



Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)



Regional Office for Central America

ISBN 978-9962-5559-0-2

This publication was developed by the Regional Office for Central America of the United Nations High Commissioner for Human Rights (OHCHR) with the support of the Americas and the Caribbean Regional Office of United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), in the framework of the United Nations Secretary General's Campaign UNiTE to End Violence against Women.

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This publication is available online at: www.oacnudh and www.onumujeres.org

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Design and layout: Diseños e Impresiones Jeicos, S.A., Panamá

Printing: Diseños e Impresiones Jeicos, S.A., Panamá

Cover Photo: UN Women Mexico/Ina Riaskov

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Abbreviations

ACHR	American Convention on Human Rights
ACUNS	Academic Council on the United Nations System
AIAMP	Ibero-American Association of Public Prosecutors
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of All Forms of Discrimination against Women
COMJIB	Conference of Ministers of Justice of Ibero-American Countries
COMMCA	Council of Ministers of Women's Affairs of Central America
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ILO	International Labour Organization
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
MESECVI	Follow-up Mechanism to the Belém do Pará Convention
NGO	Non-governmental organization
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
PAHO	Pan American Health Organization
UNODC	United Nations Office on Drugs and Crime
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
VAW	Violence against women
WHO	World Health Organization

Foreword

It gives me great pleasure to acknowledge this important contribution to the on-going work on addressing the phenomena of gender-related killings of women. Globally, there is an increasing focus on the numerous manifestations; the complexity of its root causes; its worrisome increase in some contexts; and the gravity of its consequences for the victims, their families, the community and the society as a whole. I dedicated my 2012 thematic report to this issue and highlighted that the gender-related killing of a woman was the ultimate act of violence in a continuum of violence, and that such killings had “taken on disturbing proportions in the last few years.”¹ In 2011, UNODC published a *Global Study on Homicide* noting that “intimate partner/family-related violence is a major cause of female homicides,” and that women are more likely to be killed in the home.² In 2013, a WHO study indicated that globally more than 38% of all murders of women are reportedly committed by an intimate partner, in comparison to 5% of all murders of men.³

The development of a more nuanced analysis in recent years has led to outcomes such as: the distinguishing of such killings from other types of homicide; the recognition that such killings do occur in the home and the community, whether by state or non-state actors; the need for specificity in response in addressing this phenomena; and importantly, a focus on the responsibility of the state to act with due diligence in its efforts to eliminate all forms of violence against women. Numerous countries have put into place specialized legislations, action plans, public policies and programs to prevent and eradicate gender-based violence. Some - especially in Latin America - have modified their criminal law to include gender-related killings of women; some have created specialized units within the police or the prosecutor’s offices; some have established specialized courts; some have instituted specialized training for justice operators. All these measures are a step in the right direction and should be applauded.

However, impunity rather than accountability, for the killings of women continues to be the norm in numerous contexts, and this is a source of concern. Significant challenges remain in the efforts to address the unequal and discriminatory manner in which crimes against women and girls are dealt with in the justice system. The insufficient attention given to the gendered nature of the crime, to previous complaints presented by the victims, the inadequacy of criminal investigations, the insufficient contextualization of the cases, the heavy reliance on testimonies of witnesses rather than on other types of evidence,⁴ the erroneous classification of crimes, and the use of mitigating circumstances to lower sentences, are among the many obstacles victims and their relative face in their efforts to access justice, and also to obtain justice.

This Model Protocol is a collaborative effort between the Office of the United Nations High Commissioner for Human Rights (UNHCHR) and UN Women. It responds to the needs and realities of the Latin American region, and is an attempt to assist the relevant institutions with a practical tool in the quest for gendered responses to address the investigation of killings of women. The Model Protocol reflects a multi-disciplinary and educative approach that includes a focus on the individual, institutional and structural factors that are relevant to understanding and responding to the phenomena of gender-related killings of women.

The Protocol incorporates international and regional norms and standards, and also reflects a commitment to the September 2012 Joint Statement by the Human Rights Council on gender-motivated killings which stressed the need for “the development of international guidelines for the documentation and investigation of gender-based killings, which ensures compliance with the guarantee of non-repetition” as a means to “strengthen both the investigation processes and the criminal proceedings to sanction the perpetrators.”⁵ Furthermore, the Central America Council of Ministers of Women (COMMCA) recognized that the Model Protocol constituted a “valuable instrument to guide the action of governmental entities, especially the ones involved with public security and the advancement of women.”⁶ Similar opinions have been expressed by the Conference of the State Parties to the Belém do Pará Convention, and also during the General Assembly of the Ibero American Association of Public Ministries (AIAMP).

The foundation for the successful institutionalization of the Model Protocol is reflected in the fact that its purpose is practical; its content responds to an authentic demand from national institutions; and its participatory writing process involved judicial practitioners from throughout Latin America and beyond. This is a positive example of working with national and regional actors and entities, and affirming their expertise and experience, in the development of a tool that assists to address and challenge the accountability deficit as regards the killings of women.

Laws, policies, guidelines and protocols must ultimately serve the purpose of changing the reality on the ground. It is my hope that this Model Protocol evolves into an effective tool in the quest to eliminate all forms of violence against women, including gender-related killings of women.



Professor Rashida Manjoo

Special Rapporteur on violence against women, its causes and consequences

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1. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/23/49, 14 May 2013
 2. UNODC, Global Study on Homicide, 2011, p. 57-58.
 3. Global and regional estimates of violence against women. Prevalence and health effects of intimate partner violence and non-partner sexual violence, 2013.
 4. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/23/49, 14 May 2013, at 53.
 5. Human Rights Council, 21st Session. Joint Statement on Gender-Based Killings, Item 8. 20 September 2012
 6. XXXIV Reunión Ordinaria del Consejo de Ministras de Centroamérica y República Dominicana (COMMCA), numeral 2.

Preface and acknowledgments

The *Latin American Model Protocol for the investigation of gender-related killings of women* is a practical tool, designed to be applied by the people responsible for carrying out the investigation and prosecution of these acts. Its main objective is to offer guidance and lines of action to improve the practice of those working in the justice system, forensic experts, and other specialized persons, including those acting in relation to the crime scene, the forensic laboratory, the interrogation of witnesses and suspects, the case analysis, the formulation of the indictment, or before the court.

The content of this *Model Protocol* is based not only on technical elements—essential to understand the gendered dimension of the killings of women—but also on the experience and lessons learned by the people that participate in these cases day in and day out.

This text is the result of a broad consultation process carried out with prosecutors in charge of the investigations, police officers, forensic experts, people that work with perpetrators of these crimes, professionals from a variety of disciplines, organizations that assist the victims (direct and indirect) of violence against women, and judges called on to evaluate the evidence, punish those responsible for these crimes, and determine the reparations for the victims.

The participation of a broad spectrum of professionals from all of Latin America, the Dominican Republic, and Europe has been essential to identify the real needs, define the content of the document, and guide its development. Over the two years of joint work between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) in the framework of the Secretary General’s UNiTE to End Violence against Women Campaign, seven consultation sessions were held at the national and regional levels. These international, multidisciplinary, and inter-institutional meetings produced very enriching technical discussions.

The text was also presented in political fora—such as the meeting of States Party to the Belém do Pará Convention and within the framework of the Council of Ministers of Women’s Affairs of Central America (COMMCA)—and in specialized spaces, such as the General Assembly of the Ibero-American Association of Public Prosecutors (AIAMP).

We extend our appreciation to all those people—prosecutors, police officers, forensic experts, judges, public defenders, academics, and members of women’s affairs mechanisms and women’s and LGBTI organizations—who offered us their knowledge and experiences in order to enrich this publication. Without their contribution this work would not have been possible. The list is too extensive to cite everyone here so we have included it as an annex. We hope that we have not forgotten anyone and apologize if in fact we have.

We would also like to acknowledge all those people who passionately and energetically helped us to organize these consultation processes. We especially thank the staff of the governmental entities that coordinated the meetings in Costa Rica, Chile, Panama, and the Dominican Republic. The support from the different sections of our headquarters and regional offices in Latin America of UN Women and OHCHR were vital for reaching our objective.

This document was written by a multidisciplinary team. For that reason, the different chapters change stylistically, but they share the same focus: to provide guidance and elements for identifying the gender-based motivations behind killings of women.

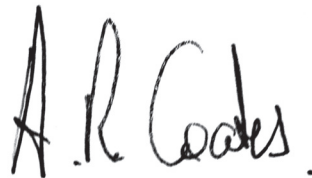
We would like to thank Camilo Bernal Sarmiento, lawyer and criminologist from the National University of Colombia and the University of Barcelona; Dr. Miguel Lorente Acosta, tenured professor of legal medicine at the University of Granada; and Françoise Roth, OHCHR Regional Gender Advisor. These authors developed this Model Protocol based on an initial text drafted by Margarita Zambrano. We also thank Alejandro Valencia Villa for editing the document.

We recognize in a special way the pioneering work that experts in the region, especially in Mexico and El Salvador, have carried out in this field. These initiatives, which UN Women and OHCHR have had the privilege of supporting, have paved the way for judicial bodies in other countries to consider the importance of approaching criminal investigations and prosecutions from a gender perspective.

The Model Protocol does not aim to substitute the manuals and protocols on investigation that already exist in the region. Quite to the contrary, the meticulous review of these documents has allowed us to provide complementary elements and to incorporate a gender perspective for the investigation and prosecution of femicides/feminicides. Although the document has a regional scope, it should be adapted for each of the different national realities based on the diverse characteristics of criminal procedure in the region. We hope that the content serves as a basis for strengthening the work of all the many people committed to the struggle against impunity in the cases of gender-related killings of women.



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INTRODUCTION

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Introduction

1. Women are subjected to multiple forms of discrimination that violate the principles of equality of rights and respect for human dignity. The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) has identified gender-based violence as one of the manifestations of discrimination that has as its primary cause gender inequality—in other words the asymmetrical power relations between men and women.⁷ Gender-based violence is “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”⁸

The UN Declaration on the Elimination of Violence against Women defines violence against women (VAW) as:

any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁹

2. This definition includes violent acts committed against women because they are women, for gender-based motivations, or those that disproportionately affect women.

3. The gender-related killing of a woman, codified in some legal systems as “femicide” or “feminicide” and in others as aggravated homicide (see Annex 1), is the most extreme form of violence against women. It takes place within the family or in public spaces and can be committed by private individuals or carried out or tolerated by state agents. It amounts to the violation of several fundamental rights of women that are established in the core international human rights instruments—especially the right to life, the right to physical and sexual integrity, and the right to personal liberty.

Gender-related killings of women are the most extreme form of violence against women.

