

The Process of Criminalizing Femicides: A Comparative Analysis between Mexico and Colombia



Angela Peña de Niz

Please note, this work includes content related to murder and abuse.

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Abstract

Femicides, the intentional killing of women because they are women, have been a rising issue within Latin America and the Caribbean for the past 30 years. This issue has caused many countries within the region to explore different processes for criminalizing femicide. Mexico and Colombia are two countries that have been leaders in the region by implementing expansive and inclusive penal codes. Throughout this paper, I will be discussing important background information concerning Mexico and Colombia to create an important context for the paper. Additionally, I will explore how Mexico and Colombia have criminalized femicide through three different factors: 1) international non-governmental organizations (NGOs); 2) domestic courts; and 3) legislators.

Introduction

In recent Latin American history, the number of gender-based violence against women (GBVAW) crimes has become alarming. Particularly, there has been a rise in the number of femicide crimes occurring across the 33 Latin American and Caribbean countries. The concept of femicide is still a new term that was conceived by Carol Orlock and later refined by Diana Russell as the “killing of females by males because they are females” (Russell, “THE ORIGIN AND IMPORTANCE OF THE TERM FEMICIDE” 2012). GBVAW has been present throughout Latin America and the Caribbean for many decades; however, the extent to which femicide is occurring within the region has made the international community pay closer attention to Latin America and the Caribbean. For example, in 2022, a study conducted by ECLAC (the United Nations Economic Commission for Latin America and the Caribbean) found that in

26 of the 33 countries within the region, there were about 4050 women that were victims of femicide. This translates to about 2 women killed per hour over the course of the year (ECLAC, 2023). Even with the results of studies such as these being so startling, of the 33 countries, only 18 Latin America and Caribbean countries have taken steps to create concrete penal codes that criminalize femicides. In my thesis, I conducted a comparative analysis case study between 2 of the 18 countries, Mexico and Colombia, to understand the extent to which different factors influenced their legal definitions and criminalization of femicide. From this comparison, I explore how the factors affected their process of criminalization.

By framing my thesis around transnational network advocacy and a criminological theoretical framework, we can create a clear comparison between the Mexican and Colombian pathways to criminalizing femicides. The Mexican case

is a strong example of how domestic femicide awareness groups utilized their networks through the boomerang approach (Keck and Sikkink 1998). The “boomerang” method is when domestic groups that are being blocked or ignored by their governments reach out to their international networks to bring attention to the issue at hand (Keck and Sikkink 1998, 9). This is especially the case in Ciudad Juárez, where the domestic groups such as Las Mujeres de Negro garnered international attention to force their government to act (Wright 2011, 717). In the Colombian case it is groups such as Madres de Catatumbo that are bringing awareness internationally to the domestic and sexual violence that is occurring on the local level in one of Colombia’s most violent regions (Stallone 2022). It is also through the work of more national feminists such as Sisma Mujer, an organization that also helps women who are victims of sexual and domestic violence receive justice while simultaneously bringing attention to these issues that are occurring in Colombia to bring that international pressure (*Corporación Sisma Mujer - SweFOR - Movimiento Sueco Por La Reconciliación*, n.d. 2023). Additionally, another tactic that transnational advocates employed was the pincer method. The pincer method is where international groups apply pressure from “above” the state so that domestic groups can focus on passing legislation and exerting pressure from “below” (Freidman 2009, 362). This method was utilized more in Mexico as opposed to Colombia, where there was some resistance to passing legislation to codify femicides. Furthermore, throughout my research on femicide, a criminological approach has been present. The criminological approach explains why “femicides” are a “unique subsection” of homicides (Corradi et al. 2016, 979). It also gives an explanation as to why femicides should not be reduced to crimes of passion. In the penal codes for both Mexico and Colombia, there is a clear distinction and definition between what constitutes

a femicide and homicide and why they are treated as two different entities.

The sources I used to conduct this case study were composed of primary sources, such as the penal codes in both Colombia and Mexico. I compared the legal definitions of both Colombia and Mexico using the qualitative data provided by Lucas Martinez-Villalba, who compiled an extensive list of the definitions of femicides using the federal penal code and created a chart for comparison between the two definitions. Moreover, another primary source I used was the IACHR ruling in the Cotton Field case for my analysis. In addition to the primary sources that I utilized, a large part of my research included analyzing secondary source material, such as peer-reviewed articles. These articles help provide the source material for the data on which factors influenced the criminalization of femicide in the respective countries.

Little research has focused on the criminalization of femicides, and which factors are influential throughout this process. However, my findings contribute to this gap in the literature on the criminalization of femicides. Investigating how the criminalization of femicides led me to consider a comparative case analysis of Mexico and Colombia. Both countries have various aspects in common that make them excellent case studies to investigate. For example, they both have similar economic standing in Latin America, as they are both major oil-producing countries. In addition to their economic standing, another notable similarity that these two countries share is the fact that they have a similar history of drug-related violence. The drug-related violence that these countries experience is relatively new; the term narco-terrorism was coined, to explain the unique situation these countries find themselves in. Essentially, narco-terrorism involves an “alliance between drug producers and an insurgent group” to carry out terrorist attacks in their home countries (Teiner 2020, 84). Drug trafficking organizations

(DTOs) in Colombia and Mexico are engaged in terrorist acts such as “bombings, violent communication, and attacks against politicians” (Teiner 2020, 87). This shared experience, coupled with the economic and political commonalities, is not the only area where these countries are similar - they both are leaders when it comes to criminalizing femicides. Of the 26 Latin American and Caribbean countries that have laws that criminalize femicide, Colombia and Mexico are the most progressive, containing penal codes that exhibit inclusive language that defines not only acts of femicides, but also who qualifies as a victim of these violent crimes. However, even though they are both leaders in the way they have constructed their penal codes, the process by which it took each state to implement and create their laws differs sustainably. Mexico had to be “shamed” by both domestic and international organizations for them to even consider acting and acknowledging the issue. The families of loved ones who died from femicides had to deal with the inaction of the Mexican government and demand to be heard before anything concrete was done. In contrast, the Colombian government took a different approach. While the Colombian government has its fair share of inefficiencies and compliancy, the international community did not have to fight as hard to force Colombia to act for the victims of these crimes. Colombia has a history with GBVAW because of the armed conflict. Therefore, it does not seem outlandish to Colombians that women are dying because of the misogynistic views that men hold. Because Colombia was not forced to deal with the issue of femicides, they could go the extra mile when it comes to criminalizing these offenses. By utilizing international soft law, which is not legally binding and is notoriously difficult to implement, and transforming it into hard law, they were able to create groundbreaking precedent and an inclusive legal definition for femicides that protects a wider range of people.

In my thesis, I detail the current literature on femicides, from the people who helped define what femicide is today to the current legislation on criminalizing femicides today. After focusing on the current literature, I dive into the historical context and background of each country. The historical background clarifies the reason why these countries are more similar than what the literature currently suggests. Additionally, it provides context as to why each country struggles with the issue of femicide. Next, I discuss my methodological process with both the primary and secondary sources that I have used. Furthermore, I analyze which factors influenced Mexico and Colombia’s processes for criminalizing femicides and why the Colombian approach is more inclusive, allowing space for transgender women to join the conversation. Finally, I present my findings, which are that there are three factors that affect the process of criminalizing femicide: 1) international NGOs; 2) domestic courts; and 3) legislators. Of these three factors, the international NGOs and legislators were the most influential for Mexico during the process of criminalizing femicide, while domestic courts played the biggest role for Colombia.

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Author’s Note: This project is the culmination of a year long project, plus inspiration from thousands of strong women across Latin America and the world.