that have created legislations within three periods-of-time: 2007-2009, 2010-2014 and 2015-2020. The final considerations are presented at the end of the article.

## 2. METHODOLOGICAL PROCEDURES

The main methodological references are found in Richardson et al (2007), who define the present study as of applied nature, with qualitative approach and explanatory aim based on following bibliographic and documental procedures. The main normative gender violence sources and indicators are found in the *Gender Equality Observatory for Latin America and the Caribbean* by the Economic Commission for Latin America and the Caribbean, also known as CEPAL[1], and in consultations to legal organs in the assessed countries. We emphasize the proposition of a comparative study about rights based on the data treatment technique to evidence similarities and differences in legal institutes (Almeida, 1998; David, 1953). Study justification involves legal expositions and comparisons to perform confrontations in three phases: 1) analytical - by observing the

[1] Available at <https://oig.cepal.org/pt/indicadores/feminicidio-ou-femicidio>. Accessed on August 28, 2021.

elements eligible to comparison; 2) integrative – understanding how these elements are inserted due to system conjunctions; 3) conclusive – confronting objects to extract similarities and differences (Almeida, 1998; Maximiliano, 2000).

## 3. FEMINICIDE: IN SEARCH FOR A POLITICAL ETYMOLOGY OF VIOLENCE

Homicide is a specific criminal offense whose tutored legal asses is life itself - from birth to the person's natural death. It is not mixed with embryonic life, whose specific criminal offense is known as abortion. There is consensus about life as persons' most valuable legal asset, it is the "basic condition of all individual rights" (Xavier, 2019: 4) – it also exceeds the other legal rights, since it is indispensable.

One finds the moral and immoral, social and anti-social reasons based on perspectives about reasons leading to homicide (Xavier, 2019). Whenever moral and social values are highlighted, one privileges homicide. Accordingly, privileged homicide encompasses a series of practices based on allegations that significantly reduce the murderer's guilt. On the other hand, when the immoral and anti-social approaches are taken into account, one can configure the circumstance to qualify a specific criminal offense. Objective and subjective bases guide qualification circumstances; the objective ones are related to crime, they point out the means (individual's execution mode) and ways (the ways of action by the subject that make it difficult, or impossible, to defend the victim). The subjective circumstances are related to the offenders' conduct. Therefore, they demand interpretation and point out the reasons (that made the subject practice the crime) and ends (that ensure some dimension associated with another crime) for the crime.

Typifying a crime of women's death through violent means due to gender, sex or feminine condition, is part of a set of public policies aimed at making human rights concrete and at acknowledging the need of acting within this social framework in order to achieve equality between men and women (Espínola, 2018). Renata Bravo (2019: 92-94) highlights that such a process can represent "disruption in the apparent neutrality of Law", since it breaks up with the patriarchal State model "because it forces [the State] to accept that the concept of citizenship cannot be supported as long as women do not reach full equality of rights".

However, there is also a problematic matter addressed by Myrna Dawson & Michelle Carrigan (2020a: 682-704), namely "distinguishing feminicide from women's murdering", by taking into consideration that feminicide concerns different motivation elements related to aspects about the meaning of "being a woman". Therefore, it captures social constructions about inequalities and hierarchies between men and women to justify an aggression act taken by those at higher positions. Nevertheless, it does not mean that *only men* are feminicide/femicide offenders, since women can embody male chauvinist constructions to justify a homicide act towards other women.

Izabel Gomes (2018) criticizes statements, according to which, "it is necessary separating feminicide from women's murdering". According to her, women's murdering is unequal, be it in terms of being practiced at gender dimension, or at scopes not directly related to it. The question is, most women's murdering are interpreted in light of parameters that oftentimes are empty when it comes to gender issues; they do not evidence that such deaths have misogynist and male chauvinist character. Moreover, they are guided by hate, contempt and indifference. Yet, the legal dimension of 'judicialization' is not able to reach a political-institutional phenomenon by itself.

Ewerton Messias, Valter Carmo and Victória Almeida (2020) highlight that the dignity of the human person must be one of the primary basis to guide the process among disputes for definitions. If disputes aim at nomenclature (feminicide or femicide), the determination of specific criminal offense (objective or subjective - if it is qualifying, or autonomous crime), sense of violence (legal or political-institutional) or interpretation of the victims' status (gender or female sex); then, they regard a crime that goes against life and that must be echoed by society's clear disapproval.

Diana Russel and Nicole Van de Ven (1976) named femicide back in 1970 based on the recognition and visibility of discrimination, oppression and inequality that, altogether, articulate violence against women. Most of all, these authors aimed at evidencing the latent misogyny of these crimes, which involve cultural, historical and social-political processes within the social structure. On the other hand, they report neutrality in the gender approach when it comes to criminological matters based on "neutral" terms used for homicide cases. Thus, "femicide is applied to all forms of sexist murdering" (OACNUDH, 2014: 16).

However, in 1998, Marcela Lagarde (2006b) applied the term "feminicide" to the act of killing a woman just because she belongs to the female sex. However, Lagarde also makes the political use of this term, differently from Russel and Van de Ven, who used it

to report negligence in States' responses and in not following actions concerning protection, investigation and punishment. Therefore, there is clear difference in using "feminicide"; Lagarde (2006a: 20) addresses this crime as "State crime": when there is "a fracture in the Rule of Law, and it favors impunity".

Thus, there is clear difference in the political construction of violence when it comes to death of women. The relative lack of "consensus" between the terms "feminicide" and "femicide" does not only regard likely grammatical or lexical divergences, but historical attempts to name a fact, be it built from misogynist dimensions, hate or procedural actions regarding the offender, in this case, *femicide*; or yet, be it in the scope of recognizing the State's negligence in the generalized unfeasible determination of a crime, namely: *feminicide*.

The *Latin American Model Protocol for the Investigation of Gender-related killings of Women* within the scope of the Regional Office for Central America of the United Nations High Commissioner for Human Rights (OHCHR) adopts the "hybrid" use of the term *feminicide*, which aims at combining the act of the active violent offender to the States' political dimension. The protocol sets the concept of *feminicide* as "the violent death of women due to gender issues, inside family environment, domestic unit or in any other interpersonal relationship, in community, by any person; be it perpetrated or tolerated by the State, and by its agents, through action or omission" (OACNUDH, 2014: 18). We highlight that OACNUDH accepts the use of terms femicide/feminicide as synonymous to the same act.

Maria Berenice Dias (2015) approaches the cultivation of values that encourage violence and guide guilt based on a perspective of social construction of violence - this is the production of cultural concepts and inequalities at power exercise sphere, which is capable of setting associations between the dominant and dominated ones. Such a perspective goes against the statement by Allan Johnson (1997), according to whom, dominants do not account for their actions and do not ask permission to do whatever they feel like, as well as do not control how reality is defined.

Based on Segato (2003), the different uses of the aforementioned terms must be strategic to build essentialism; moreover, it is essential unifying movements focused on the "women" issue. Therefore, the use of these terms is practical and political, since it involves taking care of theoretical and empirical constructions by using what they can provide, although by having in mind their limits. Bravo (2019) takes category "woman"

as linked to, and built of, subordination and distinction elements that go against man as naturally conceived and reflected on roles, behaviors and stereotypes.

According to Segato (2003), violence is not an isolated element, but a systemic process, a socially evoked message articulated with behavior standards. In other words, there is a logic and a pedagogy that are not limited to some anomaly of the offender, but that counts on society's participation in the evoked utterance. These utterances are related to social conducts whose performed violence embodies some stabilization element in society, mainly when it regards violence against women.

Bravo (2019) states that Brazil provides institutional conditions for violence, since the legislation in force, before Maria da Penha and Feminicide laws, favored impunity, mainly until 2006, when law n. 11.340 was enacted – it was followed by the Feminicide law. The world Declarations of Rights are not an excuse to assume their guarantee and respect, since 22 years had passed between Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) ratification, in 1984, in Brazil, through Decree n. 89.460[2] - which deals with violence and discrimination against women – and the enactment of Maria da Penha Law. This negligence is proven by reports from two parliamentary inquiry committees (1992 and 2011), which approached violence against women.