4. Although its diverse manifestations illustrate different interrelations between socio-cultural norms and practices, femicide¹⁰ is a global phenomenon that has reached alarming proportions.¹¹ Its victims are women in different developmental stages, conditions, and situations. The available reports reveal that gender-related killings of women show signs of the use of disproportional violence before, during, or following the criminal act. This indicates a particular brutality and ruthlessness against the body of the woman. In many cases the killing is the final act on a continuum of violence. This is particularly true in the cases of intimate femicide committed by the husband, long-term partner, boyfriend, etc. These aspects are some of the distinguishing elements that separate these killings from other homicides.¹²

5. To combat VAW, international human rights law has established a set of norms and standards that oblige states to take measures to prevent, investigate, punish, and redress violations. The due diligence standard is a frame of reference to analyze the acts or omissions of the relevant state entities and evaluate states’ compliance with international obligations (see Chapter II).

The due diligence standard is a frame of reference to analyze the acts or omissions of the relevant state entities.

6. Access to justice is a central element of these obligations. The due diligence standard is based on the supposition that states must have adequate justice systems that ensure access to criminal and restorative justice mechanisms for women victims of violence.

7. The United Nations Secretary General’s 2006 study, *Ending Violence against Women*, describes the effect that impunity has on the lives of women as follows:

Impunity for violence against women compounds the effects of such violence as a mechanism of male control over women. When the State fails to hold the perpetrators of violence accountable and society explicitly or tacitly condones such violence, impunity not only encourages further abuses, it also gives the message that male violence against women is acceptable or normal. The result of such impunity is not solely the denial of justice to the individual victims/survivors, but also the reinforcement of prevailing gender relations and replicate inequalities that affect other women and girls as well.¹³

Several international institutions have drawn attention to deficiencies and irregularities found in many of the investigations and judicial proceedings.

8. Several international institutions have drawn attention to deficiencies and irregularities found in many investigations and judicial proceedings in cases of VAW, especially in cases of killings. They highlight, inter alia:

- prejudices, stereotypes, and practices of authorities operating within the justice system that, along with other factors, obstruct the ability of women victims of violence to exercise their rights to justice and reparation;¹⁴
- delays in the initiation of investigations;¹⁵
- slowness of the investigations or inactivity in the case files;
- negligence and irregularities in gathering and assessing evidence and in identifying victims¹⁶ and responsible parties;
- management of the investigations by authorities that are not competent and impartial;
- exclusive emphasis on physical and eye-witness evidence;
- low credibility assigned to the statements of victims and their family members;
- inadequate treatment of victims and their families when they seek to collaborate in the investigation;
- loss of information;¹⁷
- misplacement of victims' remains in the custody of the Public Prosecutor's Office;¹⁸ and
- failure to analyze the attacks on women as part of a global phenomenon of gender-based violence.¹⁹

9. Vis-à-vis these deficiencies, international jurisprudence has insisted that states eliminate all de jure or de facto obstacles that impede the proper investigation of the facts surrounding the killings of women and the development of the respective judicial proceedings.

Objectives of the Model Protocol

The Model Protocol offers guidelines for carrying out an effective criminal investigation of gender-related killings of women, in accordance with the international obligations assumed by States.

10. The *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)* offers guidelines for carrying out an effective criminal investigation of gender-related killings, in accordance with the international obligations assumed by States.

11. Specifically, the Model Protocol aims to:

- **Provide general guidance and lines of actions to improve the practice** of public servants working in the justice system, forensic experts, and other specialized personnel²⁰ during the investigation and prosecution of gender-related killings of women in order to hold the responsible parties accountable and provide reparations for the victims.
- **Promote the incorporation of a gender perspective** in the action of the institutions in charge of investigating and punishing killings of women, as well as providing reparations for the victims, including the police, prosecutors' offices, forensic institutions, and other judicial entities.
- **Offer practical tools to guarantee the rights of victims, survivors, and their families.** These tools take into consideration the witnesses, experts, organizations, complainants, and other persons that may intervene in the proceedings.

Scope of the Model Protocol

12. The Model Protocol has been developed from a holistic perspective, incorporating knowledge from several disciplines (law, sociology, legal medicine, and forensics), in the hopes of serving as a practical instrument for those working in the justice system. The Protocol is the result of the work of several UN entities and public institutions in Latin America, as well as academics, non-governmental organizations that defend women's rights, and other activists.

Investigation and criminal prosecution and punishment as mechanisms to prevent VAW

13. Preventing all forms of VAW is a vitally important aspect of state policies aimed at breaking the cycles of abuse and mistreatment that lead to the killings of women. Holding perpetrators accountable in the justice system is a fundamental mechanism for preventing violence against women. For this reason the Model Protocol focuses on the criminal proceeding.

Guidelines that should be adapted to the characteristics of each country

14. The Model Protocol does not aim to homogenize or standardize the investigation of these grave crimes. The courses of action proposed here should not be seen as absolute or the only way but rather as flexible guidelines that should be adapted to the judicial system, to the conditions of the social context, to the criminal manifestations, and to the degree of institutional capacity and strength of the criminal justice system in each country.

International law as the normative reference and standard for interpretation

15. The guidelines included in the Model Protocol should be interpreted and adapted according to the norms, principles, and standards of international law and jurisprudence, as well as the legal frameworks of the countries in the region.²¹

Public servants working in the administration of justice and the Model Protocol

16. The guidelines contained in this Model Protocol are directed first and foremost to public servants working in the administration of justice who participate in the tasks of investigation, trial, and potential punishment of the people accused of these crimes, including the police officers, prosecutors, investigators, defense attorneys, civil parties, judges, experts, and medical and forensic specialists. The different chapters of this document include specific recommendations for each of these categories of actors according to different stages of the criminal process.

17. The recommendations and guidelines for action included in the Model Protocol may also be useful for the work of civil society organizations, UN agencies, and other experts and professionals in social science, law, and public health fields who are interested in the prevention of violence against women in the region, assistance to victims, and the prosecution of femicides.

Holding perpetrators accountable within the justice system is a fundamental measure for preventing violence against women.

The Model Protocol does not aim to homogenize or standardize the investigation of these grave crimes.

The guidelines included in the Model Protocol should be interpreted in accordance with the norms of international law.

The Model Protocol can be applied to the investigation of the killings of women, regardless of whether national law has expressly codified the crime of femicide/feminicide.

Crimes addressed in the Model Protocol

18. The Model Protocol can be applied to the investigation of the violent deaths of women, regardless of whether national law has expressly codified the crime of femicide/feminicide or incorporated an aggravating factor for sentencing or qualifying the crime of homicide. The Protocol applies to the investigation of all gender-related killings of women. Since gender relations are socially constructed, the distinctive characteristic of femicide is the influence of the socio-cultural conditions in which these types of crimes occur. Therefore, they must be interpreted beyond the individual context.

19. Additionally, these guidelines can be useful for the investigations of other homicides, especially those that are perpetrated against persons based on their sexual orientation,²² gender identity,²³ or gender expression.²⁴ This could include for example transgender²⁵ or lesbian and gay people.

20. The Protocol may also be useful for the investigation of other extreme forms of VAW—such as enforced disappearances, trafficking, forced prostitution, etc.—in which the manifestations of violence reveal elements of gender-based superiority, discrimination, or hate.

Cases in which the Model Protocol can be applied

The Model Protocol guidelines should be systematically applied to all cases involving the violent death of a woman.

21. The Model Protocol guidelines should be systematically applied to all cases involving the violent death of a woman, given that behind every death there may be a femicide even if at the outset there is no suspicion of foul-play.

22. For example, suicides of women should be investigated under the indications of the Model Protocol for three main reasons: First, many suicides are the consequence of prior violence that the woman has suffered. Second, suicide is a common way for perpetrators to hide a homicide, presenting the death as a suicide or accidental death. Finally, suicide may be used by those in charge of the criminal investigations as a justification for closing the case and not investigating it.²⁶

23. In cases of the **apparent accidental death of a woman**, prudence warrants applying the Model Protocol when there is even the slightest indication or doubt that the case may involve a killing. Applying the Protocol does not under any circumstances impede the general investigation of the facts. On the contrary, it allows for facts to be identified and then also associated with any possible femicidal context.

24. The Model Protocol can be applied to cases of recent **deaths as well as deaths that occurred in the more distant past**. When the investigation is launched much after a femicide has been committed, it will be impossible to identify some of the signs and indicators on the body and in the crime scene in which she was found, given that they may have disappeared or been altered. What is important is to start from a supposition that the elements associated with femicide might have been present in the past and some of them may continue to be there (see Chapter V).

Complementarity of the Model Protocol with other protocols

25. The Model Protocol does not displace or substitute other instruments or strategies for criminal investigation that are currently being used. These important antecedents should be taken as references. The Model Protocol is compatible with these instruments and is complementary to existing professional ethics codes and protocols for action, both at the national and international levels.

26. In the same way, the references that the Model Protocol presents can and should be completed and expanded with other instruments, such as anthropological, cultural, or other studies that allow for going deeper into aspects of cases.

27. Among the universally applicable rules that stand out is the *Code of Conduct for Law Enforcement Officials* (1975),²⁷ aimed at all agents that exercise police powers, whether they are appointed or elected. It is their duty to respect and protect human dignity, to maintain and uphold the human rights of all persons, and to protect the use of information that may relate to the private lives of people, “which should be disclosed only in the performance of duty or to serve the needs of justice” (Article 4). Judges are called upon to ensure people’s rights are protected. Principle 6 of the *UN Basic Principles on the Independence of the Judiciary*²⁸ requires the judiciary to ensure that judicial proceedings are conducted according to the law and that the rights of the parties are respected. Likewise, prosecutors have the ethical obligations to investigate and prosecute crimes committed against women. Articles 10 to 16 of the *UN Guidelines on the Role of Prosecutors*²⁹ set out their obligations in criminal proceedings, among which is avoiding discrimination based on sex (Article 13).

28. Different universal, regional, or national manuals and protocols set out guidelines for the exercise of different functions in the investigative process. Among those of special note are the *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (Minnesota Protocol)³⁰ and the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol).³¹ The first establishes standards and techniques for the forensic investigation in cases of extra-judicial killings, and the second for cases of torture. The UN Human Rights Commission (now Human Rights Council) and the UN General Assembly have approved resolutions that recommend applying these forensic protocols to human-rights investigations.³² In the region there are several notable protocols and action guides that give lines of action for the correct prosecutorial, police, or forensic investigation of femicides.³³

Structure of the Model Protocol

29. The Protocol has the following structure. Chapter I provides clarification on the concepts “femicide” and “feminicide” with special emphasis on their structural factors as well as the different criminal classifications and types. Chapter II analyzes the international standard of due diligence as applied to lethal violence against women. Chapter III presents several recommendations for carrying out an adequate gender analysis and consideration of inter-sectional discriminations throughout the investigation. Chapter IV offers guidelines for designing a methodological program or plan for investigating these crimes. Chapter V focuses on the role of forensic medicine and criminal analysis in order to contribute the elements and references necessary for prosecutors to identify the characteristic context of a femicide. Chapter VI presents elements for elaborating the hypothesis

The Model Protocol does not displace or substitute other criminal investigation instruments or strategies that are currently being used.

and lines of inquiry in the theory of the case that is presented in the indictment. Chapter VII offers recommendations for guaranteeing the rights of indirect victims, family members, and witnesses in the investigation and trial of femicides. Finally, Chapter VIII sets out several recommendations to ensure the appropriation and effective application of the Model Protocol.

