A Life free from violence

The legacy of Belem do Para in Latin America

By: Max Filip Sundqvist

Supervisor: Viola Boström
Abstract: The inter-American convention to eradicate all violence against women (also known as Convención de Belém do Pará, signed in 1994) was the first international treaty which purpose is to assure women a life free from physical, psychological and/or other forms of violence. In that sense, it actually turns the debate of men’s violence against women into a human rights debate. In this paper I will analyze how Latin American countries are coping with their obligations from Convención de Belém do Pará from a comparative legal studies perspective. I will discuss how gendered violence, femicides and attempted femicide is addressed in the national legal codes of four Latin American countries. I will use a comparative legal method and attempt to point to historical, social, cultural and political explanations behind legislation in these countries in the aftermath of Belem Do Para. Finally, I will point to that I find that there are several key areas that are neglected currently in Latin America’s legislations. Firstly, prevention is not given enough room in current legislations. Furthermore, specifically vulnerable groups (i.e. sex workers, minorities, poor women, rural women et cetera) are not in any country provided with special protection. Also, the judiciary dealing with violence against women in Latin America, mainly lack special preparation to investigate and advice on gendered violence in general, and deadly gendered violence (femicides) in particular. Nevertheless, the overall development of inclusion of legislation targeting femicides is positive, and further steps to expand the current protection should be encouraged throughout the region.

Results: The countries studied in this text have all implemented integral laws to protect women from violence, to promote gender equality and to raise awareness of gender inequality throughout society. My research purpose was to find out how femicides are attended to in the national legal framework of the respective countries. I discovered that all countries, but Argentina have implemented independent articles in their penal codes covering femicides. All four countries have general laws protecting women’s rights to a life free from violence, in which preventive measures regarding gender perspectives, education and socio-constructivist accounts of gender order is mentioned. I furthermore discovered that additional measures should be taken to legislate in favour of prevention, education, victim’s rights and expand the protection to marginalized groups of women, such as lesbians and include a class and race perspective into legal framework, if not already the case. My result is that there is a general positive tendency to action the problem of femicides in national legislations, but that additional work is still required.
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A Chiqui,

Por darme sus ojos tantas veces que
finalmente aprendiera a ver que sombras
y reflejos eran más que sombras y reflejos,
Por su paciencia, amor y cariño,
“The doorkeeper recognizes that the man has reached his end, and, to let his failing senses catch the words, roars in his ear: “No one else could ever be admitted here, since this gate was made only for you. I am now going to shut it.”.  

1 Franz Kafka

A special Thanks to Viola Boström who supervised me while writing this paper. Her wisdom and thoughtfulness and good sense of humor was an invaluable asset.

A Warm Thanks to my family and extended family on both sides – especially my parents – Torbjörn and Agneta - my brothers Alex, Anton and Oscar. And above all my wife - Jennyfer Soledad Sirvas Jave, her love is greater than the great Pacific Ocean.

My mother-in-law Manuela de Sirvas deserves a special and I cannot help to mention her exquisite Pato Guisado with frijolitos (Northern Peruvian typical Duck Stew with beans).

Gracias al Perú, tierra cálida, amical y fraternal. Siempre contigo.

INTRODUCTION

Violence against women is, and has been for some time now, endemic across Latin America. For example, in one period during the early 2000s a woman was killed every six hours in Mexico. In this text I will review how four Latin American countries attempt to tackle the most gruesome form of gendered violence - *femicides*, or the killing of a woman for the sake of *her being a woman*. Contemporary Latin American history is in many ways a story of violence, more accurately perhaps - forgotten and ignored violence. Far too often the dead are forgotten, their stories and their access to justice not attended to. Nobel Laureate Gabriel Garcia Marquez’s fictional character in the epic *A Hundred Years of Solitude*, José Arcadio Segundo Buendía, desperately looks for the dead in the fictional village of Macondo somewhere deep in Latin America’s soul. Just like he could not find them, to many of the victims of Latin America’s violent history are nowhere to be found in the galleries of history and collective memory. Seeking for them, the victims of a massacre, not finding them, José Arcadio Segundo Buendía desperately crosses wet, empty streets:

“'No hubo muertos’, pasó por la plazoleta de la estación, y vio las mesas de fritangas amontonadas una encima de otra, y tampoco ahí encontró rastro alguno de la masacre.
Las calles estaban desiertas bajo la lluvia tenaz y las casas cerradas. Sin vestigios de vida interior. La única noticia humana era el primer toque para misa.”  

“'There were no dead’, he passed the small square of the station, and he saw the greasy tables placed one upon the other, and there neither could he find any traces of the massacre. The streets were deserted under the heavy rain and the houses were all closed. No signs of life inside. The only sign of life was the first call to mass.” My translation.

Just like the dead in the fictional world cannot have justice when they are forgotten, women killed for the sake of being a woman may be forgotten unless legislators, society at large and the authorities attend to the problem of deadly, gendered violence. Part of the problem of Latin America’s violent history is the uncomfortable knowledge that crimes are constantly being glossed over – incompetence, impunity, lack of interest and many more motives makes this a continent of unexplored mass graves, cold cases and missing people. As we shall see – action is required in order to find justice. Of the most dangerous cities in the world, listed by murder rates, ten are in Latin America.

According to the UN, Latin America is considered the most dangerous region in the world to be a woman. In the wake of rising violence, the Inter-American

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**Convention on the Prevention, Punishment, and Eradication of Violence against Women**, from 1994 set an ambitious goal for countries across the region – that of eradication of violence against women and the establishment the right to a life free from violence as a fundamental human right. In the years following the Belem do Para Convention all but two – Cuba and Haiti - countries in Latin America incorporates specific legal measures to attend to femicides. In this text my aim will be to investigate how Argentina, Brazil, Mexico and Peru have introduced special legal measures to deal with this, the most brutal act of violence against women from a comparative legal perspective.

The reason why I have chosen these specific countries is in the main the fact that two of them are the most populous countries in the region – Mexico and Brazil. The remaining two could be considered middle range countries that have adapted fairly different ways forward (Argentina and Peru). For too long victims of gendered violence have been, like the missing dead in Marquez’s Macondo, sought by José Arcadio Segundo Buendía. In this text we shall try to seek out how these four legal systems attempt to accommodate the *nomem iuris* of femicides into their respective national legal frameworks. In a sense we also, like in Macondo, seek for missing dead - the victims of femicides.

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Purpose

In this study I investigate how four Latin American countries (Argentina, Brazil, Mexico & Perú) accommodate obligations from the Belem do Para-Convention of 1994 into their national legislations. My aim will be to review how Articles 4 and 7, of the Belem do Para-convention are addressed. In general I study of the general right of a “...life free from violence...” is emancipated in national legal frameworks, but more specifically, I will analyze how femicides – the killing of a woman for the sake of being a woman – is addressed in national legal frameworks. I will make use of a functionalist comparative legal method (with a hermeneutic sensibility).
BACKGROUND

In this section I provide the social, legal and theoretical background for this thesis. I will introduce the Belem do Para convention and provide an overview of its’ general impact across the region. I will furthermore provide a descriptive analysis of gendered violence in the region, a brief introduction to influential theories concerning what is driving the violence. I will end this section by introducing the concept of femicides and discuss its’ history globally and regionally, before I provide an overview of the current of legal frameworks across the region concerning this particular nomen iuris.

PATRIARCHY AND GENDERED VIOLENCE IN LATIN AMERICA

Violence against women is an endemic problem across Latin America. Men may be more likely to suffer violence in general, but women are far more likely to suffer violence where perpetrators are someone close to them. Most commonly their intimate partners and/or family members are perpetrators7. Albeit true that Latin America is not unique in this way; violence against women, and inequality, is an endemic structural asymmetry that permeates all human societies and cultures8.

8 ibid
According to the United Nations one out of every three women have experienced violence (psychological or physical) at some point in their lives, the most usual perpetrator was their current, or previous, intimate partner. The World Health Organization (WHO) has pointed to that 25% of all women will suffer rape during their lifetimes, and that approximately 50% of women who are murdered are murdered by their partners.