Caroline Grassi (2017) understands that feminicide is a crime related to the patriarchal culture, and it justifies the possession and domination of women's bodies, a fact that overpowers the "right" over life and death. Feminicide would not be the "last" act in the violence process, since physical or non-physical forms of aggression always precede it. Actually, it is the opposite, feminicide is the penultimate act in a real violence saga: the *last* act lies on women's defense after death; yet, it keeps moral justifications linked to "deserving the fate" imposed by the violent act. The offender, the society and the legal system twist judgement.

Karen Stout (1991) sees feminicide as an objective and subjective violence instrument, since it results from motivations supported by domination, overpower, contempt, morality and control structures linked to inequality dynamics between men and women. However, the goal of power expressions is to have control over life and death. It is also set as an end and a means, because it is used as instrument to build a scenario

[2] Later revoked by Decree n. 4.377/2002.

where violence is the ultimatum of what organizes spaces, lives, life projects and social relationships.

Stela Meneghel & Ana Paula Portella (2017) understand that the violence process is little mentioned within the feminicide scope, mainly in circumstances where crime takes place. There are hideous aspects in the act of feminicide that are less analyzed, such as processes wherein victims cannot resist or crimes performed by more than one person. At this point, feminicide is not an ordinary homicide, since it brings along hate and contempt; therefore, this feeling is reloaded at the time to commit the crime. Thus, based on Dora Munevar (2012), it is necessary naming, giving visibility and conceptualizing the violent death of women.

Clarice Marques (2020) criticizes the register of feminicide as "war crime" at "times of war", which is somehow ironic, since - based on the statistical records of feminicide – times of "peace" regard a generalized violence against women. Accordingly, in her opinion, the Law has a history of maintaining problematic domination relationships, even in contexts of legal attempts to increase punishment or criminalization. Discord embodies the challenge of decolonizing practices and the legal science itself.

## 4. FEMINICIDE IN BRAZIL: DISPUTE FOR THE CONCEPT OF VIOLENCE

In 2011, a Mixed Parliamentary Committee of Inquire (CPMI)[3] about the violence-against-women topic in Brazil issued a substantial report blaming a series of conclusions and statistics about the vulnerability of Brazilian women facing crimes against their lives. This report evidenced a negative scenario in the violence-against-women scope: crimes featured by a sense of possession, contempt, misogyny, male chauvinism and indifference towards women's lives, mainly in case of a silent crime that takes place in homes and is practiced by family members.

The report by the Parliamentary Committee articulated a whole series of elements that weaken the scenario of fighting such a violence: the disregard of a crime; in other words, lack of perception about a crime whose reasons have heinous profile; the biased debate about the law to criminalize women's death as unconstitutional; the dynamics of high circulation of guns in the territory; besides the incipient and insufficient means to

[3] Report available at <https://www2.senado.leg.br/bdsf/handle/id/496481>. Accessed on August 25, 2021.

report crimes; as well as the discredit of public agents in the exercise of their function. One of the final products of this report was a draft of a legislation project to typify the conduct of women's murdering due to their gender.

This draft was sent to the National Congress as Bill n. 292, which was issued by the Federal Senate – also known as PLS. It aimed at changing the Criminal Code and at including the qualifying circumstances of feminicide in article 121, about crime of homicide. This PLS was later taken to the National Congress as Bill (PL) n. 8.305/2014, which included the proposition to change art. 1, item I, of law n. 8.072/1990 of its original text, to add feminicide in the list of heinous crimes. Law n. 13.104/2015, also known as Feminicide Law, resulted from this PL, which was analyzed by the Congress – President Dilma Rousseff enacted it on March 9, 2015.

Article 5, item XLIII, of the 1988 Federal Constitution; and art. 1 of law n. 8.072/1990, provide on heinous crimes as those severely disapproved by society and those that affect human dignity; therefore, they cannot be pardoned or bailed. In 2015, the Brazilian State recognized feminicide as specific conduct of women's murdering due to their identification condition or to the simple fact of belonging to the female sex[4].

The United Nations Office for Gender Equality (UN Women) published the *Latin American Protocol for the Investigation of Violent Deaths of Women for Gender Reasons*[5] back in 2014; it helped creating the Brazilian Protocol, back in 2016[6]. This protocol describes a series of procedures on how to treat this crime, the offender and the victim. Notably, the Brazilian Guidelines reinforce the recommendation set for expressions such as "violence due to gender" and "feminicide" to be used as message strategy, according to which, violent death of women due to gender results from social gender inequality, rather than from an individual fact. On July 22, 2020, the Ministry of Justice and Public Security issued the National Protocol of Investigation and Forensics for Feminicide Crimes, which was limited to the civil police and to official criminal-nature forensic organs.

[4] It is important taking into account that the draft proposed by the Mixed Parliamentary Committee of Inquire was also added to the PLS provided on the "female gender" dimension; it avoided the biological aspect of the word "sex". Based on this legislative process, the original word was removed and replaced by "sex", since this word highlights the biological dimension, which has been debated at legal scope by protective claims and by the legal application for transsexual women.
[5] Available at <https://www.onumulheres.org.br/wcontent/uploads/2015/05/protocolo_feminicidio_publicacao.pdf>. Accessed on August 25, 2021.
[6] Available at <https://www.onumulheres.org.br/wp-content/uploads/2016/04/diretrizes_feminicidio.pdf>. Accessed on August 25, 2021

Feminicide interpreted in light of the Brazilian legislation encompasses contempt to the condition of being woman. Its contempt derives from a given inferiority perceived as element legitimating the violent act just for the fact of belonging to the female sex. Segato (2013) draws feminicide as women's genocide, since this crime refers to a category, rather than to a specific subject. According to Bravo (2019: 89), feminicide is the "extreme act of a continuous cycle of violence against women" that opens room for a "way to maintain the patriarchal society". Moreover, feminicide is taken as an expression of masculine domination policies put in place to keep the power of the patriarchal order. Saffioti (2015) advocates that this crime must be named feminicide as a means to resistance against the patriarchal power, because it is "interesting outspreading the use of feminicide, since this homicide brings along the prefix of man.

This is not a trivial matter. The disputes for meanings and definitions set for these terms are not merely trivial. Dawson & Carrigan (2020b) show that the act of identifying likely correlations, agents and dynamics to properly name a given phenomenon implies in a concept that carries markers used to define specific shapes; it only has impact on the legislative production, on the generation of statistics and monitoring. Nevertheless, according to these authors, this process defines an academic input to the leading role of building analytical references about a given phenomenon.

This is the dynamics Gomes (2018) claims for, since disputes take place through different "feminisms" in the feminist epistemology. However, the crucial aspect, based on this author, lies on talking about the patriarchal society and on locating this social structure as part of "feminicide/femicide" production, since it regards a "necro-policy of gender aimed at ensuring the maintenance of the *status quo* and at forcing women to follow the established patriarchal rules" (Gomes, 2018: 5).

Law n. 13.104 from March 9, 2015, changed art. 121 of the Criminal Code in Brazil, in order to add *feminicide* as qualifying circumstance of homicide and to change art. 1 of law n. 8.072/1990 to include such a crime in the list of heinous crimes. Feminicide in the Criminal Code is typified as crime against women's lives "due to the condition of belonging to the female sex", such as "domestic and family violence" (item I) and "contempt or discrimination to the condition of being woman" (item II). We must highlight that the use of the term "female sex" is not a mere dimension of nomenclature, but a clear concept of removing the term "gender", provided on the original Bill - i.e., it gives a biological meaning to the sense of "woman". Therefore, it regards the defense of Brazilian lawmakers who aim a law limited to women biologically born under the female

sex. It does not mean that this law has not been tested in State Courts for its applicability to transsexual women.

The change in art. 121 of the Brazilian Criminal Code added feminicide as qualifying crime of homicide. Thus, as we will show further in this article, Brazil goes against the Latin American current scenario, which addresses feminicide as autonomous crime - in other words, as the very character of the greatest violation of rights and of social disapproval. Accordingly, we can also face the difficulty in interpreting Law enforcement and, consequently, in observing its impact on statistical productions and on the portray of this crime's reality. The National Congress is analyzing Bill n. 4.196/2020, which aims at changing the Criminal Code in order to take into account feminicide as autonomous crime; it is an attempt to reduce the interpretative margin of what would be the "gender reason" guiding the application of law.