30. The bibliography includes references to the protocols, guides, and manuals that were consulted in the development of this Model Protocol, as well as several human rights reports that may be of interest to readers.

31. Finally, several annexes have been included. Annex 1 presents a brief analysis of the criminalization of gender-related killings of women in the legal systems of Spanish-speaking Latin America, including excerpts of the criminal codifications analyzed. Annex 2 offers a model semi-structured interview aimed at understanding the surroundings of the victim in order to understand their situation before the femicide and identify the possibility of gender-based violence. Annex 3 reproduces the same semi-structured interview aimed at the perpetrator and his surroundings in order to prove gender-based violence within a partner or interpersonal relationship. Annex 4 incorporates a model semi-structured questionnaire to interview the perpetrator and possible witnesses and to identify some of the most significant femicidal elements in the scene of a crime.

Footnotes

- 7 CEDAW Committee, General Recommendation No. 19, Violence against Women (Eleventh session, 1992), UN Doc. A/47/38 at 1 (1993). The CEDAW Committee is the human rights mechanism established by the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) to examine the progress made by States Party in applying the treaty.
- 8 *Id.* para. 1.
- 9 United Nations General Assembly, Declaration on the Elimination of Violence against Women, Resolution 48/104 of December 20, 1993, A/RES/48/104, art. 1 The Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belem do Para”), adopted June 9, 1994 by the Organization of American States (OAS), defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.” (art. 1).
- 10 Even though the terms “femicide” or “feminicide” have different accepted meanings in social sciences, this document will use the term “femicide” to refer to the gender-related killings of women, except when further distinction is necessary.
- 11 The report “Global Burden of Armed Violence 2011: Lethal Encounters,” by the Geneva Declaration on Armed Violence and Development Secretariat notes that among the 25 countries in the world with high and very high rates of feminicide, 14 of them are found in the Americas (4 in the Caribbean, 4 in Central America, and 6 in South America). It also underlines that generally the rates are higher in countries characterized by high levels of violence. See Alvazzi del Frate, A. (2011).
- 12 Restrepo, J. A. & Tobón García, A. (2011), p. 106.
- 13 United Nations General Assembly, Report of the Secretary General, In-depth study on all forms of violence against women, UN Doc. A/61/122/Add.1 (July 6, 2006), para. 368. See also IACtHR, Case of González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Series C No. 205 (Nov. 16, 2009), para. 164.
- 14 Inter-American Commission on Human Rights (IACHR), Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. LIVIII: Doc. 68 (Jan. 20, 2007).
- 15 CEDAW Committee, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, UN Doc. CEDAW/C/2005/OP.8/MEXICO (Jan. 27, 2005); Amnesty International, Intolerable Killings: Ten Years of Abduction and Murders of Women in Ciudad Juárez and Chihuahua (2003).
- 16 IACHR, Situation of the Rights of Women in Ciudad Juárez, Mexico, OEA/Ser.L/V/II.117 Doc. 44 (Mar. 7, 2003).
- 17 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 150.
- 18 *Id.*
- 19 *Id.*
- 20 The Follow-up Mechanism for the Convention of Belém do Pará (MESECVI) explains that “specialized personnel” refers to the experts and forensic physicians who gather and analyze evidence and perform psychological tests on the victims. MESECVI, Second Hemispheric Report on the Implementation of the Belém do Pará Convention (Apr. 2012), p. 62. MESECVI is a systematic and permanent multi-lateral evaluation methodology based on a forum for technical cooperation and exchange between the States Party to the Convention and a Committee of Experts, which analyzes the impact of the Convention in the region, the achievements of States Party in preventing, punishing, and eradicating violence against women and the obstacles that remain to the implementation of public policy in these areas.
- 21 This rule of interpretation mandates that nothing set out in the international legal framework should be understood so as to restrict or limit any domestic law that affords equal or greater protection and guarantees for the rights of women and appropriate safeguards to prevent and eradicate violence against women, as established in article 13 of the Belém do Pará Convention.
- 22 Sexual orientation refers to each person’s capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. Yogyakarta Principles, Preamble (2006), p. 8.
- 23 Gender identity refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. *Id.*
- 24 The concept of “gender expression” has been defined as “the outward manifestations of the cultural traits that enable a person to identify himself/herself as male or female, according to the patterns that, at a particular moment in history, a given society defines as gender appropriate.” IACHR, Sexual Orientation, Gender Identity, and Gender Expression: Key Terms and Standards (2013), para. 24. “In law, the distinction is an important one, as it entitles a person to protection regardless of whether his/her gender expression matches up with a given gender identity or is merely perceived that way.” *Id.* para. 25.
- 25 *Id.* This coincides with the vision of the Ministry of Security of Argentina (2013), p. 11 et seq.
- 26 It must not be forgotten that the “gender-related” reasons that lead perpetrators to end the lives of women are not individual factors born from the particular experience or psycho-biography of these men. Rather these are common factors in society—some men use these to carry out crimes, but a large part of society uses them to minimize violence against women and to justify its consequences.
- 27 United Nations. Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 (Dec. 17, 1979).
- 28 Adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Aug.26 –Sept. 6, 1985, and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of Dec. 13, 1985.
- 29 Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from Aug. 27 – Sept. 7, 1990.
- 30 United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Doc. E/ST/CSDHA/12 (1991) (“Minnesota Protocol”).
- 31 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1999) (“Istanbul Protocol”).
- 32 See United Nations General Assembly, Missing persons, Resolution A/RES/59/189, adopted Dec. 20, 2004; United Nations Human Rights Commission, Human rights and forensic science, Resolution 2005/26 of Apr. 19, 2005.
- 33 For the list of inputs for the development of this Model Protocol, see the section of the bibliography titled “Protocols, Guides, and Manuals Consulted.”

Chapter I.

Defining “femicide” and “feminicide”

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Capítulo I.

Defining “femicide” and “feminicide”

The definitions of the concepts “femicide” and “feminicide”

32. There is no agreed-upon definition of the concepts “femicide” and “feminicide.” Their scope, content, and implications are still the subject of ample debate in the social sciences as well as in politics and national legislative processes. Their accepted meanings vary according to the point of view from which they are examined and the discipline that is addressing it.

33. **Femicide.** The process of conceptualizing the phenomenon of the killing of females because they are females gained importance in the 1970s when Diana Russell coined the expression “femicide.”³⁴ This expression emerged as an alternative to the neutral term “homicide” with the political objective of recognizing and making visible the discrimination, oppression, inequality, and systematic violence against women that in its most extreme form culminates in death.³⁵ According to Russell’s definition, femicide applies to all forms of sexist killing that is “motivated by a sense of entitlement to or superiority over women, by pleasure or sadistic desires toward them, or by an assumption of ownership of women.”³⁶

34. The definition has varied according to the transformation of the phenomenon itself and with the debate among a wide range of activists, academics, and women’s rights defenders. In Latin America, the expression “femicide” has been defined in different ways, such as “the misogynist killing of women by men,”³⁶ “the mass killing of women committed by men based on their group superiority,”³⁷ or “the extreme form of gender-based violence, understood as violence inflicted by men against women in their desire to obtain power, domination, and control.”³⁹ These definitions signal the existence of broader patriarchal systems of oppressing women.⁴⁰

35. **Feminicide.** Building on the previous concept, the Mexican researcher Marcela Lagarde coined the term “feminicide.” She defined it as the act of killing a woman based only on the fact she is female, but she conferred on this concept a political meaning aimed at denouncing the lack of response from the state in these cases and the failure to fulfill its international obligations, including the duty to investigate and punish. Thus, for Lagarde feminicide is a state crime. It speaks to a “fracture in the rule of law that favors impunity.”⁴¹ The concept refers to the full set of facts that characterize the crimes and disappearances of girls and women in cases in which the response of the authorities is one of omission, inertia, silence, and a failure to act to prevent and eradicate these crimes.

36. Julia Monárrez considers that “feminicide includes the progression of violent acts that range from emotional and psychological abuse, battery, verbal abuse, torture, rape, prostitution, sexual assault, child abuse, female infanticide, genital mutilation, domestic violence, and all policies tolerated by the State that cause the death of women.”⁴²

37. As can be seen, in broad strokes these definitions refer to all the manifestations of violence against women and in strict sense to those gender-related killings of women that remain in impunity⁴³ as a result of omission on the part of state authorities to prevent and eradicate these crimes. These omissions should motivate the opening of disciplinary and criminal investigations to establish the responsibility of state agents that did not prevent the killing of a woman.

38. Despite these conceptual differences, the normative frameworks in the region use the terms “femicide” and “feminicide” indiscriminately to refer to the gender-related killing of women,⁴⁴ distinguishing them from the gender-neutral concept of homicide.⁴⁵

Definition of the term
“femicide”.

39. For the purposes of this Model Protocol, **the term femicide is understood as:**

the murder of women because they are women, whether it is committed within the family, a domestic partnership, or any other interpersonal relationship, or by anyone in the community, or whether it is perpetrated or tolerated by the state or its agents.⁴⁶

Employing the concept of femicide/feminicide and its differentiation from homicide brings to light the extreme expression of violence that results from the position of subordination, marginalization, and risk in which women find themselves.

The structural factors of femicides/feminicides

40. Independent of the terminology employed these situations of VAW present shared characteristics: they are based “in a culture of violence and discrimination”⁴⁷ and have their “roots in concepts of the inferiority and subordination of women.”⁴⁸ These “are not isolated, sporadic or episodic cases of violence; rather they represent a structural situation and a social and cultural phenomenon deeply rooted in customs and mindsets.”⁴⁹ Employing the concept of femicide/feminicide and its differentiation from homicide brings to light the extreme expression of violence that results from the position of subordination, marginalization, and risk in which women find themselves.

41. According to the UN Special Rapporteur on Violence against Women, its causes and consequences, the socio-economic situations of the countries that present the highest rate of femicides reveal the “persistent penetration of a sexist culture in which institutionalized gender inequality serves as the basis for gender discrimination and helps legitimize the subordination of women and the differential treatment in terms of access to justice.”⁵⁰

42. Feminicides reflect a culture of hate and discrimination toward women and indicate a failure of the criminal justice system to punish the perpetrators of these crimes.⁵¹

Categories of femicides: active or direct and passive or indirect

43. The Special Rapporteur in reviewing international developments classifies gender-related killings into two categories: (i) active or direct and (ii) passive or indirect.⁵²

44. The **active or direct category of femicides** includes:

- killings of women and girls as a result of domestic violence, inflicted by an intimate or domestic partner;
- misogynist killings of women;

- killings of women and girls in the name of “honor”;
- armed conflict-related killings of women and girls (as a strategy of war, oppression, or ethnic conflict);
- dowry-related killings of women and girls;
- gender identity and sexual orientation-related killings of women (lesbophobic femicides);
- female infanticide and gender-biased sex selection (feticide); and
- ethnic and indigenous identity-related killings.

Active or direct femicides.