The pattern is repeated throughout the countries subject to this study. For example, about 38% of Peruvian women have suffered domestic violence and about 8% have been victim of rape, according to a nation-wide survey from 2010. According to the Observatorio de Género de la Comisión Económica para América Latina y el Caribe (CEPAL) Peru had the highest number of women assassinated by their intimate partners in 2009. These numbers fluctuate from country to country, year by year – but gendered violence is a constant and critical problem across all Latin America. In Mexico, during the 2000s, a woman was killed every six hours. For Brazil and Argentina, the situation is similar.

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9 ibid
14 Contreras, Pérez, and María de Monserrat. "Violencia contra la Mujer. Comentarios en torno a
Widely influential feminist explicatory accounts of violence against women points to that the violence is in fact the result of larger oppressive social structures. The hegemonic gender order is systemically oppressive towards women. Violence becomes its’ means of ultimate control when women deviate from established norms. This oppressive structure is commonly referred to as patriarchy

One specific consequence of the gender inequality, which permeates Latin American society, is how honor and respect are socially constructed differently for men and for women. For women, such accounts hold, respect and honor is de facto not innate to their condition as human beings but rather a consequence of actions, behaviors and attitudes. Integrity of women – sexual, physical or psychological – is socially judged based upon their perceived “decency”. Women seen as having failed to live up to the gender roles may have violence acted upon them justified by discourses concerning how they act, dress, talk or even look at others.

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This patriarchal structure, which is often defined as machismo\textsuperscript{19} in Latin American discourse, or the special blend of patriarchy common in Latin America, which imposes specific gender roles on women and men alike. In this world of clearly separated spheres of the feminine, or the masculine, corresponding responsibilities, privileges and meanings are all accommodated into a masculine superior sphere and a feminine inferior dominated sphere\textsuperscript{20}. The anthropologist David Gilmore has defined *machismo* as:

“… a masculine display of complex involving culturally sanctioned displays of hypermasculinity both in the sense of erotic and physical aggressiveness”\textsuperscript{21}.

When hegemony is threatened, *machista structures* will resort to violence as a means of control – according to this influential hypothesis gendered violence follows. The most gruesome expression of gendered violence is often referred to as *femicide* - fatal violence that happens to women for the mere fact of being a woman. The definition of this concept, and legislation surrounding it, will be covered extensively in the following section.


THE CONCEPT OF FEMICIDE

According to UN Women, 14 of the 25 countries in the world with the highest prevalence of gendered violence, are found in Latin America and the Caribbean. Work on specific forms of gendered violence, such as fatal violence, has been, and still is, of great need and importance for the region. This tendency of substantially higher prevalence of gendered violence sparked reactions from civil society, the international communities, and finally legislators following the 1990s. Most countries of Latin America had already implemented legislation covering Femicides in their respective penal code by the early 2000s. The situation of one country, Mexico, was of great importance, as the gruesome killings of women in the northern Mexican town of Ciudad Juarez attracted international attention. As violence in Mexico escalated the international community attended to cases of femicides from Mexico in the Inter-American Court of Human right. This brought much needed attention to the problem. The term Femicide has been around for about 40 years. During the 1980s and 1990s feminist theory was extensively applied to criminology in order to reveal


how gender inequality and gender orders influenced criminality in general, and violence against women. It is in the wake of this awakening to the potential of feminist theory within criminology and legal studies that the concept of femicide, or gendercide, was first applied. South African feminist writer and activist Diana E.H. Russell coined the term\(^{25}\) in 1992 when she edited and released the anthology *Femicide: the politics of women killing*. In it, she argued, a femicide was the misogynist killing of women.

Over the years, the definition has been debated, questioned, revised and enriched further. Nevertheless, Russell still maintains the core aspects of her definition, as she states on her webpage:

“After making minor changes in my definition of femicide over the years, I finally defined it very simply as "the killing of females by males because they are female." I'll repeat this definition: "the killing of females by males because they are female." I use the term "female" instead of "women" to emphasize that my definition includes baby girls and older girls.”\(^{26}\)

Corradi et al\(^{27}\) points to that perhaps the most important contribution to contemporary social theory of the term femicide as being the fact that it


articulates, and singles out, a specific part of social reality – namely the murder of women for the sake of being women. In fact, as confirmed by several UN studies and other works within criminology, sociology and gender studies, most women that are murdered are murdered by a family member. Most commonly the murder is committed by their intimate partner 28. The point brought forth by Corradi et al29 is that social acts are, according to classical sociological theory, meaningful and thus a specific theoretical framework is effective at articulating and contextualizing them. Like Catharine MacKinnon’s term sexual harassment 30 the term femicide became hugely important to scholars and legislators alike. The term resounded substantially across, especially, Latin America. Rita Segato 31 has argued that like genocide the invention of the term femicide is hugely important as it is a concept that helps to understand a crime that is only understandable within a certain context.

Mexican Anthropologist and MP, Marcela Lagarde32, pioneered the use of the term in Latin American as she analysed the brutal and widespread killing of

29 Ibid
31 Segato, L.Rita, Qué es un feminicidio. Notas para un debate emergente, Serie Antropología, Brasil, 2006
32 Lagarde ,Marcela. Antropología, feminismo y política: violencia feminicida y derechos humanos de las mujeres. Universidad de México (UNAM) en Retos teóricos y nuevas prácticas, México.
women in Ciudad Juarez, Mexico, in the aftermath of drug cartel related violence. Lagarde argues that the English term *Femicide* (Lat. Killing of a woman) is unappropriated to define the social problem of structural deadly violence against women as it is a direct translation of the term *Homicide* (Latin, killing of one man) when in fact the problem at hand concerns all women, and that the killing of women for being women is, like genocide, not the killing of one woman but potentially of all women.

Julia Monarrez\(^{33}\), when discussing the mass killings and disappearances of women in Ciudad Juarez Mexico, also argues that like genocide femicide requires that authorities and society at large be permissive of the crimes and impunity. Furthermore, she argues that who is being murdered is“ a specific woman” but a generic type of the female body that reflects certain patriarchy power relations. However, such relations are not static – depending on the perpetrator the relationship may be that of near relationships, but not all femicides are conducted within this context.

Because of this, UN Women has established the following types of femicides: \(^{34}\) *Intimate, No Intimate, Infantil, Familiar, Conection, Sexual (Organized, and Unorganized), within stigmatized professions, Trafficking (Sexual or migration), Lesbophobic, Racists or as part of gender mutilation*. I will now briefly discuss regional development regarding femicide


before I proceed to discuss theories of why this problem has arisen.

THE INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN

In the northeast of Brazil sits the city of Belem, capital of the federal state of Para – commonly known as Belem do Para. As many places in Brazil, and across South America, this humid and hot warm city, is a place of stark contrasts. Second only to Manaus, further up the river and into the vast amazon rainforest, it is the largest city of the Brazilian Amazon.

On the 9th of June in 1994 this town gained its’ place in the history of Latin America as the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, usually referred to as the Belem do Para Convention, was held there. The purpose of the Convention, and its’ subsequent signing, was to address the growing problem of gender inequality in general, and the problem of gendered violence, across the Americas.

According to UN Women, Latin America has has relatively higher prevalence

36 UNIFEM. Violence against women – facts and figures. En:
http://www.unifem.org/attachments/
of gendered violence. The consensus of the convention was a declaration of a fundamental right of all women in the region to gain access to a life free from violence. Gendered violence in the American sphere, in effect following this conference, became a human rights issue. In summary, the convention assumes the objective of assuring women a life free from violence and abuse:

“...Every woman has the right to be free from violence in both the public and private spheres...”

It establishes that states have the responsibility to investigate potential crimes against women with due diligence - states are obliged to reassure a diligent treatment, prevention and investigation of the relevant cases. This right is further clarified in Article 4, which states that states are obliged to assure women the right to:

a. The right to have her life respected;

b. The right to have her physical, mental and moral integrity respected;

c. The right to personal liberty and security;

d. The right not to be subjected to torture;


40 The Convention Belem do Para establishes that States are required to: "apply due diligence to prevent, investigate and impose penalties for violence against women; Chapter III, Art 7. B.
e. The right to have the inherent dignity of her person respected and her family protected;
f. The right to equal protection before the law and of the law;
g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;
h. The right to associate freely;
i. The right of freedom to profess her religion and beliefs within the law; and
j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.”