Paragraph 7 of article 121 highlights the increase by 1/3 of half of the penalty if the crime is practiced based on five specific cases, namely: 1) at pregnancy or in the months after delivery; 2) against people under fourteen years, over seventy years or against people with disability or carrying degenerative illnesses that lead to limiting conditions or to physical and mental vulnerability; 4) in the presence of the victim's descendants or ascendants; 5) in the physical or virtual presence of the victim's descendants and ascendants; 6) for not following the urgent protective measures provided on items I, II and III of the main section or in art. 22 of law n. 11.340, from August 7, 2006.

There is a dispute in the Brazilian legal order about the application of feminicide as objective and subjective qualifying circumstance. The first current is defended by Guilherme Nucci (2014), who understands that the objective sense is clear as qualifying circumstance linked to the victim's gender, i.e., to be woman; thus, the offender does not kill a woman because of it, but for hate, rage, contempt and for reasons associated with the condition of being woman – these reasons can be subjective and have clumsy and futile character. On the other hand, the current that supports feminicide as of having subjective qualifying nature is substantiated by Alice Bianchini (2016), according to whom, the subjective dimensions highlight the interpretative conjunction in which sex and gender manipulate and boost violent actions; therefore, they are not objective, since they are observed in negatively valued signs and guided by inequality and subordination.

There is a third contemporary current in legislative and legal debates, namely: feminicide as autonomous crime, it means a crime disregarded from the mere approach

to qualify the crime of homicide in order to be autonomously interpreted. The autonomous profile of this crime would aim at giving severer social disapproval to it; and it could also include the creation of more transparency towards the phenomenon and avoid the interpretative sense implied by the qualifying circumstances to the judge – these factors end up influencing the statistics of crime. Another critique addressed by Cezar Bittencourt (2018) lies on the idea that feminicide is a qualifying circumstance that turns gender within this crime into an accessory element of punishment for the offender.

According to Carlos Garcete (2020), criminal offenses that aim at ruling out a human life are taken as autonomous, and it highlights what Juarez Tavarez (2018) calls delimiting parameters of imputation in the offenders' conduct. The allocation of feminicide as qualifying circumstance would evidence the devaluing of a violent act by the offender towards the life of a woman. Thus, the defense of feminicide as autonomous crime echoes on the Brazilian legal order, given the analysis of Bill n. 4.196/2020, which aims at typifying feminicide as autonomous crime.

Bill 4.196/2020, by Fabio Trad, changes completely the current text of law 13.104/2015 in order to create article 121-A and to typify a subjacent article to homicide, in this case, feminicide. The understanding of the Bill's author lies on the idea that the gender violence culture remains, and that it demands an independent specific criminal offense type capable of addressing this crime as reprehensible at larger scale and reach. Therefore, keeping it as qualifying approach means reducing the magnitude of the issue in question. Nevertheless, the text advocates for changing the term "condition of female sex" to "condition of female gender", since it would adjust the legislation to international standards.

## 5. FEMINICIDE AS INTERNATIONAL ISSUE IN LATIN AMERICA

Bravo (2019) states that, based on the Western perspective, disputes for rights that have led to declarations from the 18th century on were triggered by a masculine Universalism that has neglected women and their acknowledgement as human beings and subjects of rights. Mary Wollstonecraft (2016), in her response to Jean-Jacques Rousseau and Alexander Pope, highlighted that such illuminist theses is substantiated by reasoning about the inferior role to women within this "enlightened" society. In 1791, Olympe de Gouges (2014) published "The Declaration of the Rights of Woman and of the Female Citizen" as the response to the Declaration of the Rights of Man and of Citizens,

during the French Revolution, since it almost elided women from a text that aimed at putting equality in the mainstream.

Article 1 of CEDAW limits "discrimination towards women" as "distinction, exclusion or restriction based on sex; and that has as its object, or result in, the act of harming or nulling the acknowledgement, enjoyment or exercise of women" when it comes to "human rights and fundamental freedoms in the political, economic, social, cultural and civil fields, or in any other field". According to CEDAW, violence, *per se*, is a discriminating act only when it denies the acknowledgement of a person's right to a dignifying life; notably, to a life free of violence. An important aspect of CEDAW lies on the fight against discrimination within two biases: first, due to the States-part themselves, when it comes to the creation of public policies; second, by the international community itself, if one takes into account the creation of follow-up committees to register the development of actions and monitoring towards violence and discrimination.

Another declaration issued by the United Nations, the so-called Declaration on the Elimination of Violence against Women, the Vienna Declaration, is also a milestone of such an international activism. Ronagh Mcquigg (2011) understands that women suffer with assault in their human rights worldwide, mainly because of domestic violence. This global dimension was already recognized by CEDAW, since the CEDAW Committee forbids public or private domestic violence in Recommendation n. 19.

The Vienna Declaration takes violence against women as a violation of both individual freedoms and human rights. In its art 18, the Declaration states that "the human rights of women and girls are inalienable and they are an integral and indivisible part of universal human rights", since "violence and all forms of abuse […] are incompatible to the dignity and value of the human person, so they must be ruled out". Article 30 highlights the concern by the international community with "clear and systematic violations that are serious obstacles to the full exercise of all human rights", among them "discrimination against women". Accordingly, art 38 states "the importance of working towards ruling out all forms of violence against women in the public and private life".

The 1994 Belém Convention, Pará State, Brazil, which was ratified in Brazil through Decree n. 1.973/1996, is clear about taking violence against women as "violation of human rights and fundamental freedoms", this violence starts from "the manifestation of historically unequal power relationships between women and men". Article 1 of Belém Convention defines violence against women as "any act or conduct based on gender that can cause death, damage or physical, sexual or psychological suffering to women, either

at the public or private sphere". This is a standard definition to the determination of legislations on the definition of violence in Latin America.

Feminicide is a critical issue in Latin America. According to data by the Gender Equality Observatory for Latin America and the Caribbean, based on absolute numbers, Brazil, Mexico, Honduras, Argentina and Colombia lead the ranking of deaths. In 2019, Brazil concentrated 42.6% of feminicide cases in Latin America (1,941, in comparison to the 4,555 cases), in 2018 it was 41.2%; in 2017, 38.6%; in 2016, 42.3%. From 2014 onwards, when Argentina started counting data, it accounted for 16.4% of cases. In 2015, when Mexico started recording such data, it accounted for 20.1% of cases. Brazil started registering these data in 2016.

Feminicide in Latin America regards critical data because of the country's magnitude. According to Anna Alvazzi del Frate (2011), the region is featured by having large numbers of incidence, either for death of women or feminicide; in other words, this is a context wherein women's physical vulnerability emerges as apparent peculiarity. Joseph (2017) points out data about the death of one woman every 30h in certain countries in Latin America.

Racovita (2015), who states that data from some countries in this region, such as Honduras, El Salvador, Brazil, among others, show records from eight to twenty-four times higher than those recorded in Europe and Canada, reinforces such a dynamics. It is important taking into account that it does not concern a crime exclusive to Latin America, since back in the 1980s and 90s, Stout (1991) analyzed feminicide cases in the United States and pointed towards the chronic of an intentional fatality.

This is a scenario that is not just clearly numerical, but that presents quite particular features that have their male chauvinist and misogynist perspective as parts of the social, historical, political and structural basis of Latin America (2014). Kimelblatt (2016) reasons that this region accounts for high social, economic, educational, political, legal and institutional inequalities in terms of gender. According to Luffy, Evans & Rochat (2015), it leads to social vulnerability dynamics that weaken women's lives.

Based on Wilson (2014), such a set of features in Latin America potentiates social exclusion mechanisms, as well as domination, since women end up not having the effective means to break the dependence structures that either limit or prevent violence. Such a reduced agency, in association with male chauvinism and misogyny, leads to a scenario that can potentiate violence to such as extent that likely actions to fight violence face resistance or fragility at their development stage.

Actually, the public policy matter towards fighting violence against women in Latin America is reinforced by Fregoso & Bejarano (2010), who understood that slow criminal proceedings, laws, policies and actions are little effective responses to the urgency of this problem and of its reading. Actually, Musalo & Bookey (2014) share this idea and argue that this region suffers with public policies based on the specific awareness of development of violence against women – if not of general violence -, as well as that their laws have little applicability, mainly when they are specific for feminicide cases.

According to Joseph (2017), the legislative production movement in Latin America placed historical milestones from the early 21st century on. International sentences to States put pressure over standardizing texts that aim at protecting women and at punishing offenders. This author understands that the use of terms feminicide/femicide have a purpose; as for the first case, it aims at limiting actions based on legal and political approaches; and, on the second one, they are used at criminological terms. This hypothesis can be tested, but we can further show that it cannot be confirmed.

