

# Femicide as a Human Rights Issue – the Case of Latin America

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## Key points

- The increasing rates of femicides are a burning human rights issue, recognised as a “shadow pandemic.”
- Latin America is an undisputed leader in tackling the issue due to an extensive regional and national anti-femicide legislation.
- However, the failure to address the structural causes, the inconsistency of the legislation across the region and lack of universal statistical methodology perpetuate the impunity gap at the heart of such legislation.

## Introduction

Alongside the ongoing COVID-19 crisis, another pandemic is unfolding – the pandemic of femicides and gender-based violence against women and girls. This “shadow pandemic,” as the United Nations system calls it, is often overlooked globally despite being a burning human rights issue. **As estimated by the World Health Organisation (WHO), 736 million women – which equates to almost one in three – have been subject to intimate partner violence, non-partner sexual violence, or both at least once in their life.**<sup>1</sup> The situation has been exacerbated by the social isolation measures introduced by many states as a result of the coronavirus pandemic. The phenomenon of femicide is globally recognized as the most extreme form of the streak of violence against women and girls. A term popularized by Diana E. H. Russel, it can be defined as “the killing of females by males *because they are female*.”<sup>2</sup> As the author herself notes, the word bears a conceptual value as a tool that “specifically points to and politicises the sexist, patriarchal, misogynistic killing of women and girls by men.”<sup>3</sup> **This way, the term addresses not only the symptoms – the growing numbers of women murdered at the hands of men – but it also hints at the underlying causes rooted in structural dynamics of patriarchy which are embedded in the institutions of the police, state and international system as a whole.**

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<sup>1</sup> WHO News, “Devastatingly pervasive: 1 in 3 women globally experience violence,” World Health Organisation, 9 March 2021, Available at: <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>.

<sup>2</sup> Russell, D. E. H. (2021). “My Years Campaigning for the Term Femicide.” *Dignity: A Journal of Analysis or Exploitation and Violence* Vol.6: Iss.5, Article 6.

<sup>3</sup> Ibidem.

**The effectiveness of the term in politicising the murder of women, because they are women, is especially palpable in the case of Latin America.** The feminists there were among the first ones to adopt the term *femicidio* to describe the female homicides in Ciudad Juárez in Mexico where more than 370 women have been killed between 1993 and 2005.<sup>4</sup> Since then, the use of the term's mobilising potential to organise anti-femicide groups has spread to the rest of the continent, as the region has experienced at least 4,091 femicides in 2020 alone.<sup>5</sup> While some progress in national legislations of the Latin American countries has been made, the mobilisation of the civil society generated even louder calls for systematic governmental action and victim-centred media coverage. Thus, bearing this context in mind, this paper aims to take a closer look at the issue of femicides in Latin America and the steps that have been undertaken to tackle it. After a brief overview of the subject in different parts of the continent, it will focus on the legislative measures that have been introduced on national and regional levels and the extent to which they have been successful in protecting the lives of women and girls. By concluding the article with recommendations, it is aimed to highlight the progress that Latin American legislation has made in comparison to the rest of the world while also pointing out the room for improvement in the future.

### **The extent of femicide in Latin America**

A precise characterisation of this complex crime is essential to fully grasp its extent and effectively fight the perpetual impunity. In the 2012 report of the United Nations Special Rapporteur on Violence against Women, its causes and consequences, femicides are divided into active and direct, as opposed to passive and indirect.<sup>6</sup> A very similar typology has been identified in the Latin American experience according to the Latin American Protocol for Investigation of Femicide – namely, it recognises that femicide can be intimate or non-intimate; systemic and sexual; transphobic, lesbophobic and racist. Additionally, it can happen due to association/connection; due to prostitution or stigmatised occupations; because of trafficking

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<sup>4</sup> Amnesty International Report AMR 41/007/2005, “Mexico: Justice fails in Ciudad Juarez and the city of Chihuahua,” Amnesty International, 28 February 2005. Available at: <https://www.amnesty.org/en/documents/amr41/007/2005/en/>.

<sup>5</sup> ECLAC Press Release, “At Least 4,091 Women Were Victims of Femicide in 2020 in Latin America and the Caribbean, Despite Greater Visibility and Social Condemnation,” ECLAC, 24 November 2021, Available at: <https://www.cepal.org/en/pressreleases/eclac-least-4091-women-were-victims-femicide-2020-latin-america-and-caribbean-despite>.

<sup>6</sup> Manjoo, R. (2012). “Report of the Special Rapporteur on violence against women, its causes and consequences.” A/HRC/20/16. UN General Assembly Human Rights Council, 23 May 2012.

or smuggling; and due to female genital mutilation.<sup>7</sup> This classification demonstrates the variety of contexts in which the occurrence of femicides has been recorded, which emphasises its prevalence on the continent.