Article 7 stipulates that states are also obliged to:

"a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, …act in conformity with this obligation;
b. apply due diligence to prevent, investigate and impose penalties for violence against women;
c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women…;
d. adopt legal measures to require the perpetrator to refrain from harassing…the woman…;
f. establish fair and effective legal procedures for women who have been subjected to violence…
g. establish the necessary legal and administrative mechanisms to ensure that women

41Ibid
subjected to violence have effective access to restitution,”
Further on, Article 8 establishes the state’s preventive obligations, and
articulates that states are obliged to promote awareness, modify social norms,
promote education and training of the judiciary, provide appropriate specialized
services for victims of gendered violence.
The convention establishes that states (Article 10) are obliged to report on
statistics on gendered violence and that any group or individual can report to
the Inter-American court of human rights violations of Article 7.
States are obliged to take judicial, preventive, punitive, reform if required and
educational measures in order to assure those rights. The convention in its’
totality is of great importance to legislation across the region. However, my
comparative analysis (in following sections) will focus mainly on how Articles 4
& 7 are dealt with in national legal frameworks.
I will now proceed to review the structural background in descriptive terms – I
will be looking at the structure, context and mechanisms of fatal violence against
women in Latin America. The most abusive act of violence against women, the
act of taking the life of a woman because she is a woman, or femicide, will be the
legal concept that my analysis will focus on. Nevertheless, it is crucial to include
the social reality in this analysis. A fundamental contribution of the sociology of
law has been to point to have law and society interact, how social reality is
affecting law and how laws affect social reality\textsuperscript{42}. Hence, sociologist studying law, and socio-legal scholars investigate the intersection of law and society. This will be the greater task of this text; to investigate the relationship between the legal concept of femicide and social reality in four Latin American countries.

\textsuperscript{42} Mathiesen, T. Rätt i Samhället – en introduktion till rättssociologin, Studentlitteratur 2005, s. 23.
LEGISLATION DEVELOPMENTS ACROSS LATIN AMERICA CONCERNING THE NOMEN IURIS FEMICIDE

Ten years after the Belem Do Para Convention most countries in Latin America (except Cuba and Haiti) have implemented legislation especially targeting femicide / fatal gendered violence. Pressure from international organizations, such as the UN, but also pressure and activism from civil society was decisive for getting legislations passed into law. 43. Some

<table>
<thead>
<tr>
<th>Country</th>
<th>Integral Law</th>
<th>Penal type includes in integral law</th>
<th>Autonomous Law for femicides</th>
<th>Has modified penal code</th>
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<tbody>
<tr>
<td>Argentina</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<td>Bolivia</td>
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<td>Brazil</td>
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<td>Colombia</td>
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<td>Costa Rica</td>
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<td>Ecuador</td>
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<td>El Salvador</td>
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<td>Guatemala</td>
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<tr>
<td>Honduras</td>
<td>X</td>
<td></td>
<td>X</td>
<td>Special Law</td>
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<td>Mexico</td>
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<td>Nicaragua</td>
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<td>Paraguay</td>
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<td>Peru</td>
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<td>Panama</td>
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<tr>
<td>Dominican Republic</td>
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<td>X</td>
</tr>
</tbody>
</table>

43 Débora Prado e Marisa Sanematsu, Feminicídio #InvisibilidadeMata, Organização e
countries, like Mexico, have integrated general laws that attempt to protect women from violence and discrimination and withhold their right to a life free from violence, such is the case of Mexico. Others, like Peru, Colombia, Chile and many more, have added the crime of femicide to their respective penal codes as independent articles. Argentina, in one example, has added femicide (not explicitly) as an aggravating circumstance of murder, hence no independent article in the Argentinian penal code.
THEORY

Scholarship has attempted to describe and explain general abstract hypothesis around why femicides occur. This has generated a couple of main theories of femicides in Latin America. Many of these theories have been influential on legal amendments and are thus very relevant indeed for this text. I will be discussing the development of the term femicide itself from a theoretical point of view. I after that proceed to review feminist theories, sociological theories, criminological theories and human rights perspective theories. As we shall see later on, especially the feminist accounts have been influential on legal developments. However, other theoretical models shed light on the phenomenon and should perhaps be considered more by legislators across the region and beyond.

According to Corradi et al they are five main tracks that social sciences research regarding femicides/Femicides have taken, namely:

“1. A feminist approach, which confronts patriarchal domination at the same time as it investigates the killing of women;
2. A sociological approach, which focuses on the examination of the features special to the killing of women that make it a phenomenon, per se;
3. A criminological approach, which distinguishes femicide as a unique sector in ‘homicide’ studies;
4. A human rights approach, which extends femicide beyond the lethal and into extreme forms

of violence against women; and

5. A decolonial approach, which examines instances of femicide in the context of colonial domination, including so-called ‘honor crimes.’”

I will now proceed to provide a summary of theories within the categories 1-4. However, before that I will present of the main theoretical work on categories of femicides/Femicides as these are key to understanding the legislation that will be covered in coming sections.

CATEGORIZATION OF FEMICIDES

Diana Russell coined the term *Femicide* 30 years ago. Ever since there has been substantial theoretical development of the concept itself. The general definition of *femicide* has varied substantially depending on context. Definitions span from: ‘the misogynist killing of women by men’


other similar definitions. Albeit true that these definitions differ somewhat from each other, nevertheless they all depart from feminist theory which means that they all analyze human society as conditioned by patriarchy. Therefore, the concept of femicide supposes an underlying structural inequality across culture and society that perpetuates and reinforces gender roles and gender inequality. From this point of view, a view that strongly influences theory on femicides, we are dealing with a political, symbolic or even ritualistic way through which men reinforce their privileges over women across society.

In Latin America two main traditions of interpretation of the term are the most common. On the one hand some scholars use Diana Russell’s original term femicide (a translation of the term homicide) whereas some others, especially Lagarde, refer speak of femicide in terms of a crime against humanity. Especially, in such cases, the concept of negligence of the state is read into the term. The idea is that, just like genocide, femicide is not the killing of ‘a woman’ but that of ‘any woman’, hence it is like genocide, fundamentally an attack upon fundamental human rights⁴⁹.

Although an interesting discussion that has surged around the terms femicides / femicides it has been concluded by some that linguistically speaking, at least in

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Spanish, femicide is a more accurate description of the phenomenon. For the jurist Patsili Toledo the point whether one utilizes feminicide or femicide is but semantics; they both refer to the same social problem with roots in structural discrimination of women. This was also stated by the Network of Latin American and Caribbean feminists in their congress of 2006 in Santiago de Chile concluded that both terms could be used as they referred to the same problem. However, this has been defended as well as contested by some scholars. Ana Carcedo has argued that if it were to be accurate that the term feminicide, rather than femicide, is more accurate than the state would have to go up on trial in each case. This does seem unreasonable as it would be perfectly imaginable to consider that there are many cases where the authorities did not facilitate the crime or were negligent. For this reason, she uses the term femicide. However, some like Mexican Anthropologist Lagarde prefers the term femicide as it calls attention to the structural and political context that allows for such crimes to occur and go unpunished (impunity). Others, such as Alicia Deus and Diana Gonzalez adapt something of a middle position where they argue that albeit

51 Toledo, P., Feminicidio, Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, México, 2009
52 Informe de la Relatora Especial sobre la violencia contra la mujer, sus causas y sus consecuencias. 2012 (A/ HRC/20/16),
53 Carcedo, A., (Coord.), No olvidamos ni aceptamos: Femicidio en Centroamérica, CEFEMINA, San José, Costa Rica, 2010
54 Gonzales, D. & Deus, A. Análisis De Legislación Sobre Femicidio/ Feminicidio En América
true that it is of importance to analyze the role of the state and politics when analyzing the problem of femicides/Femicides, but the difference of the two concepts can be integrated equally into penal codes. It is, they argue, important for legislators to keep both concepts in mind, but not rigidly stick to either one of them. They, thus, argue in favor of a middle position. Finally, the concept of femicide have been divided into several sub-categories where there is far more agreement upon their meaning. Most scholars agree to all, or some of, the below. The following typifying of femicide is the most common and the one adapted by the United Nations:

<table>
<thead>
<tr>
<th>Typification</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intimate</td>
<td>The killing of a woman by a man with whom she has had an intimate relationship (partner, sexual non-sexual, friend, colleague, family member).</td>
</tr>
<tr>
<td>Non-intimate</td>
<td>The Killing of a woman by an unknown perpetrator.</td>
</tr>
<tr>
<td>Infant</td>
<td>The killing of a girl below 14 years of age within the context of a responsibility relationship (teacher, public servant, employee).</td>
</tr>
<tr>
<td>Familiar</td>
<td>The killing of a woman when the perpetrator is a family</td>
</tr>
</tbody>
</table>

Latina Y El Caribe E Insumos Para Una Ley Modelo, ONU Mujeres, 2018 p. 20
<table>
<thead>
<tr>
<th><strong>By Connection</strong></th>
<th>The killing of a woman when she is ‘caught in the line of fire’ for any of the other categories of femicides/Femicides.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Organized Sexual</strong></td>
<td>The killing of women that are victims of sexual crimes/violence before or during the killing. This category is divided into two sub-categories ‘organized’ and ‘unorganized’ where the first is when the crime is committed with premeditation and planning and then second when it is committed “spontaneously”.</td>
</tr>
<tr>
<td><strong>Prostitution and/or other stigmatized work</strong></td>
<td>When a prostitute, stripper, erotic dancer and/or other stigmatized groups of women are murdered as an effect of this line of work ‘she deserved it’ this is the category that specify the type of femicide.</td>
</tr>
<tr>
<td><strong>By Trafficking</strong></td>
<td>When women are murdered within a context of trafficking where violence is a method used to force women into prostitution and/or other forms of forced labor.</td>
</tr>
<tr>
<td><strong>Transphobic</strong></td>
<td>When the victim is a transgender, transsexual woman.</td>
</tr>
<tr>
<td><strong>Lesbophobic</strong></td>
<td>When the victim is a homosexual woman (Lesbian).</td>
</tr>
<tr>
<td><strong>Racist</strong></td>
<td>When racism, together with misogyny, motives the killing.</td>
</tr>
</tbody>
</table>
By Female mutilation

When a woman is killed as a result of the practice of female mutilation. 55 56

I will now turn to review some of the most common theories of femicides / Femicides in Latin America.

**SOCIOLOGICAL THEORIES**

Sociological explicatory models of femicides aims at mainly posit the problem of femicides within a situational context, what is studied is rather the violent situation than violent individuals\(^{57,58}\), or in the words of Corradi et al:

“…empirical research aims at identifying contexts, types of cases, perpetrators’ profiles and murder incidents where gender relations play an important role, but they are not the only explanation…” \(^{59}\)

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The fact that women who are murdered most likely are murdered within an intimate relationship (partner, family member, friend et cetera) is profoundly different from the ways in which men suffer deadly violence. Thus, this points to that femicides are social facts that can, argues proponents, be identified, prevented and/or mitigated using qualitative and/or quantitative methods\textsuperscript{60}. Hence, it is argued that *femicides*, rather than solely being the result of patriarchy, is the result of several factors where patriarchy is but one and which effects can vary across different groups. This means that different women, different men and different groups will be exposed to different levels of risks of gendered violence.

**FEMINIST THEORIES**

According to feminist theories of gendered violence the problem at hand originates from structural gender inequalities that permeate society, or patriarchy. Such studies claim that that patriarchy is based on the idea of how power is distributed in society unequally between women and men. Violence is the tool by which ultimately men maintain their privileges in the patriarchal

order 61 62 63.

A feminist approach to femicide is founded mainly on the social reality of most societies – murder rates for women in intimate relationships, rape, gender inequalities in wages and discrimination and many more expressions of the systematic uneven distribution of privilege between men and women, all these facts confirm the image of a structural equality issues as the main drivers of gendered violence in general, and femicides in particular 64. It is on this foundation that several of the authors and scholars already quoted in this text base their scholarship, especially in Latin America this theoretical approach dominates policy documents and scholarship across the region 65.

However, a weakness in this explicatory model has been called out to be that is too static – for instance, how do you explain the persistence of femicides and rape in countries where gender roles have changed substantially and where progress has been made regarding gender equality? 66 Another problem that has

64 Corradi, Consuelo, Chaime Marcuello-Servós, Santiago Boira, and Shalva Weil. "Theories of femicide and their significance for social research." Current Sociology 64, no. 7 (2016): 975-995. , p.6
been called out is the generality of this thesis – if women die because they are women and women and only 67 this may not tell us that much about the particularities of cases. People from minorities, in another example, may suffer deadly violence, but it is not always related to hate crimes. The idea of generality of patriarchy has been scrutinized from a queer-theory perspective 68 and perhaps more importantly from an intersectional perspective. The idea of intersectionality calls into question if structural oppression is equal across social other factors of social stratification (race, sexual orientation, social class) and whether black, Latina and/or lesbian women suffer from a different oppression due to the intersection of class and ethnicity alongside the gender order.

One way to perhaps accommodate these objections within the feminist theory has been put forward as an operationalization of Judith Butler’s theory of normative violence in the case of Peru by scholar Jelke Boesten. She argues that even though structural violence sets the frame of society there is an additional violent process the consists of normative violence that:

“So while structural violence reinforces institutionalized inequality and vice versa, normative violence refers to the process of naturalizing this same inequality. Analyzing the violence of norms in the Peruvian context shows how moral codes perceived as true, natural, and obvious put people into boxes that are reflective of the control of social behavior, but also of constraints put on the body in terms of race, class, and gender. Nevertheless, feminist theories of femicide

have been hugely influential in Latin America, and much of the most important research and activism on the topic are profoundly influenced by feminist accounts of reality.”⁶⁹

The rise of gendered violence in recent decades across the region of Latin America has been seen by some feminist theories like Rosa Cobo⁷⁰ as a reaction to social progress of the rights of women, integration into the labor force and more academic and social presence in general, which adds a new kind of oppression of women to already existent forms. According to Cobo what we are seeing currently, across Latin America, is a reaction of patriarchy to the challenge posed by social change and increased representation of women throughout society. The work of Mexican anthropologist Lagarde has been specifically important for several reasons. On the one hand she was a congresswoman in the Mexican parliament and through her political work she managed to introduce the Law of a life free from violence for Mexican women (analyzed later in this paper).

However, she has also made important contribution to the theoretical understanding of femicides in the Latin American context. She points to that ⁷¹ in Latin America the understanding of femicides needs to be contextualized further in order to include the problem of impunity and the failure of the state to protect

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women from structural violence. Hence, corruption and impunity – a part of Latin America reality – is included into the theoretical construction of *Femicides*.

**CRIMINOLOGICAL THEORIES**

Criminological theories of femicides/Femicides appeared at the turn of the millennium following an increased interest in epidemiology and public health research in relation to intimate partner violence. The main difference between criminological and feminist theories of femicide is that the criminologists avoid terminology such as femicide altogether, unless they wish to place themselves within the frame of feminist scholarship. Hence. Scholars of a criminological framework, but who are not feminists, will focus on any other given variable that may cause the killing (ethnicity, class, age, et cetera) and not only on patriarchy as the structural causation. Many of such scholars will deter from the term femicide and instead refer to terms such as *Intimate partner violence, Intimate*

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Partner homicide, et cetera\textsuperscript{73, 74, 75}

Some scholarship within this tradition has developed into the \textit{Socio-ecological Approach} which treats femicides as dependent on a multi-variable situation where gender is but one, and social class, education, ethnicity, culture are other factors that coincide to create risks of femicide/Femicides.

Karen Stout argues in a text from 1992 that murder in near relationships is the culmination of a long spiral of violence that begins much earlier. and that femicides/Femicides is the final act of a long spiral of violence\textsuperscript{76}. Even though criminological theories, such as they have been described Corradi et al\textsuperscript{77}, are very varied in their approach, this last bit is perhaps suitable as a view that unites them: deadly violence against women depends on several factors and is the culmination of a long period of normalization.


HUMAN RIGHTS PERSPECTIVE

Following 1993, when the General Assembly of the United Nations affirmed that violence against women was a violation of the fundamental rights and freedoms of women, and the 1994 Belem do Para Convention, a human rights perspective on femicides/Femicides emerged. The United Nations was a driving force behind the emergence of scholarship that studies femicides/Femicides from a human rights perspective, as ACUN (Academic Council of the United Nations System) held a conference in 2012, alarmed by the increasing numbers of femicides/Femicides in the world, that called for scholarship from this perspective.