## 6. RESULTS: FEMINICIDE IN LATIN AMERICA

The aim of this section is to analyze 18 laws from Latin American countries aimed at fighting women's death due to their gender condition. We will use the terms femicide and feminicide in each assessed country, depending on their laws. These are some important aspects to be highlighted, namely: interpretative differences and the reach of such laws within the scope of differences in the use of these terms. Elements are strictly analyzed within the feminicide scope and in the general comparative analytical frames.

Briefly, between 2007 and 2009, only two countries – Costa Rica and Guatemala – created a legislation on the herein addressed topic. Between 2010 and 2014, eleven countries have created their legislation, namely: Peru, El Salvador, Nicaragua, Mexico, Argentina, Bolivia, Honduras, Panama, Ecuador, Venezuela and Dominican Republic. From 2015 on, Brazil, Colombia, Paraguay, Uruguay and Chile were the last ones to develop their legislation. We must highlight that Belize, Cuba, Guyana, French Guiana, Haiti, Puerto Rico and Suriname do not have laws specific for feminicide or women's death – although these countries have laws that deal with violence against women; therefore, we opted not to include these countries in the analysis, since their texts did not have normative content about the assessed topic.

## 6.1 Feminicide/femicide in Latin America between 2007 and 2009: Costa Rica and Guatemala

Feminicide is included in the Criminal Code in Costa Rica through *Ley de Penalización de la Violencia Contra las Mujeres*, n. 8589 from April 25, 2007. Article 2 provides on the application of this law, which is limited to marital relationships, be them declared or not, as well as the application of cases regarding 15-18-year-old girls in relationships that are not associated with parental exercise. Accordingly, differently from most countries in Latin America, the legislation on violence towards women in Costa Rica has associated this manifestation with marital relationships, a fact that quite limits the reach of the law. Article 21 states the concept of feminicide as death of women when it is related to marital relationships be they declared or not – it concerns penalty ranging from 20 to 30-year imprisonment, in case an autonomous crime is proven. Despite the prison penalty, there is the disqualification penalty provided on article 17, which stops offenders from occupying public functions, from assuming trusteeship of property (penalty time ranges from one to twelve years).

Decree n. 22, from May 7, 2008, was enacted in Guatemala, it regulates feminicide and other forms of violence towards women. Guatemala innovated by combining feminicide, misogyny and power relationships in article 3. By addressing feminicide as violent death of women due to unequal power relationships between men and women, and because of the clear exercise of power against women – when misogynist contempt (which involves violent relationships) is developed -, it gets clear that the reach of the law is not only legal, but political-institutional; it sets the relationships between men and women as unequal, based on social structures. Article 6 addresses feminicide as death of women just because of the condition to be a woman; it lists eight likely circumstances for this crime, and it highlights feminicide in Guatemala as autonomous crime, rather than a circumstance qualifying the crime of homicide. The penalty to feminicide ranges from 25 to 50-year imprisonment. Thus, article 10 provides on the aggravating circumstance without necessarily indicating increase in penalty. There is an innovative aspect in law in Guatemala, and it regards three moments. First, art. 9, which prohibits the offender to use cultural or religious excuses to justify its act or to plea innocence. Second, arts. 12 and 13, according to which, the State is accountable for ensuring that the offender will repair the victim and for omission by public agents.

### 6.2 Feminicide/femicide in Latin America between 2011-2014: El Salvador, Nicaragua, Mexico, Argentina, Peru, Bolivia, Honduras, Panama, Ecuador, Venezuela and Dominican Republic

Decree n. 520 from December 14, 2010, enacted in El Salvador, provides on *Ley Especial Integral para una Vida Libre de Violencia para las Mujeres*. It states that violence against women is based on inequality between men and women, and on historical and social processes substantiated by power inequality. The innovation in the Salvadoran law is observed in article 10, which limits the "modalities of violence" regarding violent acts due to social context, be it community, institutional or labor – it is also not found in Latin America. Feminicide is a public criminal action regulated by art.45 in El Salvador: death of a woman due to hate for its condition of being woman; its penalty ranges from 20 to 35-year imprisonment, based on five circumstances, namely: previous violence, abuse of vulnerability, abuse of hierarchy, previous sexual abuse and mutilation. Feminicide is described as autonomous crime when the active offender is not generalized and the passive agent is a woman – it is not related to the use of term "gender". Any conciliation measure is forbidden for feminicide cases based on article 58. Article 46 deals with qualified feminicide based on five aggravations to increase the penalty from 30 to 50 years.

The violence against women issue in Nicaragua is presented in *Ley Integral Contra la Violencia Hacia las Mujeres* – law n. 779, from 2012, which also changed the Criminal Code in this country. This law considers gender violence a perverse reality observed in Nicaragua, which violates the rights and integrity of women, in its very preamble - a fact that has demanded protective, preventive and punitive mechanisms. Article 2 limits law application as its scope, as well as public and private places where one exerts different forms of violence against women in a punctual or repeated way (just as in the Paraguayan law). Article 9 typified feminicide in Nicaragua as autonomous crime involving the death of a woman in public or private spaces, committed by a man, at unequal power relationship, based on eight circumstances. We must highlight the inclusion of sexual intercourse denial as circumstance to justify feminicide, since the sexual act performed without consent within a marital relationship is also a violent act against women. Article 9 also makes a distinct dosimetry between feminicide[7] crimes

[7] There is no justification in the Criminal Code and in Law n. 779, from 2012, highlighting the reason for the difference in penalty.

committed in public spaces - penalty ranging from fifteen to twenty years in prison – and those taking place in private places – penalty time ranging from twenty to twenty-five-year imprisonment. In both cases, if there are two or more circumstances, the maximum penalty would be applied.

Feminicide in Mexico was included in the Criminal Code based on *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia,* from June 14, 2012 – it was provided on the chapter about offenses against life, in art. 325 of the Criminal Code, and stated feminicide as the death of a woman due to gender reasons based on seven circumstances – penalty ranging from forty to sixty years in prison and fine. Aggravating circumstances included sexual violence, family violence, marital relationships and exposure of the victim's body. It does not mention the gender issue regarding the active offender, but it mentions the passive agent's gender. Nevertheless, feminicide in Mexico is an autonomous crime linked to a whole series of subjective and objective aggravations provided on the country's Criminal Code.

Argentina enacted law n. 26.791 at late 2012, it changed the country's Criminal Code. Articles 80 to 89 regulate homicide in Argentina, and it provides penalty ranging from eight to twenty-five years. Article 14 states that crimes provided on art. 80 are considered heinous. Article 80 addresses crimes of homicides as those featured by some conditions and their penalty is life imprisonment – paragraphs 1 (marital relationships), 4 (hate for gender or gender identity), 11 (homicide of women committed by men due to gender violence) and 12 (homicide committed in order to cause the person who the offender had sex with to suffer) of this article. The terms feminicide or femicide are not used in the Argentinian law, it just uses the term "death of women" committed by a man. At the same time, there are no listed circumstances for women's death interpretation due to their condition of being woman, only four general guidelines that cover marital relationships, gender violence or the cause of suffering. Yet, in Argentina, the death of women due to their condition of being woman is not an autonomous crime, but it is a subjective qualifying circumstance of the crime of homicide – it leads to the most aggravating penalty – life imprisonment.

Peru enacted law n. 30.068 on July 18, 2013, it provides on changes in the Peruvian Criminal Code in order to prevent, punish and rule out feminicide. This law, in its art.2, creates art. 108-A, which defined feminicide as "death because of the condition of being woman", and it limits four contexts: family violence, coercion or sexual harassment, power harassment in trust and contractual relationships, any form of

discrimination within marital relationships or living with the offender. Penalty for this crime ranges from fifteen years (minimum) to twenty-five years; seven aggravating circumstances are set, they range from age to pregnancy, impossibility to resist, sexual violence or mutilation, and to human trafficking. Accordingly, the crime of feminicide is autonomous and it is addressed in the Peruvian Criminal Code. Therefore, although the code does not clearly refer to it, it indirectly mentions the common forms of violence against women in Latin American laws.