**Notably, the modalities of the crime point to its root causes which are embedded within the historical and socio-economic context of Latin American development.** The acts of femicide are often linked to the legacy of abuse and impunity left by the terror of military governments, death squads, and civil wars – especially in terms of the widespread acceptance of gendered violence. Nevertheless, the phenomenon is also tightly connected to the continuing ubiquity of patriarchal norms, normalisation of misogyny, and assumptions about the role of women in society which view them as a male possession and presume the disposability of female lives.<sup>8</sup> **The machista cultural attitudes are an expression of the unequal relations of power between men and women – “a mechanism of control and domination, discrimination against women, and a display of deeply entrenched sexism.”**<sup>9</sup> Thus, while femicides are often related to domestic abuse, other contributing factors to the growing rates of gendered violence consist of organized crime, gang violence and related acts of vengeance that can be viewed as forms of sexist and misogynist cleansing.<sup>10</sup>

In assessing the extent of femicide in Latin America it must be noted that there is a notorious issue with underreporting, mischaracterization, and data transparency which result in many killings of women which are not accounted for. As reported by the Economic Commission for Latin America and the Caribbean (ECLAC), “femicide is one of the areas where the information void is most apparent” as “in some countries where it is a crime, information on aggravated homicide or femicide is not processed.”<sup>11</sup> For instance, while it is estimated that 12 women are murdered a day across the region, that does not include Brazil, a country with one of the worst records of gender-based violence, due to data limitations.<sup>12</sup> **The lack of accurate**

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<sup>7</sup> UN OHCHR Regional Office for Central America, “Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide),” OHCHR 2014, Available at: <https://lac.unwomen.org/en/digiteca/publicaciones/2014/10/modelo-de-protocolo>.

<sup>8</sup> Joseph, J. (2017). “Victims of Femicide in Latin America: Legal and Criminal Justice Responses.” *TEMIDA* Vol.20: Issue 1, pp.3-21.

<sup>9</sup> Ibidem.

<sup>10</sup> Yagoub, M. (2016). “Why Does Latin America Have the World’s Highest Female Murder Rates?” *InSight Crime: Investigation and Analysis of Organized Crime*. Available at: <https://insightcrime.org/news/analysis/why-does-latin-america-have-the-world-s-highest-female-murder-rates/>.

<sup>11</sup> ECLAC, “Annual Report 2013-2014. Confronting violence against women in Latin America and the Caribbean” (LC/G.2626), ECLAC 2014, Available at:

[https://repositorio.cepal.org/bitstream/handle/11362/37271/4/S1500498\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/37271/4/S1500498_en.pdf).

<sup>12</sup> Ibidem.

**information constitutes one of the main challenges in effectively tailoring the legislation to respond to the issue of femicides and prevent it from happening.** Therefore, comprehensive cross-regional research is crucial to comprehend the nature, extent, social context, and circumstances of recurring murders of women.

### **National and regional legislation**

The above considerations are crucial in order to critically examine the legal and criminal justice responses to femicide across Latin America. The primary action undertaken in face of growing cases of femicide was to ratify the first and only regional instrument aimed at combating violence against women, the Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women (the Belém do Pará Convention), in 1994.<sup>13</sup> This constitutes a major commitment to amending national legal frameworks to respond to cases of extreme violence against women. **The role of the Inter-American Court of Human Rights was also crucial in demonstrating the centrality of eradicating femicides in the broader human rights mission.** More specifically, the watershed *Gonzalez v. Mexico* case (“Cotton Field” case) became the point of departure for the Court’s commitment to highlighting the state obligation to protect the right of women to live free from violence.<sup>14</sup>

The regional legislation has been gradually translated into reforms in national criminal justice systems in an attempt to effectively address the phenomenon of femicides. **As a result, all Latin American countries (except Cuba and Haiti) have approved laws that penalise femicide, and thirteen of them have also introduced a comprehensive law against violence.**<sup>15</sup> Moreover, the Criminal Codes of twelve of these countries include the crime of femicide.<sup>16</sup> All of these states utilise the term “femicide” to properly address the crime of killing

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<sup>13</sup> ELLA Policy Brief, “Building legal frameworks to address femicide in Latin America,” ELLA 2013, Available at: <http://ella.practicalaction.org/knowledge-brief/building-legal-frameworks-to-address-femicide-in-latin-america/>.

<sup>14</sup> Sosa, L. (2017). “Inter-American case law on femicide: Obscuring intersections?” *Netherlands Quarterly of Human Rights*, Vol. 35: Issue 2, pp.85-103.

<sup>15</sup> Deus, A. and Diana, G. (2018). “Analysis of femicide/feminicide legislation in Latin America and the Caribbean and a proposal for a model law.” MESCEVI and UN Women, Available at: <https://lac.unwomen.org/en/digiteca/publicaciones/2018/12/analisis-legislacion-feminicidio-femicidio-modelo-de-ley>.

<sup>16</sup> Deus, A. and Diana, G. (2018). “Analysis of femicide/feminicide legislation in Latin America and the Caribbean and a proposal for a model law.” MESCEVI and UN Women, Available at: <https://lac.unwomen.org/en/digiteca/publicaciones/2018/12/analisis-legislacion-feminicidio-femicidio-modelo-de-ley>.

women due to their gender. This is crucial as only a few states outside the region employ the term in any legal capacity. Latin America is a pioneer in this sense, paving the way for the horizontal expansion of this concept and acknowledging its misogynistic nature.