45. *The passive or indirect category of femicides* includes:

- deaths due to unsafe or clandestine abortions;
- maternal mortality;
- deaths from harmful practices (for example, those resulting from female genital mutilation);
- deaths linked to human trafficking, drug dealing, small-arms proliferation, organized crime, and gang-related activities;
- the death of girls or women from neglect, starvation, or ill-treatment; and
- deliberate acts or omissions by public servants or agents of the state.

Passive or indirect femicides.

46. This list is not exhaustive. Other forms of violent deaths of women can also be gender-related.

Types of femicides

47. Several manifestations of gender-related killings of women have been identified in the Latin American experience. The following is a classification and explanation of the different types of femicide:

Intimate femicide. The killing of a woman by a man with whom she had a relationship or intimate connection: husband, ex-husband, life-partner, boyfriend, ex-boyfriend, lover, or person with whom she had a child. This includes the situation where a man murders a female friend or acquaintance that refuses to engage in an intimate relationship (emotional or sexual) with him.

Non-intimate femicide. The killing of a woman by a man unknown to her and with whom the woman had no relationship. For example, a sexual assault that culminates in the murder of a woman at the hands of a stranger. This also includes a case where a neighbor kills his female neighbor without there having been any type of relationship or connection.

Child femicide. The killing of a girl under the age of 14 by a man in the context of his position of responsibility, trust, or power as an adult vis-à-vis her status as a minor.

Family femicide. The killing of a woman in the context of a familial relationship between the victim and the perpetrator. The relationship might be by blood, marriage, or adoption.

Femicide because of association/connection. The killing of a woman “in the line of fire” by a man that was killing or attempting to kill another woman. This might be the victim’s friend, relative, mother, daughter, or a female stranger that was simply in the same place at the same time when the perpetrator attacked the victim.

Systematic sexual femicide.⁵³ The killings of women that have been kidnapped, tortured, and/or raped. There are two manifestations:

Unorganized systematic sexual femicide. The killing of women accompanied by kidnapping, torture, and/or rape. The assassins are presumed to have killed the victim at a given point in time.

Organized systematic sexual femicide. In these cases the assassins may operate as an organized network of people involved in sexual feminicides, with a planned method practiced over an extended and indeterminate period of time.

Femicide because of prostitution or stigmatized occupations. The killing of a woman that works in prostitution and/or another stigmatized occupation (such as strippers, servers, masseuses, or dancers in night clubs) by a man or several men. This includes cases in which the perpetrator (or perpetrators) assassinates a woman motivated by the hate and misogyny that the occupation of the victim generates. This particular manifestation illustrates the role that social stigmatization and justification play in the criminal act on the part of the perpetrator: “she deserved it;” “she had it coming because of what she did;” “she was a bad woman;” “her life wasn’t worth anything.”

Femicide because of trafficking. The killing of women produced in the context of human trafficking. “Trafficking” is understood here as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, prostitution to others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.⁵⁴

Femicide because of smuggling. The killing of women produced in the context of the smuggling of migrants. “Smuggling” here refers to procuring the illegal entry of a person into a state of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit.

Transphobic femicide. The killing of a transgender or transsexual woman⁵⁵ in which the perpetrator (or perpetrators) kills her because of a hate or rejection of her transsexual condition or gender identity.

Lesbophobic femicide. The killing of a lesbian woman in which the perpetrator (or perpetrators) kills her because of a hate or rejection of her sexual orientation.

Racist femicide. The killing of a woman because of hate or rejection of her ethnic or racial origins or her genetic features.

Femicide because of female genital mutilation. The killing of a girl or woman as a result of the practice of genital mutilation.⁵⁶

Footnotes

- 34 Diana Russell coined the expression femicide and made it public in 1976 during her presentation in Brussels before the organization called the International Tribunal on Crimes against Women. See Russell, D. E. & Van de Ven, N. (1982).
- 35 In 1992 Diana Russell and Jill Radford defined femicide as “the misogynist killing of women by men.” Radford, J. & Russell, D. E. (1992).
- 36 Russell, D. E. (2006), pp. 77-78.
- 37 Monárrez Fragoso, J., cited in Consejo Centroamericano de Procuradores de Derechos Humanos (2006), Situación y análisis del feminicidio en la Región Centroamericana, San José, Secretaria técnica del Instituto Interamericano de Derechos Humanos (2006), p. 33.
- 38 Id.
- 39 Carcedo, A. & Sagot, M. (2000).
- 40 Manjoo, R. (2013), p. 15 et seq.; Toledo Vásquez, P. (2009), pp. 25 et seq.
- 41 Lagarde y de los Ríos, M. (2006), p. 20.
- 42 Monárrez Fragoso, J. (2005), p. 43.
- 43 Morales Trujillo, H., Femicidio en Guatemala, essay in Fregoso, R. L. (coord.) (2001), p. 182.
- 44 Through their legislative processes, the countries of the region have adopted different legal definitions to criminalize femicides/feminicide. There is no homogenous criminal codification in the region. See Annex 1.
- 45 The content of these terms was discussed in a meeting of the Latin America and the Caribbean Feminist Network against Domestic and Sexual Violence (Red Feminista Latinoamericana y del Caribe por una vida sin violencia para las mujeres) held in Santiago, Chile in July 2006. There the conclusion was that both concepts refer to the same criminal phenomenon. For more on the use of the two concepts as synonyms, see Chiarotti, S. (2011), p. 74; Toledo Vásquez, P. (2009); Russell, D.E. (2013), pp. 19-20; Pola Z., M. J. (2009), p. 74.
- 46 MESECVI, Second Hemispheric Report on the Implementation of the Belém do Pará Convention (Apr. 2012), p. 29 (citing MESECVI, Committee of Experts’ Declaration on Femicide, MESECVI/CEVI/DEC.1/08 (Aug. 15, 2008), pt. 2).
- 47 Cited in IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 133.
- 48 IACHR, Situation of the Rights of Women in Ciudad Juárez, Mexico, OEA/Ser.L/V/II.117 Doc. 44 (Mar. 7, 2003) (citing the letter from the Secretary of Government of Chihuahua to the Special Rapporteur on Feb. 11, 2002).
- 49 CEDAW Committee, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, UN Doc. CEDAW/C/2005/OP.8/MEXICO (Jan. 27, 2005), para. 159.
- 50 Manjoo, R. (2013), p. 15.
- 51 Id.
- 52 Report of the Special Rapporteur on violence against women, its causes and consequences, UN Doc. A/HRC/20/16 (May 23, 2012), paras. 16 et seq. Another recent version of this classification was developed in the Vienna Declaration on Femicide, of November 2012, adopted by the participants in the symposium on femicide, Academic Council on the United Nations System (2013), p. 2. A detailed analysis of each of these manifestations of feminicide, with comparisons between the different modalities that have been presented in different countries and continents, can be found in the same document beginning on page 56, as well as in Russell, D. E. & Radford, J. (2006).
- 53 Monárrez Fragoso, J. (2005).
- 54 Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UN General Assembly, Resolution 55/25 (Nov. 15, 2000).
- 55 Transgenderism includes transsexualism and travesties/transvestites. The term is used to describe the different variants of gender identity, whose common denominator is that the person’s biological sex and the gender identity traditionally assigned to that sex do not match. A trans person can construct his/her identity regardless of surgical interventions or medical treatment. IACHR, Rapporteurship on the Rights of LGBTI Persons, Relevant concepts and applicable terminology, <http://www.oas.org/en/iachr/lgtbi/mandate/concepts.asp>.
- 56 According to the World Health Organization (WHO), female genital mutilation comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons. See Atencio, G. & Laporta, E. (2012).

Chapter II.

The International due diligence standard applied to cases of femicide

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Chapter II.

The international due diligence standard applied to cases of femicide

International obligations of the State regarding gender-based violence

48. International human rights law has established a set of norms, standards, and principles aimed at realizing the full implementation and guarantee of the rights of women. There has been a substantial evolution in this field, which started from the limited objective of mere formal equality between men and women but which is now focused on the recognition of the structural inequality and discrimination that affect women. This change has meant a complete overhaul of the ways in which women's rights are recognized, protected, and applied.⁵⁷

49. Several international instruments—binding norms and soft law—address the problem of VAW, and these have served as the basis for establishing an abundant international jurisprudence on the issue. Two agreements deserve special note:

- in the universal system, the **Declaration on the Elimination of Violence against Women**, adopted by the United Nations General Assembly in 1993,⁵⁸ and
- in the Latin American region, the **Convention of Belém do Pará**,⁵⁹ which is binding on those states that have ratified it.

50. Both instruments condemn all forms of VAW that take place within the family or domestic unit, in the community, in any other interpersonal relationship, or any act that is perpetrated or tolerated by the state or its agents, wherever it might take place. Under the Declaration and the Convention, states commit to design and implement a series of measures aimed at preventing, eradicating, investigating, punishing, and redressing violence against women, including femicide.

Article 7 of the Convention of Belém do Pará

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions 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 and to adopt appropriate administrative measures where necessary;
- d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies.

The international due diligence standard applied to VAW

51. The international systems of human rights protection have emphasized the nexus between gender-based discrimination, VAW, the duty of the state to act with due diligence, and the obligation to guarantee access to suitable and effective judicial remedies.⁶⁰

52. The international due diligence standard⁶¹ has been used by different international instances to evaluate whether a state has complied with its general obligation as guarantor vis-à-vis acts that violate the rights to life, integrity, and personal liberty, especially those acts attributable to private persons. As the Inter-American Court has explained:

An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.⁶²

53. In terms of VAW, since 1992 the CEDAW Committee has set out that states may be responsible for private acts of individuals “if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁶³ The due diligence standard was then integrated into the United Nations Declaration on the Elimination of Violence against Women,⁶⁴ the Beijing Platform for Action,⁶⁵ the Convention of Belém do Pará (article 7(b)), as well as in the European Council Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, article 5).

54. Based on international practice and *opinio juris*,⁶⁶ it can be affirmed that “there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence.”⁶⁷ This rule obliges states to adopt holistic and sustainable measures to prevent, protect, punish, and provide remedies for acts of violence against women.⁶⁸ It implies a responsibility both in terms of systematically addressing the violence, addressing its causes and consequences, and also in terms of the individual level, which demands that states establish effective prevention, protection, punishment, and reparation measures for each case of violence.⁶⁹

There is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence.

The duty to prevent

55. The obligation of prevention is reflected in domestic legal systems in terms of recognizing and ensuring that the rights of women are upheld, as well as guaranteeing the respect of these rights in practice. The duty “encompasses all those measures of a legal, political, administrative, and cultural nature that ensure the safeguard of human rights, and [requires] that any possible violation of these rights is considered and treated as an unlawful act, which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences.”⁷⁰

The obligation to prevent encompasses all those measures of a legal, political, administrative and cultural nature that ensure the safeguard of human rights, and requires that any possible violation of these rights is considered and treated as an unlawful act.