Law n. 348 was enacted in Bolivia on March 9, 2013; it regards *Lei Integral para Garantir às Mulheres uma Vida Livre de Violência*. This Bolivian law highlights the combat of violence against women and discriminations as priorities of the national policy, which must be coordinated by different governmental spheres (arts. 3 and 5) based on fourteen principles and values that concern the guarantee of women's rights (art. 4). Innovations were presented in the definitions of "violence situation", "non-sexist language", and "assumptions sensitive to gender" as part of public policy propositions. With specific respect to feminicide, the whole Bolivian law, in its article 83, determined important changes in the country's Criminal Code, and it has recorded the impossibility of having feminicide cases interpreted in light of art. 254, which deals with homicide due to violent emotion. Yet, there is art. 265, which provides on induction to suicide due to violence cases. Other changes in the Code are observed in art. 154, which addresses the crime of not following protective measures related to violence against women. Art. 252, which provided on crime of feminicide and whose penalty is thirty years in prison, is based on nine circumstances – offenders have no right to pardon. Accordingly, feminicide in Bolivia is an autonomous crime that can have aggravating qualifications. There is no mention on offenders' gender.

Decree n. 23, from April 6, 2013, was enacted in Honduras; it includes the crime of femicide in the Honduran Criminal Code. This decree results from art. 59 of the country's constitution, which states the human person as the very end of both the society and the State, it is inviolable in its dignity, mainly when it comes to life, as shown in art. 6 of the constitutional text. This decree also states the commitment to CEDAW and to the Belém Convention, which forces the State to protect and guarantee the prevention, investigation and punishment of violence against women. The creation of art. 321-A was an innovative aspect, since it criminalized communication and broadcast media that outspread the contempt and hate contents listed in art. 321. Feminicide in Honduras is regulated by art. 118-A, which is understood as the death of women due to gender issues,

practiced with contempt and hate – penalty foresees prison from thirty to forty years, based on four limiting circumstances. There are few aggravating dimensions and other mitigating ones; however, the Honduran law does not provide on alternatives and mitigations. The crime of femicide in Honduras is autonomous, and it defines the active offender as belonging to the male sex.

On October 24, 2013, Panama enacted law n. 82, which takes prevention and protection measures towards violence against women, as well as typifies the crime of femicide and other offenses – it changed the country's Criminal Code. Femicide in Panama is inserted in the Criminal Code through art. 132-A; it is addressed as an offense against life, in the homicide section. This article provides on femicide as autonomous crime, according to which a woman is killed based on ten circumstances – penalty ranges from twenty to thirty-year imprisonment. Marital and trust relationships, crime in the presence of the children, abuse of physical and psychological vulnerability, revenge, contempt towards the victim's body, body exposure and pregnant women are among the analyzed circumstances. A whole series of aggravating circumstances are provided throughout the Criminal Code during several situations. The active offender is neutral and the passive agent is a woman. Femicide in Panama has no dimension linked to gender, but it makes it clear the use of the term "condition of being woman".

The reform created the Integral Criminal Organic Code in Equator, on January 28, 2014[8], which provides on violence towards women and femicide. The Ecuadorian Criminal Code addresses femicide as crime against life in art. 141; it is defined by death of a woman due to power relationships expressed through any type of violence given her gender condition – penalty ranges from twenty-two to twenty-six years in prison. Femicide in Equator is an autonomous crime that accepts qualifications, since it is a public criminal action that prohibits pardon (art. 73). The offender's sex is not identified and the victim is a woman, but the crime is not related to the use of the term "gender". Article 142 concerns the four aggravating circumstances for femicide: victim's denying the relationship; previous marital, family, intimate, friendship and companionship, labor, school relationships, or any other relationship that is linked to gender hierarchy dimensions; crime committed in the presence of the children; victim's body exposure in public places.

[8] Available at: <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ECU/INT_CEDAW_ARL_ECU_18950_S.pdf>. Accessed on August 26, 2021.

Venezuela enacted law n. 40.548, from November 25, 2014, which concerns *Lei Orgânica sobre o Direito das Mulheres à uma Vida Livre de Violência*. This law was inspired by the Declaration of Rights of Women, by Olympe de Gouges. It understands the gender issue as having deep roots in societies' patriarchal order. Femicide in Venezuela is addressed as an extreme form of gender violence, in item 20 of art. 15 – penalty ranges from 20 to 25 years in prison, as provided on art. 57. Accordingly, femicide in Venezuela is an autonomous crime committed by offenders due to sex; it allows aggravating qualification circumstances. This last article limits five circumstances of subordination and domination relationships based on gender; they provide on an act full of hate or contempt towards women, some of them involve means and modes. Article 58 provides on four aggravating circumstances associated with intimate relationships, and contractual or affective reactions, sexual acts or the case of crimes by organized groups. Article 59 provides on other aggravating circumstances in case of women's induction to suicide. Articles 57, 58 and 59 of the Organic Law, which concern femicide, make it clear that the passive agent of femicide violence is gender-based, and it opens a window for the overcoming of biological dimensions; however, the offender is ambiguous, since the law does not necessarily refer to it as belonging to the male sex, it only applied the world "masculine" in a universal linguistic concept.

The Dominican Republic enacted law n. 550, from December 19, 2014, to change the country's Criminal Code. This new text is the most synthetic among the assessed ones. Violence against women is highlighted in art. 123 as action or conduct, in public or private space, that can cause damage or suffering for women because of their gender – penalty ranges from two to three years in prison. This is an innovation of the Dominican law, since it is not common associating the forms of violence with the gender aspect, but only set the forms of it, *per se*. Feminicide in the Dominican Republic is difficult to judge according to interpretation based on the Brazilian organization. Article 98 regulates homicide in the Penal Code – penalty ranges from ten to twenty years in prison; article 99 regulates the aggravating conditions that can rise the penalty to 30-40 years. Line "i", in paragraph 4, addresses homicide as the death "of any person due to its gender, sexual preference or orientation". However, feminicide is expressly included in art. 100, and it is defined as "who, in the attempt or intention to have a relationship, kills a woman with intent" – penalty ranges from 30 to 40 years (based on the aggravating circumstance described in art. 99). The Criminal Code in the Dominican Republic considers feminicide as a subjective qualifying crime of homicide, despite its description in an article other

than that about homicide. Nevertheless, the offender in feminicide cases do not have defined sex, and the victim is a woman – one cannot observe the use of the term "gender".

### 6.3 Feminicide/femicide in Latin America between 2015 and 2020: Colombia, Paraguay, Uruguay and Chile

Feminicide is included in the Colombian Criminal Code; it is expressed by law n. 1.761, from 2015, which changed the chapter concerning homicide. Feminicide was included in art. 104-A as the death of women due to their condition of being woman or due to gender identity, based on six circumstances, such as marital, companionship and trust relationships; labor relationships; physical, sexual, psychological and previous patrimonial violence; among others. Penalty ranges from 250 to 500 months in prison. Article 104-B highlights the seven punishing aggravating circumstances of feminicide that can rise penalty from 500 to 600 months in prison. Item 2, in art. 119 of the Criminal Code, was also changed in order to double the penalty in case of crime against children. Accordingly, feminicide in Colombia is an autonomous crime whose offender is not specified in terms of gender, but the passive agent is a woman.

Paraguay enacted law n. 5.777 on December 6, 2016; it concerns "Full Protection to Women Against all Forms of Violence", as described in its article. It was firstly done to set the prevention policies and strategies, the protection, and the punishment and full reparation mechanisms to victims of violence against women in public or private places. Feminicide is described in art. 50 as death of a woman due to her condition of being woman, based on six terms: marital and trust relationships, family bonds, death resulting from other forms of physical, sexual, psychological or patrimonial violence, abuse of formal hierarchy or of power relationships, denial of the relationship by the victim. Penalty ranges from ten to thirty years in prison, without aggravating circumstances. Feminicide in Paraguay is an autonomous crime that does not mention the offender's sex, but the victim belongs to the female sex (the law mentions the term "gender").

Uruguay enacted law n. 19.538, from October 9, 2017, which provides on *Actos de Discriminación y Femicidio.* It aimed at changing articles 311 and 312 of the country's Criminal Code. One of the nomenclature aspects adopted by the Uruguayan Code lies on title XII: "Of Offenses against Man's Physical and Moral Personality"; in other words, it embodies a "gender" connotation that understands man as universal subject of the criminal dimension. The death of women due to marital relationships, sexual crime or

crime committed in front of underage individuals in Uruguay is a special aggravating circumstance provided on paragraph 1, of art. 311, which is related to crime of homicide described in article 310. Femicide, in its turn, is interpreted as special aggravating circumstance provided on paragraph 8, of art. 32, as "crime against women due to hate or contempt, given their condition of being woman" – penalty ranges from 15 to 30 years in prison. Three traces of hate are observed; thus, femicide in Uruguay is a subjective qualifying circumstance for crime of homicide whose offender has no defined sex, but the victim is a woman (there is no association with the dimension of using the term "gender").