The Human rights perspective broadens the view of femicides/Femicides to include state actors, police and other authorities. The Human rights perspective has been hugely influential to international legislation, the UN, and it attempts to highlight the structural inequalities that states, and other actors implicitly maintains, and which makes women more vulnerable to violence\textsuperscript{78}. All in all, the fundamental theoretical contribution is that violence against women is a violation of fundamental human rights in a similar way that racist violence is.

METHOD

In this section I present the method that I am using to analyze the legislation of my countries of comparison. I will introduce the methodology and discuss and motivate my particular choice of method and why it is relevant to my investigation.

COMPARATIVE LEGAL METHOD

Comparative legal study is in short, the comparison between how different legal systems attempt to address different legal issues.

However, perhaps more important for our purpose is the question of ‘why’ comparative law? How can this methodology contribute to the production of knowledge within the field of legal studies?

At the turn of the last century, comparative legal studies, was perceived as a potential way of improving local legal codes. At the end of the 18th century Raymond Saleilles worked with this objective. However, recent developments regarding globalization has shifted the focus of scholarship in comparative law towards international law 79. Comparative legal method is based on making comparison between different systems and evaluate how a similar problem are attended, hence analyzing how ‘the same problem’ is dealt with differently in

separate jurisdictions. This stems from an interpretation of the term itself, and a relationship to other ‘comparatist’ sciences such as comparative literature, or as legal scholar Geoffrey Samuel argues:

“one can define ‘comparative law’ as a process in which the comparatist takes several objects in order to study them within a ‘scientific’ framework in which the object or element being studied is viewed in terms of the ‘other’… The expression ‘comparative law’ thus makes sense if viewed in the context of the idea that the discipline—law—is to be understood in terms of a dialectic between the domestic body of law and a foreign body of law.”

The relationship between the international and the national is fundamental to my study. Indeed, the legislations I compare all make amendments to legislation through their own legitimate channels, but they all pursue towards the same goal – adapt to obligations from the Belem do Para Convention and honor the rights agreed upon there. Comparative Law has been subject to disagreement on method, there is no agreed upon standard method, even though functionalism is sometimes ascribed this role. Nevertheless, several types of comparative law are available, most commonly a scheme of six styles of comparative law have been identified: causal, functional, structural, hermeneutical, actional and dialectical.

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82 Ibid p. 65, 66
83 Ibid 81-82.
84. A critical comparative analysis of Criminal Law has several doctrinal benefits. On the one hand it can be useful for judiciary, as a source of interpretation and knowledge in particularly complicated cases. On the other hand, comparative law is also of great use to scholars and legislators when attempting to solve legal problems of punitive nature within a specific jurisdiction. Furthermore, the rise of international law has caused a specific interest in comparative perspectives on laws, especially in human rights cases, as international courts present legal reasoning and rulings. Nevertheless, the purpose of comparative criminal law is far from limited to international law – any given legal system can be enriched and solidified by taking a comparative legal approach to how certain problems within the penal code are resolved. The mere recognition of the existence of well-developed and well considered alternatives makes room for the consideration not only of new answers to familiar questions, but of new questions as well. Comparative analysis, of course, can also be rewarding as a scholarly end, although the meaningful comparison of even a single doctrinal rule requires careful consideration of the rule’s place in the doctrinal system, along with an inquiry into historical and sociolegal context. Early on German philosopher Feuerbach argued in favor of a comparative legal approach to criminal law when he argues that:

“Just as the comparison of various tongues produces the philosophy of language, or linguistic science proper, so does a comparison of laws and legal customs of the most varied nations, both those most nearly related to us and those farther removed, create universal legal science, i.e., legal science without qualification, which alone can infuse real and vigorous life into the specific legal science of any particular country.”

In this text I will be mainly focusing on the *functional model*, which purpose is to analyze how function is achieved in different legal systems. However, as there exists quite a myriad of *functional models* out there with some understanding law, comparing (*tertium comparationis*), focusing on similarities (*praesumptio similitudinis*), system building approaches, determining the ‘*better law*’, unifying law, critical appraisal of the legal orders and so on. In my appraisal of doctrine, I am looking at ‘the better law’, in the sense, as I am looking at how Belem do Para obligations are achieved. However, I will include some aspects of the Hermeneutic criticism of functionalism in my methodological discussion. The importance of the hermeneutic critique of functionalism is focused on the importance of cultural sensitivity – one cannot simply review function without an understanding of cultural and social contexts. One needs to achieve a cultural and anthropological understanding of the legal systems that are being studied.

When I approach the issue of femicide I attempt to do just that; on the one hand I review historical and cultural background, I connect the legislation to how it

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has developed, the role of civil society and processes of implementing legislation. I also look at the specifics of each country and interpret and analyse how this affects legislation.

**SOURCES**

In this section I will review the relevant parts of the legislation of the countries which are subject of my comparative legal analysis (Argentina, Brazil, Mexico and Peru). In none of my selected countries the ministry of justice, or any other relevant authority for that matter, publishes a version in English of their respective penal codes, or in the case of Mexico the relevant law. Hence, I have translated from Portuguese (in the case of Brazil) and from Spanish in the case of the other countries. Nevertheless, I have decided to keep the original text as well for those readers who understand Spanish and also for the fact that I am using the original text, not the translation, for my analysis.

**THE PERUVIAN LEGISLATION**

Peru implemented a specific law that aims at protecting women from violence in general, hence guarantee women a life free from violence. Under Law 30364\(^{87}\) the Peruvian legislators attempt to honor their general obligations from the Belem do Para convention by protecting all women during their entire life span.

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(Art. 1) from acts of violence. Article 3 establishes, importantly, that:

(i) structural asymmetries exist between men and women and that these are the main causes behind gendered violence.

(ii) Focus on integrity – the causes behind gendered violence are multifactorial.

(iii) Focus on human rights.

(iv) Intersectionality – it is recognized that gendered violence is deeply influenced by factors of race, gender, social class. Sexual orientation, being HIV-positive, et cetera.

Art. 5 define violence against women as any act that causes women violence or damage. Femicide is mentioned in Art. 28 as this section deals with prevention and attention to gendered violence. In Art. 27, 28, 30, 31 the law establishes that the state is obliged to prevent femicides – it does not elaborate on how – and that special safe houses are to be established to attend to women who have suffer gendered violence.

Additionally, the crime of femicides was accommodated into the Peruvian penal code under the nomen iuris of Feminicide under Art. 108-B in the year in July 2013.

“Artículo 108º-B.- Feminicidio

Será reprimido con pena privativa de libertad no menor de quince años el que mata a una mujer por su condición de tal, en cualquiera de los siguientes contextos:

1. Violencia familiar; 2. Coacción, hostigamiento o acoso sexual; 3. Abuso de poder, confianza o de cualquier otra posición o relación que le confiera autoridad al agente; 4. Cualquier forma de discriminación contra la mujer, independientemente de que exista o haya existido una relación conyugal o de convivencia con el agente. La pena privativa de libertad será no menor de veinticinco años, cuando concurra cualquiera de las siguientes circunstancias agravantes:
1. Si la víctima era menor de edad;
2. Si la víctima se encontraba en estado de gestación;
3. Si la víctima se encontraba bajo cuidado o responsabilidad del agente;
4. Si la víctima fue sometida previamente a violación sexual o actos de mutilación;
5. Si al momento de cometerse el delito, la víctima padeciera cualquier tipo de discapacidad;

Artículo modificado por el Artículo Único del Decreto Legislativo N° 1237, publicado el 26 de septiembre de 2015.
6. Si la víctima fue sometida para fines de trata de personas;
7. Cuando hubiera concurrido cualquiera de las circunstancias agravantes establecidas en el artículo 108°.

La pena será de cadena perpetua cuando concurran dos o más circunstancias agravantes. En caso de que el agente tenga hijos con la víctima, además será reprimido con la pena de inhabilitación prevista en el inciso 5 del artículo 36…”

Article (108-B Feminicide)

Shall be sanctioned with a deprivation of liberty no less than fifteen years, for her being a women, in any of the below contexts:

1. Family/Domestic violence
2. Coercion, Harassment/Sexual harassment
3. Abuse of power, confidence or any other position or relation which grants authority to the perpetrator over the victim.