56. Compliance with the obligation to prevent is not limited to adopting a legal framework or establishing formal judicial recourses. It implies also “[building] up the capacity of judicial institutions . . . to combat the pattern of impunity in cases involving violence against women by being able to conduct effective criminal investigations of cases so that they can then be taken to trial, thereby guaranteeing that the violence will be properly punished and redressed.”⁷¹ It also implies making “simple, rapid, adequate and impartial judicial recourses available, without discrimination,” in order to investigate, prosecute, punish, and provide reparations for the violations and prevent impunity.⁷²

57. In cases of VAW, states must adopt comprehensive measures aimed at preventing risk factors and also strengthening institutions so that they may provide an effective response.⁷³ Applying the Convention of Belém do Pará, the Inter-American Court defined a “**reinforced state duty to protect**”⁷⁴ in terms of violence against women, considering the structural situation of subordination, discrimination, and violence that women on the continent must face. This reinforced duty is based on the doctrine of foreseeable and avoidable risk, adopted from the European system of human rights protection. According to that doctrine imputing international responsibility of the state is based on “the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger.”⁷⁵

58. The obligation to prevent includes the obligation to transform gender stereotypes.

The state obligation to modify, transform, and eliminate wrongful gender stereotyping⁷⁶

59. As noted above, there is a connection between discrimination, VAW, and the duty of due diligence. In this context, the perpetuation of harmful gender stereotypes⁷⁷ has been identified as one of the determining factors of discrimination and violence, as highlighted by the CEDAW Committee (see textbox). The Inter-American Court has also said on the same point that the “creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women.”⁷⁸ This situation is exacerbated when the stereotypes are reflected, implicitly or explicitly, in the policies and practices of state authorities.⁷⁹ Cultural notions constructed around the belief that women are inferior—generally attributed to biological differences and women’s reproductive capacity—negatively affect the response of the police, prosecutors, and judicial system in these cases.

In the administration of justice, the gender myths and prejudices that different parties in criminal proceedings might use can seriously affect the rights of women to access justice and to a fair trial.

60. Gender stereotypes appear in legal frameworks and in the operation of legal systems, and they can be perpetuated by state actors in all branches and levels of government, as well as by private actors.⁸⁰

61. In the administration of justice, the gender myths and prejudices that different parties in criminal proceedings might use can seriously affect the rights of women to access justice and to a fair trial.

62. The use of prejudices and stereotypes can influence the perception of a victim or a perpetrator. B. E. Turvey⁸¹ explains that generally there are two tendencies vis-à-vis the victim:

- **Deification of the victim**, which refers to idealizing the victim. The victim is assessed based on circumstances, such as being young, belonging to a privileged family, being a college student, being generous, etc. This idealization can decontextualize a crime and make the investigation more difficult by distracting from the real circumstances of the facts.
- **Vilification of the victim**, which is the opposite. The victim's characteristics are interpreted to make her seem like she is responsible for or deserving of what happened. It is believed that certain crimes only happen to certain people, namely those that have different lifestyles, belong to certain ethnic groups, hold particular religious beliefs, are of some social groups, have a low economic status, consume drugs, express a different sexual orientation, etc.

CEDAW Committee, General Recommendation No. 19

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.

63. Something similar can be said about the suspected perpetrators: they are either “deified” or “vilified” in relation to their personal characteristics and also with respect to the crime and to the victim. When the aggressor is deified and the victim is vilified, the investigation tends to seek out arguments to justify the version offered by the former.

64. B. E. Turvey insists that this situation tends to be guided by the “investigator’s subjective sense of personal morality” and that this positioning leads to an “investigative apathy” where one believes that certain crimes committed against people with these characteristics do not merit investigation. Being female is a factor that contributes to assigning meaning to the facts along the lines of general cultural stereotypes instead of concentrating on the context of what happened and the objective results produced by investigation.

65. International jurisprudence has drawn attention to different aspects in the administration of justice that reveal the wrongful gender stereotyping affecting women and girls, including:

- The creation and application of inflexible norms of what constitutes domestic or gender-based violence,⁸² or of what women and girls should be;
- The determination of the victim's credibility based on preconceived notions about how she should have acted before the violation, during the act, and after the act, given the circumstances, her character, and her personality;⁸³
- The tacit presumption that the victim was responsible for what happened to her, whether because of her dress, her occupation, sexual conduct, or relationship to the aggressor;⁸⁴
- References to stereotypes about male or female sexuality of the victim or perpetrator;⁸⁵
- The lack of attention paid to the testimony of girls;⁸⁶
- Interference in the private lives of women when their sexual life is taken into consideration to evaluate the scope of her rights and protection.⁸⁷

66. Therefore, states have the obligation to transform gender stereotypes and social and cultural patterns that perpetuate these situations of discrimination and violence against women and girls.⁸⁸

67. In particular, several CEDAW articles establish explicit obligations for states to modify and transform gender stereotypes and abolish wrongful gender stereotyping.⁸⁹ Article 5 of CEDAW sets out the obligation to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” This obligation is reinforced by article 2(f), which demands that states take “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” The CEDAW Committee has identified this duty as one of the three central obligations for reaching substantive equality.⁹⁰

The duty to investigate and punish

68. The obligation to investigate has two aims: to prevent the repetition of the acts in the future⁹¹ and to provide justice in individual cases.⁹² This is a duty of means and not of results.⁹³ Regarding the quality of the investigation, the Inter-American Court recalled that “judicial investigation allows for clarifying the circumstances in which the facts that generate state responsibility took place. Therefore it is a necessary step for establishing the truth for the victim's family members and for society, as well as for punishing those responsible and establishing the measures that will prevent the repetition of human-rights violations.”⁹⁴ This obligation includes situations where the criminal acts are attributed to private persons “because, if their acts are not investigated genuinely, they would be, to some extent, assisted by the public authorities.”⁹⁵

69. The duty to investigate guarantees an adequate response by the state to acts of violence and has “a wider scope when dealing with the case of a woman who is killed or, ill-treated or, whose personal liberty is affected within the framework of a general context of violence against women.”⁹⁶ In the *Campo Algodonero* judgment, the Inter-American Court recommended that “all available means [be] used to ensure that the investigations and judicial proceedings are conducted promptly in order to avoid a repetition of the same or similar acts.”⁹⁷ The Special Rapporteur added that the investigation must be carried out with a gender perspective and considering a victim's special vulnerability.⁹⁸

70. The investigation must be impartial, serious, and exhaustive, and it should hold state agents criminally or disciplinarily accountable in the case that the rule of law has been contravened.⁹⁹ On this point, the Inter-American Court has emphasized that “the lack of the due investigation and punishment of reported irregularities encourages investigators to continue using such methods. This affects the ability of the judicial authorities to identify and prosecute those responsible and to impose the corresponding punishment, which makes access to justice ineffective.”¹⁰⁰ The duty to investigate also encompasses the right of the victims to access information about the status of the investigation.¹⁰¹

International jurisprudence has drawn attention to different aspects in the administration of justice that reveal the wrongful gender stereotyping that affects women and girls.

States have the obligation to transform gender stereotypes and social and cultural patterns.

The obligation to investigate has two aims: to prevent the repetition of the acts in the future and to provide justice in individual cases.

The investigation must be carried out with a gender perspective.

The duty to guarantee just and effective reparation

71. The United Nations Declaration on the Elimination of Violence against Women and the Convention of Belém do Pará set out states' obligation to guarantee for women victims of violence access to the mechanisms of justice and to just and effective reparation for the harm they have suffered.

States should guarantee access to justice as well as an appropriate and efficient reparation to victims.

Reparations should have a transformative role and be addressed with a gender perspective.

72. In the *Campo Algodonero* judgment, the Inter-American Court ordered the Mexican State to provide reparation to the victims with a series of measures, which included material compensation, symbolic redress, and a wide range of guarantees of non-repetition. The Court established that reparations must be addressed with a gender perspective, "bearing in mind the different impact that violence has on men and on women."¹⁰² It emphasized the **transformative role that reparations with a gender perspective should have, "so that their effect is not only of restitution, but also of rectification."**¹⁰³ They should aim at remedying the situation of violence and structural discrimination that is the context of the case.¹⁰⁴

Reparation has a transformative dimension

"Reparations for women cannot be just about returning them to the situation in which they were found before the individual instance of violence, but instead should strive to have a transformative potential. This implies that reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of crosscutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience..."

Special Rapporteur, UN Doc. A/HRC/14/22 (Apr. 22, 2010), para. 85

73. International jurisprudence has also placed special emphasis on the importance of the victims' participation in determining reparations. Their world view, perspective on life, and concept of justice must be taken into consideration.¹⁰⁵

Applicable international standards for evaluating the adequacy of criminal investigations

74. Several international bodies have established standards for examining the adequacy of criminal investigations in accordance to international human rights law.

The independence and impartiality of the judiciary

75. The functional and material independence of the different bodies called on to investigate, try, punish, and provide reparations for a criminal act is an indispensable condition to guarantee the adequacy of the investigation and trial. The requirements of independence and impartiality apply to each of the stages of the proceeding, including the initial collection of evidence, the visit to the site where the body of the victim is found, and all the following stages.¹⁰⁶ It is particularly important to safeguard the investigation from possible contamination and tampering of the evidence when the suspected perpetrators are agents with investigative functions, such as the military police, civilian police, the armed forces in certain zones, the prosecutors' office, penitentiary personnel, or any other State entity.¹⁰⁷

76. Impartiality demands that judicial actions are not affected by prejudices or stereotypical notions about the attitudes, characteristics, or roles of the victims or defendants.¹⁰⁸

The requirements of independence and impartiality apply to each of the stages of the proceeding.

Impartiality demands that judicial actions are not affected by prejudices or stereotypical notions.

The ex officio and timely initiation of the investigation

77. Once being alerted to a possible criminal act, such as the killing of a woman, **tate authorities have the obligation to start “ex officio and without delay, a serious, impartial and effective investigation** using all available legal means, aimed at determining the truth and the pursuit, capture, prosecution and eventual punishment of all the perpetrators of the facts, especially when public officials are or may be involved.”¹⁰⁹

78. This principle underscores the importance of collecting the basic evidentiary elements in a reasonable time and without prompting. Failing to immediately launch an investigation obstructs key actions such as the timely preservation and collection of the evidence and identification of eye witnesses.¹¹⁰ The Inter-American Court has recalled that “the passage of time has a directly proportionate relationship to the constraints . . . of obtaining evidence or testimonies that help clarify the facts under investigation and even invalidates the practice of procedures for taking evidence in order to shed light on the facts of the investigation.”¹¹¹ If the investigation is not done in a timely fashion in certain cases the possibility of criminal prosecution becomes illusory.

The principle of prosecutorial discretion underscores the importance of collecting the basic evidentiary elements in a reasonable time and without prompting`.

79. “The assessment of the timely and diligent response of the authorities should be constant and applies to urgent actions as well as the establishment of a methodological program or plan for the investigation.”¹¹²

In cases where there is a real and imminent risk to the life and integrity of a woman, there is an obligation of strict due diligence.

The investigation must be aimed at examining all possible lines of inquiry.

In effect the obligation to investigate has a wider scope in the case of a woman who is killed, mistreated, or whose personal liberty is violated in the framework of a general context of violence against women.