**Nevertheless, an impunity gap persists at the heart of anti-femicide legislation leading many to state that the current femicide laws in their current do not seem to significantly reduce female homicide rates in Latin America.**<sup>17</sup> Two main factors behind that trend can be identified: the failure to address the structural causes and the inconsistency of the legislation across the region. Firstly, the countries that criminalise femicide without implementing comprehensive laws countering gender-based violence do not provide provisions for prevention, protection, investigation of the crime, and reparation for the victims.<sup>18</sup> This then evinces itself through public officials, police officers, prosecutors and judges who lack proper training and are easily influenced by the omnipresent patriarchal structures. This bias can influence the outcome of legal processes, thereby limiting women's access to justice and creating a context of permanent impunity.<sup>19</sup> Secondly, the lack of a common legal definition of the crime dictates drastically different approaches to the issue across the continent. The main contentions concern the relationship status between the victim and the perpetrator – some states, such as Mexico, classify a crime as femicide only when it involved sexual abuse or when the perpetrator is related to the victim.<sup>20</sup>

**The case of Guatemala aptly illustrates the contrast between the existing legislation and its implementation.** The Guatemalan Congress passed the Law Against Femicide and Other Forms of Violence Against Women in Guatemala and incorporated the concept of femicide in its constitution in April 2008. **Moreover, the Guatemalan framework included a broad definition of femicide which acknowledged the context of unequal power relations between men and women which made it the most comprehensive example of femicide law**

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<sup>17</sup> Joseph, J. (2017). Op. cit.

<sup>18</sup> Deus, A. and Diana, G. (2018). "Analysis of femicide/feminicide legislation in Latin America and the Caribbean and a proposal for a model law." MESCEVI and UN Women, Available at: <https://lac.unwomen.org/en/digiteca/publicaciones/2018/12/analisis-legislacion-feminicidio-femicidio-modelo-de-ley>.

<sup>19</sup> Inter-American Commission on Human Rights. "Access to Justice for Women Victims of Violence in the Americas." Inter-American Commission on Human Rights 2007, Available at: <http://www.cidh.org/women/access07/chap1.htm>.

<sup>20</sup> Deus, A. and Diana, G. (2018). "Analysis of femicide/feminicide legislation in Latin America and the Caribbean and a proposal for a model law." MESCEVI and UN Women, Available at: <https://lac.unwomen.org/en/digiteca/publicaciones/2018/12/analisis-legislacion-feminicidio-femicidio-modelo-de-ley>.

**in Latin America.**<sup>21</sup> Among other efforts, this resulted in creating new government units to work on cases of femicide, as well as an anti-femicide division of the National Police. Nevertheless, the success of these reforms has been mixed. Evidence indicates that not enough budget has been allocated to the Attorney General's Office for these units and very few perpetrators of femicide have been sentenced; Guatemala has also witnessed 159 femicides in 2021 only, indicating the continuation of the streak of violence.<sup>22</sup> Moreover, the new framework does not successfully deal with the legacy of violence against indigenous women stemming back to colonial times. **Up until 2006, the Guatemalan Penal Code granted immunity to perpetrators of sexual violence and kidnapping of women and girls, where the perpetrator married the victim.**<sup>23</sup> Therefore, despite introducing a truly progressive framework, Guatemalan reforms are insufficient to deal with years of state-endorsed impunity.

### Conclusions and recommendations

Latin America remains an undisputed leader in anti-femicide legislation. As of November 2021, it is the region with the highest number of regulations addressing violence against women out of the 52 countries which integrated a gender-sensitive lens into their COVID-19 response plans.<sup>24</sup> Nevertheless, passing such laws is not synonymous with their enforcement and implementation; they also often fall short of the international standards and recommendations. The necessary steps to close the impunity gaps must involve a close cooperation between Latin American countries in producing impartial and independent investigations into the murders of women. A cross-regional action is essential to gather relevant and useful data which can act as a basis for effective legislation. Such initiatives are already underway, as demonstrated by the Femicide Watch Initiative<sup>25</sup> and the CEPAL registration system for femicides announced in November 2019.<sup>26</sup> However, active support and participation of the federal governments in

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<sup>21</sup> ELLA Policy Brief, op. cit.

<sup>22</sup> Ibidem.

<sup>23</sup> Manjoo, R. (2012). Op. cit.

<sup>24</sup> UNDP Data, "COVID-19 Global Gender Response Tracker," UNDP 2021, Available at: <https://data.undp.org/gendertacker/>.

<sup>25</sup> UN OHCHR, "Femicide Watch Initiative," OHCHR 2020, Available at: <https://www.ohchr.org/en/issues/women/srwomen/pages/femicidewatch.aspx>.

<sup>26</sup> La Razón de México, "Reporta Cepal tres mil 529 feminicidios en América Latina y el Caribe en 2018," La Razón de México, 25 November 2019, Available at: <https://www.razon.com.mx/mundo/reporta-cepal-tres-mil-529-feminicidios-en-america-latina-y-el-caribe-en-2018/>.

these international projects are essential to conduct comprehensive and transparent investigations into murders of women because of their gender.



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