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88 Decreto Legislativo nr. 635 – Código Penal del Perú, Ministerio de Justicia y Derechos Humanos, Décima Segunda Edición Oficial, 2016 Lima, Peru.
4. Any other form of discrimination against women, independently within wedlock or other forms of cohabitation.

The deprivation of liberty shall be no less than twenty-five years when any of the below aggravating circumstances exist:

1. If the victim was a minor.

2. If the victim was pregnant.

3. If the victim was below the perpetrator’s care / custody.

4. If the victim prior to being slayed suffered rape or genital mutilation.

5. If the victim suffered trafficking.

6. When any of the aggravating circumstances from Art. 108 concur.

The sanction shall be life in prison if two or more of the above aggravating circumstances concur. In case of having children with the victim, furthermore the sanction will include an inhibition of incise 5 of Art. 36.” (My translation).

DEVELOPMENT OF THE PERUVIAN LEGISLATION

In the period 2009-2012 Peru saw elevated numbers of Femicides. According to estimates from Ministerio de la Mujer\textsuperscript{89} 436 women fell victim to femicides in this period, and an additional 268 female citizens were victims of attempted

Femicides. Fundamental to the interpretation of this figure is the likely scenario of the actual number being much more elevated as statistics in Perú, especially in rural areas, are quite unreliable.\(^9^0\)

However, the period was important as legal adjustments were made to the penal code. In August of 2011 Law **Nr 08/2011 CR** incorporated aggravating circumstances linking near relationship violence to femicides. The same year, in November, additional amendments were made to the penal code - law Proposal **537/2011-PE** proposed that whoever kills his female concubine, wife or other sentimental partner, or his children, shall be incarcerated no less than 15 years. Finally, this was passed into law under Law 29818 under the nomen iuris *Paricidio / feminicido* (*Child-murder / Femicide, my translation*).

Finally, Article 108-B of the penal code was modified – clearly influenced by feminist social theory – and incorporating the *nomen iuris* of femicide as quoted in previous section. Clearly, an important reason behind the modification was to accommodate obligations from Belem do Para, but also outrage and preoccupation over rising trends of intimate violence in Peru.\(^9^1\) The penal code independent Art. specifically targets near relationship, and family, related violence whereas the general law attempt to establish mechanisms of prevention.

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LEGISLATION OF BRAZIL

LEI MARIA DA PENHA – THE MARIA DA PENHA LAW

The Brazilian Lei nr. 11 340 was introduced in 2006 as a response to a situation of critical gendered violence across Brazilian society. Gendered violence was a severe problem that received increased attention during the 1990s and the 2000s. After a long period of proposals, debates and suggestions from NGOs, feminist organizations and MPs the law was finally approved of in 2006. The law is a direct response to the obligations undertaken in the Belem do Para Convention. The law obliges the state to establish safe houses for women suffering domestic abuse. Art. 10 establishes the objective of the law as to eradicate violence against women, and Art. 20. Explicitly establishes the right to a life free from violence for all women, regardless of race, class, age or any other factor:

Art 20: “Toda mulher, independentemente de classe, raça, etnia, orientação sexual, renda, cultura, nível educacional, idade e religião, goza dos direitos fundamentais inerentes à pessoa humana, sendo-lhe asseguradas as oportunidades e facilidades para viver sem violência, preservar sua saúde física e mental e seu aperfeiçoamento moral, intelectual e social”

“All women, independent of class, race, ethnicity, sexual orientation, income, culture, education level, age or religion shall enjoy rights inherent to all human beings, assuring her of the abilities and possibilities to live a life free from violence, preserving her mental and physical health and her moral, social and intellectual perfection”, my translation
Finally, and of importance to this study, the state is obliged under Art. 12 to establish specific mechanism that investigate cases of femicides and/or cases of grave violence against women.

**BRAZILIAN PENAL CODE**

Femicide is included in the Brazilian penal code under Chapter I (Dos Crimines contra a vida, Crimes Against Life):

“CÓDIGO PENAL  CAPÍTULO I DOS CRIMES CONTRA A VIDA
…VI Feminicídio (Incluído pela Lei nº 13.104, de 2015) VI - contra a mulher por razões da condição de sexo feminino: (Incluído pela Lei nº 13.104, de 2015)
§ 2o-A Considere-se que há razões de condição de sexo feminino quando o crime envolve:
I - violência doméstica e familiar;
II - menosprezo ou discriminação à condição de mulher.”

“Penal Code  Chapter I  Of Crimes Against Life,
VI Feminicide (Included through law 13.104 of 2015) against women when reason is due to her being of the female sex.
§ 2o-A Considers that there such reasons are:
I: Family violence / Domestic violence
II: Disparagement or discrimination towards the condition of being of a woman” (My translation)”

**DEVELOPMENTS IN BRAZIL**

Due to the repeated denunciation of civil society, and increasing international pressure, articulated in the Belem Do Para Convention, several Latin American countries amended penal codes to include femicides in the 2000s. In Brazil the

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nomen iuris of femicide was introduced as late as 2015 through law 13.104, which modified the Brazilian penal code.

The law was the result of a recommendation from a mixed Parliament Commission which investigated violence against women across Brazil during 2012-2013\textsuperscript{93}. Initially the proposed text was much more explicit, and targeted femicide in a more explicit way as it defined it as:

“…a forma extrema de violência de gênero que resulta na morte da mulher, apontando como circunstâncias possíveis a existência de relação íntima de afeto ou parentesco entre o autor do crime e a vítima; a prática de qualquer tipo de violência sexual contra a vítima; mutilação ou desfiguração da mulher, antes ou após a morte…”\textsuperscript{94}

“…The extreme form of gendered violence which results in the death of a women, signaling an intimate affectious relationship, or family relationship, between the perpetrator and the victim as possible circumstances: the practice of any kind of sexual violence against the victim, mutilation or disfiguration of the women, before or after death…” \textit{(My translation)}.

However, this definition was subject to alterations after debates in the parliament where, above all, conservative and religious MPs removed wording such as “gender”. Mainly this word (\textit{genero}, Portuguese for Gender) is referring to the social and/or constructivist aspect of gender. Whereas conservative MPs wanted a wording that better reflected a more biological perception of gender.

\textsuperscript{93} Débora Prado e Marisa Sanematsu, Feminicídio #InvisibilidadeMata, Organização e Coordenação Editorial Fundacio Rosa Luxemburg, Sao Paulo, Instituto Patricia Galvao, 2017

\textsuperscript{94} ibid
Nevertheless, the more progressive view of gender that has motivated, and been central to the analysis of violence against women in Brazil and of the commissioner investigation, is key to understanding this piece of legislation. As it seems gender perspectives where not included in the general law, or the penal code, due to the influence of conservative MPs in the parliament.

LEGISLATION OF MEXICO

From the Late 1980s and onwards the number of women in Mexico that were murdered by their partners, or someone else close to them, rose significantly. Between 1999 and 2005 more than 6,000 women were murdered in Mexico. During 2004-2005 the violence was so prevalent in Mexico that it is in fact estimated that a woman was killed every 6 hours.

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95 Ibid:13
It is worth noting that Mexican society passed through a tragic period of intense fatal violence since the 1990s and onwards; in 2018 Mexico saw the highest number of murders – about 34,000 - since homicide statistics began in the country in 1997\(^{100}\).

Hence, it is crucial to see these alarming numbers of femicides within the context of escalating violence and trivialization of fatal violence across Mexican society in general. Nevertheless, it is still massively alarming that so many women are killed, especially since we know from UN statistics that most of these murders will be femicides rather than linked to drug trafficking (which is common for fatal violence against men in Mexico and Central America).

In the aftermath of outrage, activism and political debate a law that was unique in the region, and perhaps even so in the entire world, emerged in response to Mexico’s femicide crisis. In Mexico the constitution establishes an equal right to opportunity, quality of life and development for Mexican nationals and other nationals who are residing within the boundaries of the state of Mexico\(^{101}\). This constitutional discrepancy, and the horrific violence against women that battered Mexican society in the early 2000s, lead up to the introduction of the Ley General De Acceso De Las Mujeres A Una Vida Libre De Violencia (General Law of a Life of women free from violence, my translation). This

\[\text{de Género en el Marco de las metas del Milenio, 19 al 21 de septiembre del 2006,}\]

\[\text{Aguascalientes, Ags., México, INMUJERES, UNIFEM, CEPAL, INEGI, 2006,}\]

\(^{100}\) INFOBAE, Con 33.341 asesinatos, 2018 fue el año más violento en México,  

law will be discussed in more detail below, I will also briefly look at the accommodation of femicides into the Mexican penal code.