The investigation must be conducted in a transparent way and by persons that are independent and impartial.

80. Regarding VAW, the Inter-American Court has noted that adequate procedures must be in place to ensure the launching of an effective investigation within the first hours that a disappearance is reported. Therefore, in cases where there is a real and imminent risk to the life and integrity of a woman, there is “**an obligation of strict due diligence**” vis-à-vis the reports of disappearances of women. This obligation demands immediate action on the part of the authorities including an exhaustive search. “The authorities should presume that the disappeared person has been deprived of liberty and is still alive until there is no longer any uncertainty about her fate.”¹¹³

The quality of the criminal investigation

81. The duty to conduct an immediate, exhaustive, effective, serious, and impartial investigation into criminal acts has been reiterated by the Inter-American Court:

“The duty to investigate is an obligation of means and not of results, which must be assumed by the State as an inherent legal obligation and not as a mere formality preordained to be ineffective.”¹¹⁴

82. The importance of the effectiveness of judicial action goes beyond the individual case: “judicial ineffectiveness vis-à-vis cases of violence against women creates a climate of impunity conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.”¹¹⁵

83. The investigation must be exhaustive—meaning that all available legal means must be exhausted and the focus must be on the truth, the capture, prosecution, and punishment of those responsible. Therefore, the investigation must be aimed at examining all possible lines of inquiry. As the Minnesota Protocol recalls (see section II.B.), the investigation must aim:

- a. **To identify the victim;**
- b. **To recover and preserve evidentiary material** related to the death, as well as other evidence associated with the crime scene and the disposal of the body in order to identify the masterminds and perpetrators of the crime, especially when State agents are or may be involved;
- c. **To identify possible witnesses** and obtain statements from them concerning the death;
- d. **To determine the cause, manner, location and time of death**, as well as any pattern or practice that may have brought about the death;
- e. **To distinguish between natural death, accidental death, suicide, and homicide.** In the case of the killing of woman or suicide, the investigative team should presume that it is a femicide;
- f. **To identify and apprehend the person(s) involved in the crime;**
- g. **To bring the suspected perpetrator(s) before a competent court** established by law.

84. Any shortcoming or deficiency in the investigation that prejudices the determination of the cause of death or the identification of perpetrators or masterminds will imply a failure to comply with the procedural obligation of protecting the right to life.¹¹⁷ “The obligation to investigate effectively has a wider scope when dealing with the case of a woman who is killed or ill-treated or whose personal liberty is affected within the framework of a general context of violence against women. . . . [W] here an attack is racially motivated, it is particularly important that the investigation is pursued with vigor and impartiality, having regard to the need to reassert continuously society’s condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence. This criterion is wholly applicable when examining the scope of the obligation of due diligence in the investigation of cases of gender-based violence.”¹¹⁸

85. Moreover, the European Court of Human Rights has underscored that the investigation must (i) be conducted by persons that are independent and impartial; and (ii) be conducted in a transparent fashion and with enough publicity to guarantee accountability, public trust, and respect for the rule of law, as well as to protect against any type of collusion or illegality.¹¹⁹

86. The investigation must be carried out by competent professionals, according to the appropriate procedures,¹²⁰ using all available resources effectively, and with the support of proper technical and administrative personnel.¹²¹ The obligation to seriously investigate violence against women requires professional people able to identify the necessary factors for conceptualizing and inquiring into the existence of gender-based violence, according to international standards and treaties.¹²² “When investigations are not carried out by appropriate authorities, duly trained in gender-related issues . . . the investigations are needlessly delayed and important clues or evidence overlooked, which will be detrimental to any future proceedings on the case.”¹²³

87. Finally, the Inter-American Court asserts that “certain lines of inquiry, which fail to analyze the systematic patterns surrounding a specific type of violations of human rights, can render the investigations ineffective.”¹²⁴

The effective collection and safeguarding of evidence

88. The effective collection and safeguarding of evidence must allow for verifying the procedural, objective truth of the criminal investigation. The investigation ought to aim at identifying and producing the necessary evidence. It should avoid the loss of any probative elements because of the passage of time as well as any delay in the discovery of the truth and the achievement of justice and reparations. In this sense, the Inter-American Court has established that the investigation is not to be undertaken “as a mere reaction to private interests, which would depend on the procedural initiative of the victims or their family members or on the submission of evidentiary elements by private individuals.”¹²⁵ The investigation should be based on the relevant elements that are derived from the crime scene, from the study of the context, and on certain aspects linked to other criminal acts, and it should explore all the clues that allow for discerning the motives of the crime and the responsibility of different persons involved.¹²⁶

89. The loss of evidentiary elements whether through tampering, destruction, negligence, or lack of caution, generates presumptions of illegality and may implicate responsibility on the part of the authorities.¹²⁷ In the same way, state responsibility may be implicated where “evidence that could have been very important for the due clarification of the homicides was not ordered, practiced or evaluated.”¹²⁸

The effective participation of the victims and their representatives

90. The right to intervene in a criminal proceeding includes the victim’s equitable and effective access to justice and to an adequate, effective, and swift reparation for the harm suffered.

91. The criminal investigation should be carried out while guaranteeing the respect and participation of the family members or persons that lived with the victim, in their condition as indirect victims.¹²⁹ The Inter-American Court recognizes the central importance of the participation of the victims in each of the stages of the judicial process related to the investigation, the punishment of those responsible, and the definition, application, monitoring, and assessment of the reparations programs for harms suffered. “The victim’s intervention should not be seen as an end in itself but rather a means of achieving greater degrees of truth and justice.”¹³⁰ The European Court of Human Rights has ruled that the lack of participation by family members in the criminal investigation is sufficient to implicate the international responsibility of the state.¹³¹

The investigation requires professional people able to identify the necessary factors for conceptualizing and inquiring into the existence of gender-based violence.

The investigation cannot be seen as a mere reaction to private interests, which would depend on the procedural initiative of the victim.

The loss of evidentiary elements may implicate responsibility on the part of the authorities.

Victim participation has a central importance in all of the stages of the judicial process.

Victims should receive all relevant information about the investigation directly from the authorities in charge of that investigation.

92. Ensuring the participation of interested parties is even more valuable in cases affecting women because they face more difficulties in terms of access to justice. In all investigations it is fundamental for the victim's family members and next-of-kin to receive all the relevant information regarding the progress of the case directly from the authorities responsible for the investigation, all the while respecting their privacy, security, and judicial guarantees.¹³²

93. Children and adolescents that are part of the immediate family of the victim and who were present at the time of the commission of the crime, or who have suffered harm for having intervened to help the victim or any other circumstance, are considered victims and have the right to comprehensive reparation. Moreover, victims and witnesses that are minors under the age of eighteen must receive special protection and assistance,¹³³ prioritizing the best interest of the child.¹³⁴

Footnotes

- 57 Toledo Vázquez, P. (2009).
- 58 See supra note 7. Although the Declaration was not adopted as a binding international document in the strict sense, its standards and principles have become part of customary international law.
- 59 See supra note 7.
- 60 Inter-American Commission on Human Rights, Access to Justice for Women Victims of Sexual Violence in Mesoamerica, OEA/Ser.L/VIII. Doc.63 (Dec. 9, 2011), para. 4.
- 61 This standard can be seen as a frame of reference or measurement gauge with which to evaluate whether a state has fulfilled the obligations it has assumed.
- 62 IACtHR, Case of Velásquez Rodríguez v. Honduras, Series C No. 4 (July 29, 1988), para. 172.
- 63 CEDAW Committee, General Recommendation No. 19, para. 9; CEDAW Committee, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc. CEDAW/C/GC/28 (Dec. 16, 2010), para. 5. The Special Rapporteur declared that it also includes the obligation to protect women from every act of violence and the obligation to provide victims of violence against women with redress and reparation. Report, UN Doc. A/HRC/23/49 (May 14, 2013), para. 20.
- 64 Declaration, supra note 7, art. 4(c).
- 65 Beijing Platform for Action, para. 125, section (b).
- 66 To be able to establish the existence of an international custom, two elements must be present: State practice and *opinio juris*, i.e. the conviction that the state is legally obligated to follow that practice.
- 67 Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, UN Doc. E/CN.4/2006/61 (Jan. 20, 2006), para. 29.
- 68 Id. para. 30; Report of the Special Rapporteur, UN Doc. A/HRC/23/49 (May 14, 2013), para. 71.
- 69 Report of the Special Rapporteur, UN Doc. A/HRC/23/49 (May 14, 2013), para. 20.
- 70 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 252.
- 71 IACHR, Access to Justice for Women Victims of Violence in the Americas (2007), para. 298. See also CEDAW Committee, Communication No. 5/2005, Sahide Goeke vs. Austria, UN Doc. CEDAW/C/39/D/5/2005 (Aug. 6, 2007), para. 12.1.2 (a prevention system must “be supported by State actors, who adhere to the State party’s due diligence obligations”); CEDAW Committee, Communication No. 20/2008, Violeta Komova vs. Bulgaria, UN Doc. CEDAW/C/49/D/20/2008 (Sept. 27, 2011), para. 9.4 (“the political will that is expressed in such specific legislation must be supported by all State actors, including the courts”).
- 72 IACHR, Access to Justice for Women Victims of Violence in the Americas (2007), para. 5.
- 73 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 258.
- 74 Abramovich (2010), p. 168. IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 282. See also CEDAW Committee, Sahide Goeke vs. Austria, para. 12.1.4.
- 75 Abramovich (2010), p. 173 (citing IACtHR, Case of the Pueblo Bello Massacre v. Colombia, Series C No. 140, (Jan. 31, 2006), para. 123).
- 76 CEDAW Committee, R.K.B. vs. Turkey, UN Doc. CEDAW/C/51/D/28/2010 (Apr. 13, 2012), para. 8.8.
- 77 There is no definition of “gender stereotype” in the international human-rights treaties. The concept has been defined as a generalized view or preconception regarding the attributes, characteristics, or roles that men or women should or must have. The existence of stereotypes responds to a process of simplifying the reality that surrounds us in order to understand and grasp our world more easily. They are generally deeply entrenched in societies, although they can vary over time. The problem emerges when these stereotypes have legal or social consequences that affect part of the population, resulting in the denial or a right or benefit to someone, imposing a burden, or marginalizing a person or group of people. Cook, R. & Cusack, S. (2010), p. 9.
- 78 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 401.
- 79 Id.
- 80 CEDAW Committee, R.K.B. vs. Turkey, UN Doc. CEDAW/C/51/D/28/2010 (Apr. 13, 2012), para. 8.8.
- 81 Turvey, B. E. (1999).
- 82 CEDAW Committee, V. K. vs. Bulgaria, UN Doc. CEDAW/C/49/D/20/2008 (Sept. 27, 2011), para. 9.11.
- 83 CEDAW Committee, Karen Tayag Vertido vs. Philippines, UN Doc. CEDAW/C/46/D/18/2008 (Sept. 22, 2010), para. 8.5.
- 84 IACHR, Access to Justice for Women Victims of Violence in the Americas (2007).
- 85 CEDAW Committee, Karen Tayag Vertido vs. Philippines, UN Doc. CEDAW/C/46/D/18/2008 (Sept. 22, 2010), para. 8.6.
- 86 Committee on the Rights of the Child, General Observation No. 12, UN Doc. CRC/C/GC/12 (July 20, 2009), para. 77.
- 87 Human Rights Committee, General Recommendation No. 28, UN Doc. HRI/GEN/1/Rev. 9 (Vol I) (2000), para. 20.
- 88 See Committee against Torture, Final Observations: Spain, UN Doc. CAT/C/ESP/CO/5 (Dec. 9, 2009), para. 24; Committee against Torture, Final Observations: Albania, UN Doc. CAT/C/ALB/CO/2 (June 26, 2012), para. 25; Committee on the Rights of the Child, General Observation No. 12, UN Doc. CRC/C/GC/12 (July 20, 2009); CRC, General Observation No. 13, UN Doc. CRC/C/GC/13 (Apr. 18, 2011). See also CEDAW Committee, General Recommendation No. 28, para. 9.
- 89 CEDAW Committee, Karen Tayag Vertido vs. Philippines, UN Doc. CEDAW/C/46/D/18/2008 (Sept. 22, 2010), para. 8.4.
- 90 CEDAW Committee, General Recommendation No. 25, UN Doc. A/59/38 (2004), para. 7. See also United Nations General Assembly, Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, art. 8(1)(b): “States Parties undertake to adopt immediate, effective and appropriate measures . . . to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.”
- 91 The IACtHR also recalls that “impunity encourages the repetition of human rights violations.” IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 289.
- 92 Report of the Special Rapporteur, UN Doc. A/HRC/23/49 (May 14, 2013), para. 73.
- 93 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 289.
- 94 Centro por la Justicia y el Derecho Internacional (CEJIL), Debida Diligencia en la investigación de graves violaciones a derechos humanos (2010), p. 1 (citing IACtHR, Case of the Moiwana Community v. Suriname, Preliminary Exceptions, Merits, Reparations and Costs, Serie C No. 124 (June 15, 2005), para. 153).
- 95 IACtHR, Case of the Pueblo Bello Massacre v. Colombia, Series C No. 140, (Jan. 31, 2006), para. 145.
- 96 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 293.
- 97 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 455.
- 98 Report of the Special Rapporteur, UN Doc. A/HRC/23/49 (May 14, 2013), para. 73.
- 99 Id.
- 100 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 346.