On March 2, 2020, Chile enacted law n. 21.212, which has changed the Criminal Code, the Criminal Process and law n. 18.216 in the matter concerning typifying crime of femicide. The first change resulted from modifications in art. 372, which provides on sexual crimes whose violence results in the victim's homicide; when the victim is a woman the offense will be analyzed as femicide. Another change was made in order to differentiate simple homicide (art. 391) from femicide (art. 390bis). Femicide is addressed as crime against life, based on four basic points: art. 390bis, based on marital and companionship relationships; 390ter, regards the death of women due to gender (it involves five circumstances); 390quáter, it highlights four aggravating circumstances; 390quinquies, it regulates the impossibility of applying mitigating measures in case of femicide. Circumstances limiting femicide in Chile encompass sentimental and sexual relationships, abuse of prostitution, previous or subsequent sexual violence, motivation based on gender, abuse of vulnerabilities or power manifestation situations. Penalty for crime of femicide in Chile is life imprisonment. Accordingly, femicide is an autonomous crime in Chile. It is important highlighting that the Chilean law ratifies that the offender in crime of femicide is a man and the victim is a woman (it is based on the gender dimension).

## 7. DISCUSSION

Legislative production about feminicide/femicide in Latin America is relatively new. Among all created legislations, Costa Rica was the first to do so, back in 2007, and Chile was the last country to enact its legislation on this topic, in 2020; more than ten years have passed between one and the other. We can highlight that after the "great" cases discussed by the Inter-American Committee for Human Rights (ICHR-AEO) and by the

Court itself, in 2001 and 2009, respectively - the Court judged Maria da Penha and Campo Algodoeiro cases – one could observe a Feminicide/Femicide Agenda that has been articulated and reinforced in Latin America. It does not refer just to cases in these countries – with respect to Brazil, fourteen years have passed between the sentence in the Commission and the effective legislation; it took three years in Mexico -, but to how the sentences have emphasized some windows of opportunities to the discussion about violence against women and women murdering, based on gender. The most productive phase regards that between 2010 and 2014, when 11 countries have elaborated their texts on this subject.

We can point out the treaty about women murdering, which was attacked by changes in the Criminal Code, since none can be sentenced for a crime that is not provided by law. The greatest challenge lies on evidencing that the purposeful death of women based on sex/gender is a dimension to be criminally typified. Accordingly, the main strategy adopted by twelve of the eighteen countries (Guatemala, Mexico, Argentina, Peru, Honduras, Ecuador, Dominican Republic, Colombia, Brazil, Paraguay, Uruguay and Chile) only focused on changing their Criminal Codes. Six countries (Costa Rica, El Salvador, Nicaragua, Bolivia, Panama and Venezuela) suggested changing the Criminal Code based on the elaboration of general laws to discriminate any approach in public policies, criminal changes and in the regulation of mechanisms aimed at fighting violence towards women; they even interpreted women murdering based on sex/gender as extreme violence.

The nomenclature issue linked to women murdering seem to not necessarily echo on the inter-protections by Russel and Nicole Van de Vem (1976) or by Marcela Lagarde (2006a) about the use of the proper term. Nine countries adopted the term femicide, whereas eight countries use feminicide; Argentina in its turn, adopts the expression “death of women”. If we start from the term “feminicide”, based on Marcela Lagarde - who highlights the State’s responsibility -, only seven countries (Guatemala, El Salvador, Bolivia, Honduras, Panama, Venezuela and Paraguay) expressly mention the role of the State as (co)responsible agent for this crime, be it in the elaboration of public policies or as being the direct or indirect sponsor of reparations to this act of violence.

With regards to the ones that adopt the term “feminicide”, which – based on the logic by Lagarde (2006b) - would imply greater responsibility by the State, only two countries (El Salvador and Bolivia) have created a criminal legislation based on programs to fight violence, whereas four countries (Costa Rica, Nicaragua, Panama and Venezuela)

did the same, but also adopted the term “femicide”, which would first of all have a criminal logic in its essence. Yet, only three countries among the ones that have used the term “feminicide” have also mentioned the State, whereas four countries mentioned “femicide”. Regarding countries that only made changes in their criminal codes, five have used “femicide”, six used the term “feminicide” and only one called this crime “death of women”. Therefore, there is not association between the use of the terms feminicide/femicide based on original concepts of them. Such a perspective can be observed in Chart 1, below.

**Chart 1**. Institutional dimensions of feminicide/femicide laws in Latin America

| Country | Year | Law | Type | Used term |
|---|---|---|---|---|
| Costa Rica | 2007 | 8589 | Program/CC | Femicide |
| Guatemala | 2008 | Decree 22 | Change in the CC | Femicide |
| El Salvador | 2010 | Decree 520 | Program/CC | Feminicide |
| Nicaragua | 2012 | 779 | Program/CC | Femicide |
| Mexico | 2012 | w/n | Change in the CC | Feminicide |
| Argentina | 2012 | 26.791 | Change in the CC | Women’s death |
| Peru | 2013 | 30.068 | Change in the CC | Feminicide |
| Bolivia | 2013 | 348 | Program/CC | Feminicide |
| Honduras | 2013 | Decree 23 | Change in the CC | Femicide |
| Panama | 2013 | 82 | Program/CC | Femicide |
| Ecuador | 2014 | w/n | Change in the CC | Femicide |
| Venezuela | 2014 | 40.548 | Program/CC | Femicide |
| Dominican Republic | 2014 | 550 | Change in the CC | Feminicide |
| Colombia | 2015 | 1.761 | Change in the CC | Feminicide |
| Brazil | 2015 | 13.104 | Change in the CC | Feminicide |
| Paraguay | 2016 | 5.777 | Change in the CC | Feminicide |
| Uruguay | 2017 | 19.538 | Change in the CC | Femicide |
| Chile | 2020 | 21.212 | Change in the CC | Femicide |

**Source:** Elaborated by the author.

When it comes to the criminological aspects, fourteen of the eighteen countries (77%) have criminalized women murdering as autonomous crime. With respect to penalty, only Brazil and Uruguay have shorter penalties than the least penalties recorded in Latin America, namely: fifteen years. Penalties often range from fifteen to forty years in prison, except for Mexico (which starts from forty years), Argentina and Chile (which adopted life imprisonment). Most countries adopt aggravating circumstances to increase penalty, regardless of having it as autonomous crime, or not, except for Costa Rica, Paraguay, Uruguay, Argentina and Chile (in case of Argentina and Chile, penalty is life imprisonment – it justifies the non-adoption of aggravating circumstances). It is also possible observing that fifteen of the eighteen countries (except for Argentina, Uruguay

and Chile) connect these legislations with domestic violence, be it by criminalizing it, or not; as shown in Chart 2, below.

We can also highlight that, three among the five countries that have adopted the term “femicide” - which brings along the perspective of increasing penalties and criminal reach – (Costa Rica, Uruguay and Chile) did not provide on aggravating circumstances to increase penalty; they also do not highlight the connection with domestic violence (except for Costa Rica). Seven among the nine countries that adopt the term “femicide” have minimal penalties (twenty years or more). Peru, Brazil and Paraguay adopt the term “feminicide” and account for the three shortest minimal penalties. Somehow, based on such an aspect, the term “feminicide” is quite in compliance with the original term.