**LEY GENERAL DE ACCESO DE LAS MUJERES A UNA VIDA LIBRE DE VIOLENCIA (GENERAL LAW OF ACCESS OF WOMEN TO A LIFE FREE FROM VIOLENCE)**

The law’s objective is to guarantee the rights of women across Mexican society, their equality and the fundamental right to a life free from violence. It is a public order law and it is valid across the entire federation of Mexican States. In the initial Chapters the law defines what constitutes violence against women, and the rights of all women to a life free from violence. In Art. 4 the fundamental objectives that are estimated to achieve a life free from violence for women are defined as:

“ I. La igualdad jurídica entre la mujer y el hombre;
II. El respeto a la dignidad humana de las mujeres;
III. La no discriminación...
IV. La libertad de las mujeres”

I: The legal equality between women and men.
II: The respect of human dignity of women.
III: The no discrimination...
IV: The liberty of women”, *My translation.*

The law makes direct reference to international law (CEDAW) in Art. 5 VIII and
Convention of Belem do Para. But perhaps more importantly still; under Article XI there is reference to “gender perspective” and a clear stand in favor of a socio-constructivist view of gender and gender order. This is important as the law makes clear that the state argues in favor of socio-constructivist accounts of gender, rather than conservative biological/sexual accounts of gender.

In Chapter 6 preventive action, or the ways in which the state is obliged to take preventive action to decrease risks of fatal gendered violence, is raised. In Articles 8-9 special care is given to victim’s rights to treatment, but also to the obligation to offer reeducation measures for perpetrators. Articles 11-14 speaks of acts of violence in school and work settings and expands protection from the family sphere to these settings. The same is said about communities and institutions in Articles 16-20. Article 38 is also of importance to our analysis; it deals with prevention of gendered violence. Central to my investigation is what is stated regarding femicides in Article 21:

“ARTÍCULO 21.- Violencia Feminicida: Es la forma extrema de violencia de género contra las mujeres producto de la violación de sus derechos humanos, en los ámbitos público y privado, conformada por el conjunto de conductas misóginas que pueden conllevar impunidad social y del Estado y puede culminar en homicidio y otras formas de muerte violenta de mujeres.”

ARTICLE 21.- Violent feminicide: Is the extreme form of gender violence against women, product of the violation of their human rights, in public and private spheres, conforming of a conjoint of misogynist conducts which can lead to social impunity of the state and which may culminate in the slaying of, and other forms of violent deaths, of women.” My translation.
In this general law the crime of femicide is, in fact, defined as a human rights issue, and interestingly the element of impunity, hence state responsibility is included in the definition. Here feminist and human rights perspective accounts of femicides are apparent in the legislation. Furthermore, the federal penal code of Mexican states has included femicide in Chapter V, Article 325:

“Artículo 325. Comete el delito de feminicidio quien prive de la vida a una mujer por razones de género. Se considera que existen razones de género cuando concurra alguna de las siguientes circunstancias:

I. La víctima presente signos de violencia sexual de cualquier tipo;
II. A la víctima se le hayan infligido lesiones o mutilaciones infamantes o degradantes, previas o posteriores a la privación de la vida o actos de necrofilia;
III. Existan antecedentes o datos de cualquier tipo de violencia en el ámbito familiar, laboral o escolar, del sujeto activo en contra de la víctima;
IV. Haya existido entre el activo y la víctima una relación sentimental, afectiva o de confianza;
V. Existan datos que establezcan que hubo amenazas relacionadas con el hecho delictuoso, acoso o lesiones del sujeto activo en contra de la víctima;
VI. La víctima haya sido incomunicada, cualquiera que sea el tiempo previo a la privación de la vida;
VII. El cuerpo de la víctima sea expuesto o exhibido en un lugar público.

A quien cometa el delito de feminicidio se le impondrán de cuarenta a sesenta años de prisión y de quinientos a mil días multa.

“Article 325. Commits the crime of femicide he who deprives the life of a woman, due to gender related reasons, it is considered that such reasons exist when any of the following circumstances
occur:

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

II. The victim has suffered degrading gender mutilation and/or lesions, acts of necrophilia, prior, or posterior, to being killed;

III. There exists evidence of prior violence in the family, labour or school context between the perpetrator and the victim.

IV. There has been a sentimental, affective or confidential relationship between victim and perpetrator.

V. There is data that establishes that there were threats made regarding the crime, harassment, or injuries inflicted upon the victim by the perpetrator.

VI. The victim has been uncommunicated, regardless of the reason, prior to being killed;

VII. The body of the victim has been exposed or exhibited in a public place;

Whoever is found guilty of femicide will be incarcerated for fourth to sixty years and a fine of 500 to 1000 days.” My Translation

The Mexican example pioneered a general integral law to protect women from violence in general. This was reproduced across Latin America, but the very ambitious initial Mexican Law still stands out as deeply explicit and direct when it comes to confronting violence.
THE ARGENTINIAN PENAL CODE

The Argentinian government has introduced Law 26, 485 which aims is to protect the right of women to a life free from violence. It establishes that women have a fundamental right to a life free from discrimination and violence. The law also establishes that the state is obliged to assist, prevent and provide safe houses for women suffering domestic, and/or other forms of gendered violence. Femicides is never mentioned in this general law. Another important difference between Argentina and the other countries compared in this study is that Argentina has not incorporated an independent article in its’ penal code, or any other independent laws concerning femicide, but rather included an aggravating circumstance to the article 80 of its’ penal code.

This followed upon debate and preoccupation or rising numbers of Femicides in Argentina. Hence, the Congress voted in favor of adding the following incision to article 80 in 2012:

“ARTICULO 80. - Se impondrá reclusión perpetua o prisión perpetua, pudiendo aplicarse lo dispuesto en el artículo 52, al que matare:

1°. A su ascendiente, descendiente, cónyuge, ex cónyuge, o a la persona con quien mantiene o ha mantenido una relación de pareja, mediare o no convivencia.”

Inc. 4°. “Por placer, codicia, odio racial, religioso, de género o a la orientación sexual, identidad de género o su expresión.”.

ARTICLE 80, - Life time imprisonment will be applied to the who, being applicable what Art. 52, he who kills:

1° His ascendant, descendent or conjugal or non-conjugal partner, or the person with whom a relationship has been, or is, maintained, in cases of living or not living together.

Inc. 4°. By pleasure, greed, racial hatred, religious hatred, gender hatred or hatred for sexual orientation, gender identity or expressions of any of the above. / My Translation. ”

The Argentinian case is very interesting for several reasons. For one it never explicitly mentions the word femicide, but rather describes the circumstances and defines it as a crime that may be punishable by life incarceration. Another important point of interest is that it includes what scholarship has defined as lesbophobic Femicides as it includes “...hatred for sexual orientation...gender hatred...”.
RESULTS

Overview

<table>
<thead>
<tr>
<th>Country</th>
<th>Independent Art. in Penal code?</th>
<th>Aggravator of homicide?</th>
<th>Integral General Law to protect women’s right to a life free from violence?</th>
<th>Nomen Iuris</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>X</td>
<td>X</td>
<td></td>
<td>Not specified</td>
</tr>
<tr>
<td>Brazil</td>
<td>X</td>
<td>X</td>
<td>Feminicide</td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>X</td>
<td>X</td>
<td>Feminicide</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>X</td>
<td>X</td>
<td>Feminicide</td>
<td></td>
</tr>
</tbody>
</table>

The countries studied in this text have all implemented integral laws to protect women from violence, to promote gender equality and to raise awareness of gender inequality throughout society. My research purpose was to find out how femicides are covered the national laws. I discovered that all countries, but Argentina have implemented independent articles in their penal codes covering femicides. All four countries have general laws protecting women’s rights to a life free from violence, in which preventive measures regarding gender perspectives, education and socio-constructivist accounts of gender orders are mentioned.
Below follows a summary table of how the different legal frameworks protect some of the fundamental aspects of Art. 4 in of the Belem do Para convention:

<table>
<thead>
<tr>
<th>Country</th>
<th>Respect of life</th>
<th>Right to health</th>
<th>Personal Liberty</th>
<th>Dignity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Protected as an aggravated circumstance in penal code &amp; protected under Art. 2 Law 26,485</td>
<td>Art. 3, Ley 26,485</td>
<td>Art. 3, Ley 26,485</td>
<td>Art. 4 Ley 26,485</td>
</tr>
<tr>
<td>Brazil</td>
<td>Protected in legal good protected in Penal code, Lei Maria Penha Art. 30</td>
<td>Art. 20 &amp; 30, Lei Maria Penha Art. 30, Lei Maria Penha</td>
<td>Art. 30, Lei Maria Penha Art. 30, Lei Maria Penha</td>
<td></td>
</tr>
<tr>
<td>Mexico</td>
<td>General De Acceso De Las Mujeres A Una Vida Libre De Violencia &amp; Penal Code</td>
<td>General De Acceso De Las Mujeres A Una Vida Libre De Violencia</td>
<td>General De Acceso De Las Mujeres A Una Vida Libre De Violencia</td>
<td>General De Acceso De Las Mujeres A Una Vida Libre De Violencia</td>
</tr>
<tr>
<td>Peru</td>
<td>Penal code, Art. 2, 3 &amp; 9 of Law 30364</td>
<td>Art. 2 &amp; 3, Law 30364</td>
<td>Art 2 &amp; 3 Law 30364</td>
<td>Art. 2. Law 30364</td>
</tr>
</tbody>
</table>

The pattern that emerges from my comparative study is that of four countries making progress, albeit in their slightly different way. An area of opportunity for all countries is to make use of the scholarship regarding categorizing of femicides (i.e. racist, lesbophobic and so on).

It is true that Peru in Law 30364 discuss intersectionality and expand protection to include features of sexuality, race, class and even HIV-status. Also, Brazil in Art. 20 Lei Maria Penha discuss the protection from an intersectional perspective. But a step forward, that I have identified in this study, is to expand that discussion towards penal codes in the case of Brazil and Perú, and to
include it into general laws in Argentina and Mexico, and subsequently into respective penal code.

Furthermore, articles in penal codes should be as specific as possible - this is not always the case currently - in order for prosecutors to be able to present actual criminal cases and not, due to lack of evidence, have to prosecute femicides as homicides, as they cannot accommodate all cases with a very narrow definition. Hence, the main finding of my study is a positive tendency of the compared legal frameworks to achieve the function of protecting women’s life by using femicide-terminology in their respective national legislation. The main opportunities are to continue to expand the preventive aspects in the general laws, to include categorization that spans beyond the traditional feminist account of femicide as a result of patriarchal normative violence. It is true that patriarchal violence is a key factor driving femicides. However, as we have seen in Sociological and Criminological scholarships of femicides (see the Theory-section of this text), it is far from the only aspect beyond femicide. Prevalence may be affected by several factors, and some women – such as transgender women to give one example – may suffer additional risk of femicide as they are largely socially excluded. The same may be said for lesbians and bisexual women. Hence, it is my view that such groups need to be protected in penal codes and general laws moving forward.
**DISCUSSION**

What becomes clear when reading the general laws of the countries in this study is the influence of feminist scholarship. This is no coincidence – feminist activists have been on the frontline for several years call for a review of how structural inequalities cause violence throughout society. This influence has particularly been evident when reading the general laws, especially the cases of Mexico, Peru and Brazil. Nevertheless, when it comes to the penal code such accounts become less important. Additionally, as was covered in the results section, an area of development is the inclusion of more problematized categories of types of femicides. Perhaps this is a natural consequence of some of the dominant accounts being feminist and being directed mainly towards patriarchy in its’ traditional form. Scholars such as Lagarde, Corradi\(^{103}\) and Cobo\(^{104}\) are influential and their kind of reasoning resonates with the legal framework in the countries compared. Such feminist accounts are tremendously important and should be forwarded further moving on, because there is still much work to be done.

Femicides continue to be a problem across Latin America, and structural inequalities between men and women as well. However, queer perspectives and intersectional analysis indicate that not all women experience oppression in the


same way – are really women of Lima’s finest neighborhoods seeing the same
problems with structural violence as, for example, shanty towns do?
Unfortunately, there is no data available to evaluate this but seems unlikely that
the theory that patriarchy is equally oppressive towards women across all social
groups, sexual orientations and social classes seems to be at least partly
problematic in the case of Latin America. The perspectives that include more
sociological and/or criminological approaches to femicides mainly are to be
found within general laws, such as the one in Brazil or Perú, but hardly ever in
the penal code. In that case Argentina is a curious exception – on the one hand
there is no independent Article in the penal code, but a more nuanced
perspective is visible as lesbophobic and/or racist motivations are considered in
the Argentinian aggravating circumstance.
The legislation that has been implemented – general laws and penal code
modifications – are of great importance as they allow for prosecutors to
effectively charge perpetrators for depriving women of their most fundamental
human right – that to a life free from violence. However, what was evident from
my investigation is the lack of substantial protection for marginalized women.
Penal code should be expanded to include categories of race, gender, class and
other fundamental aspects of identity that will impact how women experience
oppression. Perhaps here international law will play a key role. After all, the
Belem Do Para Convention played a key role in motivating countries across the
Americas to implement laws that protect women’s rights. Not unlikely
international agreements on how to protect marginalized women would span a similar reform wave across the region.

Another important point that is that of the opportunity to include a human rights perspective into the additional categorization of femicides in the respective penal codes. Especially important is to distinguish those types of femicides that form part of greater human rights violations. Additionally, another missing piece in all the four legislation is a rigorous and comprehensive account of the rights of victims – what about reparations to victims and families? What about children growing up in families affected by femicides? Art. 2 in the Peruvian Law 30364 is an example of such honoring of victim’s rights, The Mexican Integral Law also covers victim’s rights. Both are good examples of points of departure for future work and could be elaborated further and perhaps imported in an adapted form into other Latin American legislations.

Finally, it is of great importance to consider how prevention could be further elaborated in the penal codes and/or in the general laws of respective country. As, in fact, femicide prevalence is still very high across the region it should be a priority to legislate against it. Here increased mechanisms of control, follow-up, laws that oblige local authorities to educate and prevent gendered violence. These mechanisms are somewhat present in some of the general laws but should probably be elaborated further alongside greater social reform projects that aim promote gender equality across society at large.

In summary what my analysis shows is that the tendency to implement general
laws that honor the general obligations from the Belem do Para Convention is an important first step. However, a few general recommendations for future discussions have emerged:

- Implement a more rigorous categorization of the femicides types in penal codes.
- Implement rigorous and holistic mechanisms of control in general laws, and when possible in penal codes.
- Include a more dynamic gender perspective in general laws, departing from sociological, criminological and queer-theory oriented perspectives on gender and gendered violence in order to include such marginalized groups into the legal good that is to be protected.
- Implement, and legally control, preventive action in form of educational reforms.
SUMMARY

In this study I have compared 4 Latin American legislations, focusing on their respective penal code, in order to study how they have implemented the nomen iuris of Femicide and their obligations from the Belem do Para convention to guarantee women access to a life free from violence. What I have found is that a general tendency is present in all four countries to implement general laws that honor the Belem do Para Convention, and furthermore adjust penal codes in order to accommodate the nomen iuris of femicide. The main finding is that a clearly positive tendency to pursue equality and protection of women’s rights is present and that the legal good of female lives is protected through the nomen iuris of femicide in all four countries, although in slightly different ways. A general recommendation is to continue the tendency to reform, to focus on expanding protection to marginalized women and to further legislate prevention. Also, femicides should be expanded to cover specific situations in order to allow for actual criminal cases to be presented by local prosecutors. Although progress has been made in all four countries, I found the following areas of opportunities for future discussions around how-to pursue the goal of gender equality and protect women’s right to a life free from violence:

- Implement a more rigorous categorization of the femicides types in penal codes.
- Implement rigorous and holistic mechanisms of control in general laws, and when possible in penal codes.
Include a more dynamic gender perspective in general laws, departing from sociological, criminological and queer-theory oriented perspectives on gender and gendered violence in order to include such marginalized groups into the legal good that is to be protected.

Implement, and legally control, preventive action in form of educational reforms.