- 101 Report of the Special Rapporteur, UN Doc. A/HRC/23/49 (May 14, 2013), para. 73.
- 102 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 450.
- 103 *Id.*
- 104 See also Report of the Special Rapporteur, UN Doc. A/HRC/23/49 (May 14, 2013), para. 75.
- 105 Inter-American Commission on Human Rights, Access to Justice for Women Victims of Sexual Violence in Mesoamerica, OEA/Ser.L/VIII. Doc.63 (Dec. 9, 2011), para. 111: “In a proceeding where the content of reparations is being determined, these cultural differences have to be taken into account and assessed according to the principle of equality, breaking with prejudices and stereotypes, especially those biased against indigenous and Afro-American cultures.”
- 106 IACtHR, Case of Cantoral Huamaní and García Santa Cruz v. Peru, Preliminary Objection, Merits, Reparations and Costs, Series C No. 167 (July 10, 2007), para. 133.
- 107 IACtHR, Case of Myrna Mack Chang v. Guatemala, Merits, Reparations and Costs, Series C No. 101 (Nov. 25, 2003), paras. 173 & 174.
- 108 CEDAW Committee, Karen Tayag Vertido vs. Philippines, UN Doc. CEDAW/C/46/D/18/2008 (Sept. 22, 2010), para. 8.9.
- 109 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), paras. 40-41.
- 110 IACtHR, Case of Ximenes-Lopes v. Brazil, Merits, Reparations and Costs, Series C No. 149 (July 4, 2006), para. 189.
- 111 IACtHR, Case of Anzualado Castro v. Peru (Sept. 22, 2009), para. 135.
- 112 IACtHR, Case of Carlos Antonio Luna López et al. v. Honduras, Expert testimony from Michael Reed Hurtado (Jan. 30, 2013), p. 9.
- 113 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 283.
- 114 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 289 (citing IACtHR, Case of Anzualado Castro v. Peru (Sept. 22, 2009), para. 123; IACtHR, Case of Garibaldi v. Brazil (Sept. 23, 2009), para. 113).
- 115 IACHR, Access to Justice for Women Victims of Violence in the Americas (2007), para. 36 (internal citation omitted).
- 116 IACtHR, Case of Heliodoro Portugal v. Panama, Preliminary Objection, Merits, Reparations and Costs, Series C No. 186, (Aug. 12, 2008), para. 247.
- 117 IACtHR, Case of Juan Humberto Sánchez v. Honduras, Preliminary Objection, Merits, Reparations and Costs, Series C No. 99 (June 7, 2003), para. 112; IACtHR, Case of Valle Jaramillo et al. v. Colombia, (Nov. 27, 2008), para. 97; IACtHR, Case of Garibaldi v. Brazil (Sept. 23, 2009), para. 23.
- 118 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 293.
- 119 ECHR, Case of Kolevi Vs. Bulgaria. Application No. 1108/02, Judgment (Nov. 5, 2009), paras. 191-94.
- 120 IACtHR, Case of Ximenes-Lopes v. Brazil, Merits, Reparations and Costs, Series C No. 149 (July 4, 2006), para. 179; IACtHR, Case of Baldeón García v. Peru, Merits, Reparations and Costs, Series C No. 147 (Apr. 6, 2006), para. 96; IACtHR, Case of the Pueblo Bello Massacre v. Colombia (Jan. 31, 2006), para. 177; IACtHR, Case of the Mapiripán Massacre v. Colombia, Merits, Reparations, and Costs, Series C No. 134 (Sept. 15, 2005), para. 224.
- 121 See Minnesota Protocol (1991), Introduction & Annex 1, point 11.
- 122 See especially Declaration on the elimination of violence against women, art. 14(i); IACHR, Access to Justice for Women Victims of Violence in the Americas (2007), paras. 298 et seq.
- 123 IACHR, Access to Justice for Women Victims of Violence in the Americas (2007), para. 46.
- 124 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 366 (citing IACtHR, Case of the Rochela Massacre v. Colombia, Merits, Reparations and Cost, Series C No. 163 (May 11, 2007), paras. 156, 158 & 164).
- 125 IACtHR, Case of Albán Cornejo et al. v. Ecuador, Merits, Reparations and Costs, Series C No. 171 (Nov. 22, 2007), para. 62; IACtHR, Case of Zambrano Vélez et al. v. Ecuador, Merits, Reparations and Costs, Series C No. 166 (July 4, 2007), para. 120.
- 126 IACtHR, Case of Carlos Antonio Luna López et al. v. Honduras, Expert testimony from Michael Reed Hurtado (Jan. 30, 2013), p. 12.
- 127 *Id.*
- 128 IACtHR, Case of Villagrán Morales et al. (“Street Children”) v. Guatemala, Merits, Series C No. 63 (Nov. 19, 1999), para. 230.
- 129 Indirect victims are those that suffer harm to their own assets or rights as an effect, reflection, or consequence of the harm inflicted on the direct victim. García Ramírez, S., Cuestiones ante la jurisdicción internacional, Cuadernos Procesales, Mexico, Año V, no. 13 (Sept. 2001), pp. 27-29; García Ramírez, S., La jurisdicción interamericana sobre derechos humanos: Actualidad y perspectivas, in: García Ramírez, S., Estudios jurídicos, Mexico, UNAM, Instituto de investigaciones Jurídicas (2000), pp. 300 et seq.
- 130 IACtHR, Case of Carlos Antonio Luna López et al. v. Honduras, Expert testimony from Michael Reed Hurtado (Jan. 30, 2013), p. 13.
- 131 ECHR, Case of Seidova and others v. Bulgaria, No. 310/04, (Nov. 18, 2010).
- 132 International Committee of the Red Cross (2003). The Missing and their Families: Observations and Recommendations from the International Conference of Governmental and Non-Governmental Experts, adopted by consensus on 21 February 2003.
- 133 IACtHR, Juridical status and human rights of the child, Advisory Opinion OC-17/02 (Aug. 28, 2002), paras. 53, 54 & 60; IACtHR, Case of the Gómez Paquiyauri brothers v. Peru, Merits, Reparations and Costs, Series C No. 110 (July 8, 2004), para. 164; IACtHR, Case of the Yean and Bosico girls v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Series C No. 130 (Sept. 8, 2005), para. 133.
- 134 IACtHR, Juridical status and human rights of the child, Advisory Opinion OC-17/02 (Aug. 28, 2002), paras. 56, 57 & 60; IACtHR, Case of the Yean and Bosico girls v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Series C No. 130 (Sept. 8, 2005), para. 134.

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Chapter III.

The analysis of gender and the intersectionality of discrimination in the criminal investigation of femicides

94. In many countries there is still a significant percentage of cases of killings of women that goes unresolved. This situation is not necessarily the result of a lack of means or personnel to carry out a good criminal investigation. Among the multiple causes of the impunity that prevails in relation to femicide is the fact that it is not analyzed as a grave social problem but rather as “isolated cases.” The necessary mechanisms and means for adequately exposing these criminal acts are not activated.

95. Public servants working in the judicial system need to be able to rely on a series of shared reference points to guide the investigation of femicide to the proper conclusion. Among these, the investigation must be conducted from a gender perspective and based on a gender analysis.

How to identify a femicide

96. **While all femicides can be classified as homicides** under the terms of the current criminal legislation in the countries in the region, **not all homicides of women are eligible to be classified as femicides**. Even though the death of a woman may be violent, for example a traffic accident, the motive of the act may not be related to her condition as a female and not be gender-related. This might be the case for example when the killing of a woman results as a consequence of the theft of her vehicle.

97. In order to establish the criminal act with specificity, killings of women that have some indication of a motivation or context based in a culture of gender-based violence and discrimination must be treated as femicides.¹³⁵

98. The factors that differentiate the crime of femicide from the homicide of a man, and even from the common homicide of a woman, reveal that aim of the killing is to entrench and perpetuate the patterns that have been culturally assigned regarding what it means to be a woman: subordination, weakness, sentimentality, delicateness, femininity, etc. This means that the femicidal agent and his actions draw on cultural patterns rooted in the misogynist ideas of male superiority, discrimination against women, and disrespect toward her and her life. These cultural elements and system of beliefs

Killings of women that have some indication of a motivation or context based in a culture of gender-based violence and discrimination must be treated as femicides.

The aim of the killing is to entrench and perpetuate the patterns that have been culturally assigned regarding what it means to be a woman.

make the perpetrator believe that he has sufficient determinative power over the lives and bodies of women to punish them, and ultimately, to preserve social orders of inferiority and oppression. These same cultural elements allow the perpetrator to feel reinforced in his manhood through this conduct.