**Chart 2.** Criminological dimensions of feminicide/femicide laws in Latin America

| Country | Feminicide typification | Qualifying approach | Aggravating circumstance | Articulation with domestic violence | Penalty (in years) |
|---|---|---|---|---|---|
| Costa Rica | Autonomous crime | No | No | Yes | 20-35 |
| Guatemala | Autonomous crime | No | Yes | Yes | 25-50 |
| El Salvador | Autonomous crime | No | Yes | Yes | 20-35 |
| Nicaragua | Autonomous crime | No | Yes | Yes | 20-25 |
| Mexico | Autonomous crime | No | Yes | Yes | 40-60 + fine |
| Argentina | No | Subjective qualification of homicide | No | No | Life imprisonment |
| Peru | Autonomous crime | No | Yes | Yes | 15-25 |
| Bolivia | Autonomous crime | No | Yes | Yes | 30 |
| Honduras | Autonomous crime | No | Yes | Yes | 30-40 |
| Panama | Autonomous crime | No | Yes | Yes | 25-30 |
| Ecuador | Autonomous crime | No | Yes | Yes | 22-26 |
| Venezuela | Autonomous crime | No | Yes | Yes | 20-25 |
| Dominican Republic | No | Subjective qualification of homicide | Yes | Yes | 30-40 |
| Colombia | Autonomous crime | No | Yes | Yes | 20-41 |
| Brazil | No | Subjective qualification of homicide | Yes | Yes | 12-30 |
| Paraguay | Autonomous crime | No | No | Yes | 10-30 |
| Uruguay | No | Subjective qualification of homicide | No | No | 15-30 |
| Chile | Autonomous crime | No | No | No | Life imprisonment |

Source: Elaborated by the author

With respect to the offender, six countries (Costa Rica and Guatemala, El Salvador, Mexico, Peru and Bolivia) do not clearly define its sex, this information is ambiguous and allows interpretations at law enforcement time. Eight countries (Panama, Ecuador, Venezuela, Dominican Republic, Colombia, Brazil, Paraguay and Uruguay) adopt neutral terms in the language to describe offenders, and it allows the broader application of the criminal legislation. Among the countries that adopt the neutral term or that are ambiguous, eight use “feminicide” and six adopt “femicide” – at first, it makes

sense, since the term “femicide” is clearly associated with death of women caused by men; it regards misogynist action. Only four countries (Nicaragua, Argentina, Honduras and Chile) understand man as offender – accordingly, three countries adopt the terms “femicide” and “women’s death”, a fact that meets the use of the original sense of criminal emphasis.

With respect to the term “woman” adopted by the legislation, ten countries (Costa Rica, El Salvador, Nicaragua, Peru, Bolivia, Panama, Ecuador, Dominican Republic, Brazil and Uruguay) show a biological character in their legislations by associating the term “woman” with the “sex” dimension. It limits the application of protective mechanisms towards non-biologically born women of this sex or mechanisms that consider non-biologically born women of the female sex who can be killed due to their condition of being woman. Eight countries adopt the gender understanding (Guatemala, Mexico, Argentina, Honduras, Venezuela, Colombia, Paraguay and Chile) and it allows putting aside biologically oriented interpretations. Of the two countries that adopt the term “feminicide”, only three understand gender as a meaning gave to “woman”, whereas four of the nine countries that adopt “femicide” do the same – such an understanding allows highlighting that still there is the understanding of the term “woman” in its biological dimension, regardless of its conceptual use adopted to refer to women murdering.

As for the main reason for violence, eleven countries (Guatemala, El Salvador, Mexico, Peru, Honduras, Panama, Venezuela, Colombia, Paraguay, Uruguay and Chile) use the term “condition of being woman” to refer to the main motivation bases, be them in the very text of the law defining it or the crime, or in the circumstantial dimensions that guide the interpretation. Costa Rica has the most restrictive legislation, since it limits feminicide application to marital relationships. Nicaragua and Equator understand “unequal power relationships” as the reason for violence against women. Argentina adopts the term “gender violence”, the Dominican Republic uses “gender reason” and Brazil applies the term “condition of female sex”. Only Bolivia does not adopt a reason for violence against women. Finally, only Costa Rica and Ecuador do not adopt circumstances to define the contexts in which femicide takes place. See Chart 3, below.

**Chart 3.** Generalized dimensions of feminicide laws in Latin America

| Country | Offender | Used term | Meaning to the term woman | Case orientations |
|---|---|---|---|---|
| **Costa Rica** | Ambiguous | Femicide | Biological | No |
| **Guatemala** | Ambiguous | Femicide | Gender | Yes |
| **El Salvador** | Ambiguous | Feminicide | Biological | Yes |
| **Nicaragua** | Man | Femicide | Biological | Yes |
| **Mexico** | Ambiguous | Feminicide | Gender | Yes |
| **Argentina** | Man | Women's death | Gender | Yes |
| **Peru** | Ambiguous | Feminicide | Biological | Yes |
| **Bolivia** | Ambiguous | Feminicide | Biological | Yes |
| **Honduras** | Man | Femicide | Gender | Yes |
| **Panama** | Neutral | Femicide | Biological | Yes |
| **Ecuador** | Neutral | Femicide | Biological | No |
| **Venezuela** | Neutral | Femicide | Gender | Yes |
| **Dominican Republic** | Neutral | Feminicide | Biological | Yes |
| **Colombia** | Neutral | Feminicide | Gender | Yes |
| **Brazil** | Neutral | Feminicide | Biological | Yes |
| **Paraguay** | Neutral | Feminicide | Gender | Yes |
| **Uruguay** | Neutral | Femicide | Biological | Yes |
| **Chile** | Man | Femicide | Gender | Yes |

**Source:** Elaborated by the author.

Briefly, we can highlight a general scenario in Latin America regarding the legislative production towards crime of women murdering based on sex/gender reasons. This crime has no conceptual input inspired by the theoretical interpretations developed by the academia; therefore, using the terms femicide/feminicide seems not to be substantiated by any clear and cohesive criterion, although countries that adopt "femicide" – which brings along the perspective of increasing penalties and criminal reach -, are the ones that do not have significant penalties, including life imprisonment. This finding points out the context of penalty often ranging from 15 to 40 years in this region, as well as the use of the term "femicide" by these countries in its criminal sense. This is a crucial matter, since it shows that the legislative production does not follow the scientific research, which can help creating the very bases for the understanding of the crime phenomenon.

The women's murdering issue is fought through changes in the Criminal Code, since the perception about death of women due to sex/gender reasons is new in Latin America. Accordingly, most countries criminalize it after the implementation of feminicide/femicide as autonomous crime, because it evidences the disapproval of this crime and the urgency of having actions taken by the State to punish crimes against life. Nevertheless, most countries adopt aggravating circumstances that increase penalties, as

well as connect their legislations to domestic violence. One third of the countries has changed their Criminal Codes to create programs applied to fight violence against women. Therefore, this is a complicated process according to which women's murdering is understood based on the punishing bias, and it is disregarded from measures that influence the social structure and change views of the world and behaviors.

The term "woman" still faces significant range in its biological dimension, regardless of the conceptual use adopted to refer to women's murdering. At this point, we can observe the reason why a little bit more than half of countries in Latin America have adopted the term "condition of being woman", because it would cover the gender perspective dimension. Once again, there is a long distance between lawmakers and scientific research about this topic, mainly if one takes into account the feminist bias (which is not radical) and gets away from the biological concepts to refer to a plural dimension observed in the expression "to be woman".

Based on another aspect, most Latin American countries are ambiguous or adopt neutral terms to refer to offenders in women's murdering cases; the minority of countries limits man as offender. This aspect allows two interpretations that have further consequences. The first interpretation lies on distinguishing neutral from ambiguous to highlight that violence against women can be practice by other women who are capable of embodying male chauvinist elements observed in the historical, social and political context of a given society; thus, it regards general responsibility. When it comes to the second interpretation, when one limits the offender as belonging to the male sex, the system adopts the perspective that most crimes of women's murdering are committed by men (at their most different bonds), but, on the other hand, it also reinforces women responsibility as likely offender of other women (it is also a discriminating element because it reduces women to an entity incapable of murdering).

## 8. FINAL CONSIDERATIONS

A general scenario of Latin America about its legislative production points out that the use of terms femicide/feminicide has no clear and cohesive criterion, although women's murdering is fought through changes in Criminal Codes, without necessarily concerning general programs and laws that provide on violence against women (and it can point out a certain "hurry" in developing laws as fast responses). Thus, most countries criminalize this action of violence by implementing feminicide/femicide as autonomous

crime, and it evidences the disapproval of this crime and the urgency of having the State taking actions to punish crimes against life.

The term "woman" still faces a broad reach in the biological dimension, regardless of the conceptual use adopted to refer to women's murdering. Other aspect shows that most countries in Latin America are ambiguous or adopt neutral terms to refer to offenders in women's murdering; the minority of countries limits man as offenders. It is also essential highlighting that a significant fraction of these countries connects feminicide/femicide to domestic violence and the State's responsibility for ensuring reparation to victims.

The aforementioned scenario does not erase problems linked to the legislative production. The confusion in using the terms feminicide/femicide evidences the distance between the scientific community - that assesses this topic - and lawmakers. The continuous use of the biological term meaning "woman" is the very proof of it. Nevertheless, the emphasis on the creation of specific criminal offenses without connection to other violence types or programs to fight this phenomenon points out the fast responses that do not necessarily combine the dynamics of this crime. Finally, the offender matter, when it comes to its sex, is a barrier yet to be faced, since the maturity adopted by the legislations implies in not coping due to interpretations about limiting, or not, the offender as belonging to the male sex.

Accordingly, the challenge faced at the Brazilian institutional order, mainly in the Latin America context – whose indices progressively grow -, lies on configuring a cohesive and clear legislation to be applied in order to have impact on the social structure to change behaviors and to create a culture that privileges life. This is the matter to be faced in Brazil and, consequently, to motivate studies on feminicide in Latin America.

## 9. REFERENCES

Almeida, C. F. (1998). *Introdução ao Direito Comparado*. 2.ed. Coimbra: Almedina.

Alvazzi Del Frate, A. (201). *When the victim is a woman*. In: Krause, K.; Muggah, R.; Gilgen, E. (eds). *Global Burden of Armed Violence 2011*. Geneva: Geneva Declaration: 113-144.

Bianchini, A. (2016). A qualificadora do feminicídio é de natureza objetiva ou subjetiva? *Revista Emerj*, 19(72): 203-219.

Bittencourt, C. R**.** (2018). *Tratado de Direito Penal: Parte Geral*. 24. ed. São Paulo: Saraiva.

Bravo, R. (2019). *Feminicídio: Tipificação, poder e discurso*. Rio de Janeiro: Lumen Juris.

Campos, C. H. (2020). *Criminologia Feminista: Teoria feminista e crítica às criminologias***.** 2. Ed. Rio de Janeiro: Lumen Juris.

David, R. (1953). *Tratado de Derecho Civil Comparado: Introducción al estudio de los derechos extranjeros y al método comparativo*. Madrid: Editorial revista de Derecho Privado.

Dawson, M & Carrigan, M. (2020a). Identifying Femicide Locally and Globally: Understanding the Utility and Accessibility of Sex/Gender-Related Motives and Indicators, *Current Sociology*, 69(5): 682–704.

Dawson, M. & Carrigan, M. (2020b). Problem representations of femicide/feminicide legislation in Latin America. *International Journal for Crime, Justice and Social Democracy*, 9(2): 1-19.

Dias, M. B. (2015). *Lei Maria da Penha: A efetividade da Lei 11.340/2006 de combate à violência doméstica e familiar contra a mulher*. São Paulo: Revista dos Tribunais.

Espínola, C. C. (2018). *Dos Direitos Humanos das Mulheres à Efetividade da Lei Maria da Penha*. Curitiba: Appris.

Fregoso, R-L.; Bejarano, C. (2010). *Introduction: A cartography of femicide in the Americas*. In: Fregoso, R-L.; Bejarano, C (eds) *Terrorizing Women: Femicide in the Americas*. Durham: Duke University Press, 1-42.

Garcete, C. A. (2020). *Homicídio: aspectos penais, processuais, tribunal do júri e feminicídio*. São Paulo: Revista dos Tribunais.

Grassi, C. F. S. (2017). Femicídio no Brasil: O assassinato de mulheres em razão do gênero e sua tipificação no ordenamento jurídico pátrio. *Revista do CEPEJ*, 16: 93-115.

Gomes, I. S. (2018). Feminicídios: um longo debate. *Revista Estudos Feministas*, 26(2): e39651.

Gouges, O de. (2014). *Femme, reveille-toi!.* Paris: Gallimard,

Johnson, A. (1997). *The Gender Knot – Unraveling our Patriarchal Legacy*. Philadelphia: Temple University Press.

Joseph, J. (2017). Victims of femicide in Latin America: Legal and criminal justice responses. *Temida*, 20(1): 3-21.

Lagarde y de los Rios, Marcela. (2006a). *Introducción*. En: Russell, D. & Harmes, R. (Edits.). *Feminicidio: una perspectiva global***.** México: CEICH-UNAM.

Lagarde y de los Rios, Marcela. (2006b). Del femicidio al feminicidio. *Desde el jardín de Freud*, 6: 216-225.

Kimelblatt, M. (2016). Reducing harmful effects of machismo culture on Latin American domestic violence laws: Amending the Convention of Belém do Pará to resemble the Istanbul Convention. *The George Washington International Law Review*, 49(2): 405–439.

Luffy, S.; Evans, D.; Rochat, R. (2015). "It is better if I kill her": Perceptions and opinions of violence against women and femicide in Ocotal, Nicaragua, after Law 779. *Violence and Gender*, 2(2): 107–111.

Maximiliano, C. (2000). *Hermenêutica e aplicação do Direito*. 18. Ed. Rio de Janeiro: Forense.

Mcquigg, R. (2011). *International Human Rights Law and Domestic Violence: The Effectiveness of International Human Rights Law*. New York: Routledge.

Meneghel, S. N. & Portella, A. P. (2017). Feminicídios: conceitos, tipos e cenários. *Ciência & Saúde Coletiva*, 22(9): 3077-3086.

Messias, E. R.; Carmo, V. M.; Almeida, V. M. (2020). Feminicídio: Sob a perspectiva da dignidade da pessoa humana. *Revista Estudos Feministas*, 28(1): e60946.

Munevar, D. (2012). Delito de femicidio. Muerte violenta de mujeres por razones de género. *Revista Estudios SocioJurídicos*, 14(1): 135-175.

Musalo, K. & Bookey, B. (2014). Crimes without punishment: An update on violence against women and impunity in Guatemala. *Social Justice*, 40(4): 106–117.

Nucci, G. S. (2014). *Leis Penais e Processuais Penais comentadas*. v. 1. Edição revista, atualizada e ampliada. Rio de Janeiro: Forense.

OACNUDH [Escritório Regional para a América Central do Alto Comissariado das Nações Unidas para os Direitos Humanos]. (2014). *Modelo de protocolo latino-americano para investigação de mortes violentas de mulheres (femicídios/feminicídios)*. Brasília: OACNUDH.

Marques, C. G. P. (2020). Colonialidade e feminicídio: superação do "ego conquiro" como desafio ao Direito. *Opinión Jurídica*, 19(38): 201-226.

Prieto-Carrón, M.; Thomson, M.; Macdonald, M. (2007). No more killings! Women respond to femicides in Central America. *Gender and Development*, 15(1): 25–40.

Racovita, M. (2015. *Lethal violence against women and girls*. In Alvazzi Del Frate, A.; Krause, K.; Nowak, M. (eds). *Global Burden of Armed Violence 2015: Everybody Counts*. Geneva: Geneva Declaration, 87-120.

Richardson, R. J. et al. (2007). *Pesquisa social: métodos e técnicas*. 3. ed. rev. ampliada. São Paulo: Atlas.

Russell, D. & Van De Ven, N. (1976). *Crimes against Women: The Proceedings of the International Tribunal.* Milbrae, California: Les-Femmes.

Saffioti, H. (2015). *Gênero, patriarcado, violência*. 2. Ed. São Paulo: Fundação Perseu Abramo e Expressão Popular.

Segato, R. (2013). *La escrita en el cuerpo de las mujeres asesinadas en Ciudad Juárez*. Buenos Aires: Tinta Limón.

Segato, R. (2003). *Las estructuras elementales de la violencia: ensayos sobre género entre antropología, psicoanálisis y derechos humanos*. Buenos Aires: Prometeo.

Stout, Karen. (1991). Intimate Femicide: A National Demographic Overview, *Journal of Interpersonal Violence***,** 6(4): 476–85.

Tavarez, J. (2018). *Fundamentos de Teoria do Delito*. Florianópolis: Tirant lo Blanch.

Wilson, T. D. (2014). Violence against women in Latin America. *Latin American Perspectives*, 41(1): 3–18.

Wollstonecraft, M. (2016). *Reivindicação dos Direitos das Mulheres*. Tradução de Ivania Pocinho Motta. São Paulo: Boitempo.

Xavier, R. R. (2019). *Feminicídio: Análise jurídica e estudo em consonância com a Lei Maria da Penha*. 2. Ed. Rio de Janeiro: Lumen Juris.