99. The gender-related motives influence the aggressor's reasons for committing the femicide and the objectives that are sought by this criminal action. To carry out an adequate investigation, the consequences of the crime must be identified not only in terms of the results of the conduct and its impact on the victim and the crime scene. The investigation must also focus on the repercussions felt by the aggressor in terms of a "reward" or "benefits" in order to understand what led him to decide to commit femicide.

Why identify the gender-related motives in the investigation of the killing of women?

100. **Femicides must not be seen as isolated or sporadic cases of sexist violence.** First, experience suggests that femicide, especially when it occurs in the private sphere, is often the culmination of a continuum of violence that by its very nature has distinctive elements.¹³⁶ Second, gender-related killings, whether in the private or public sphere, are one of the manifestations of violence against women that reveals the interrelation between cultural norms and the use of violence in the subordination of women.¹³⁷

101. Police and prosecutorial investigations for suspected femicides must include and be conducted with a gender perspective. This allows for two objectives to be reached:

- a) **To analyze the connections that exist between VAW and the violation of other human rights**, including the undermining of the principles of gender equality and non-discrimination. The goal is to identify the elements of a specific, gender-biased criminal intent in the commission of the act, such as misogyny, hate, or contempt for women.
- b) **To posit possible hypotheses for the case based on the preliminary findings that would identify discrimination, hate for women, or other "gender-related motivations" as possible motives to explain the killings.** As such, the identification of these motivations is one of the strategic objectives of the investigation (see Graphic 1). This requires investigating the different manifestations of gender-based violence observed before, during, or after the killing of the woman.

Investigations must include and be conducted with a gender perspective.

Graphic 1. Strategic Objectives in the investigations of femicides

Identify the acts that caused the death and other physical, psychological, or sexual harms or suffering by the woman (before or after death).

Verify the presence or absence of gender-related motives that led to or explain the killing of the woman by identifying specifically:

- the context surrounding the death;
- the circumstances of the death and the disposal of the body;
- the history of violence between the victim and the perpetrator;
- the modus operandi and the type of violations committed before and after death;
- the family, intimate, inter-personal, community, work, educational, or health relationships that connect the victim and the perpetrator(s);
- the victim's situation of risk and vulnerability at the time of the killing; and
- the power inequalities that existed between the victim and the perpetrator(s).

Clarify the degree of responsibility of the perpetrator(s) of the crime, investigating whether the perpetrator was an individual or a group, whether he is or has been a public servant, or whether he is a private individual that acted with the acquiescence, tolerance, or complicity of State agents.

Promote the participation of the indirect victims, the family members, and survivors in the judicial process aimed at revealing the truth about the acts.

102. Investigating and analyzing the killing of a woman from a gender perspective also allows for:

- **Examining the act as a hate crime**, the roots of which are cemented in the historical conditions generated by the social practices of each country.
- **Addressing the killing of women not as a circumstantial or coincidental act but as a systematic crime**, the investigation of which demands the due diligence of state institutions.
- **Going beyond the lines of inquiry that are based on individual factors** and which tend to be pathologized to present the aggressors as “crazy,” “out of control,” or “jealous,” or to conceive of these killings as the result of “crimes of passion,” “lovers quarrels,” or “sex scandals.”
- **Differentiating femicides from the deaths of women taking place in other contexts**, such as the deaths of women in traffic accidents.
- **Avoiding value judgments about the victim's prior conduct or behavior** and breaking from the social and cultural patterns that blame the victim for what happened to her (“she must have done something,” “she was looking for trouble,” “maybe she provoked him”). The people intervening in the different stages of the investigation must pay attention to the “obvious” prejudices related to the roles that women and girls supposedly ought to

assume in society (be a good mother, wife, and daughter, obey her husband or partner, dress according to religious mores, not participate in male activities, dress modestly). Given the apparent unquestionable character of these suppositions, they tend not to be evident for the justice system or society at large and thus demand special attention.

- **Bringing power asymmetries to light**, as well as the way in which gender inequalities permeate differences in the roles, norms, practices, and cultural conceptions of men and women.
- **Seeking legislative alternatives in terms of preventing** gender-related killings of women, recognizing that historically women have been discriminated and excluded from the full and autonomous exercise of their rights.

How to identify gender-related motives: gender as an analytical tool

VAW occurs within a socio-cultural system of domination and subordination of women that is applied by men and called patriarchy.

103. VAW occurs within a socio-cultural system of domination and subordination of women that is applied by men and called patriarchy. This system is sustained ideologically through androcentric norms – a masculine vision of the world – which legitimize practices of violence against women. This is based on the roles assigned as “natural” or “biological” and on the discourse of masculine superiority that seeks to control and maintain women within the model that patriarchy has sought to impose on them: one of the submissive woman, mother, daughter, or wife.

104. The social sciences coined the category of gender to analyze and describe this social reality and the ways that power relations between men and women take shape. The descriptive power of this concept helps identify the way that social constructs appropriate the sexual and biological differences between men and women and assign opposite attributes to each sex. These attributes are then assigned to different social roles, functions, and spheres, which have a particular value economically, politically, socially, and culturally in daily life.

Difference between the concepts “sex” and “gender”

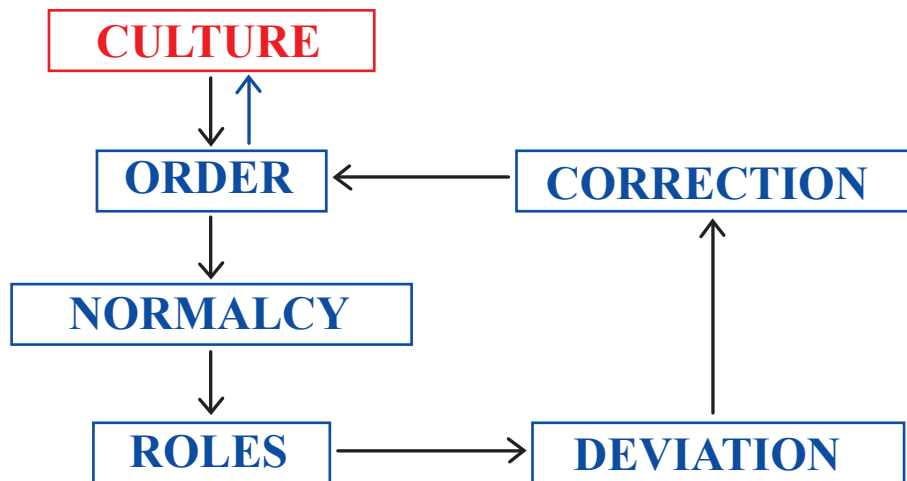
The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favoring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.

CEDAW Committee, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN doc. CEDAW/C/GC/28 (Dec. 16, 2010), para. 5

105. The use of the category of gender also reveals that, even though the status and situation of women can vary from one culture, country, or historical moment to another, one thing remains constant: the subordination of women to men. This inequality particularly impacts the distribution of power, the access to services and material and symbolic resources, and violence.

106. An analysis of this socio-cultural construction (Graphic 2) reveals that culture establishes an order for organizing relations, allowing them to take shape within given guidelines and thus setting out what is “normal” for that society. On the basis of this concept of normal, a series of roles and functions are set out for men and women so that everything is maintained within the established order. According to this construction, when those that are subjected to the control and supervision of others stray from the expectations (for example, when women question or reject this authoritarian or patriarchal order or when their actions do not stay within the confines of what is deemed acceptable in the dominant world vision), those that have the authority or power to do so should correct any deviation, including through the use of certain degrees of violence. In this way, order is recovered and culture, with its values and reference points, is reinforced. Violence against women emerges as a way of resolving disputes in this sense.

Graphic 2. Culture as a determinative factor of the social order



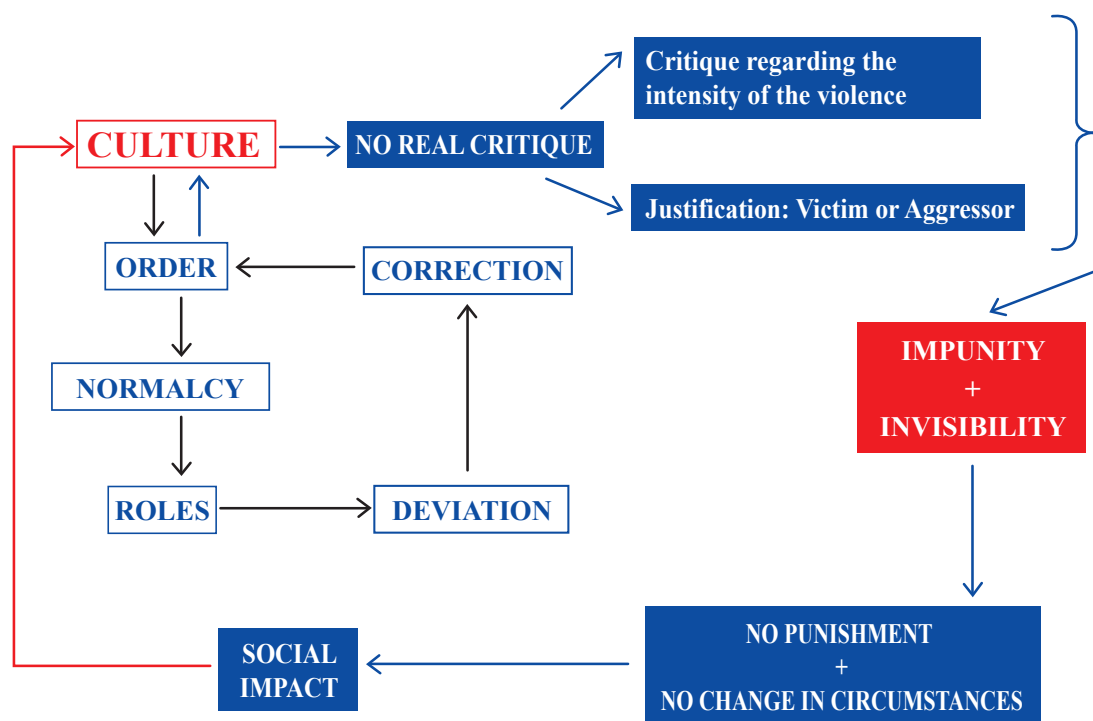
Androcentric culture creates inequality by positioning men and what is masculine as the reference point. It is from there that VAW is normalized.

When the aggression does not produce serious injury, it is classified as a “lovers’ quarrel.”

107. The influence of the socio-cultural context does not end there, but also gives meaning to the results it produces. Androcentric culture creates inequality by positioning men and what is masculine as the reference point. It is from there that VAW is normalized. As can be seen in Graphic 3, when an instance of gender-based violence occurs, there is often no real critique. Rather it tends to be justified and processed around two ideas.

When the aggression does not produce serious injury, it is classified as a “lovers’ quarrel” or a domestic dispute that ought to be resolved within the relationship. When the case is more serious or results in the death of the woman, justifications are sought in the aggressor (alcohol, drugs, mental health issues, emotional problems, etc.) or in the victim herself. She might be seen as having provoked the very violent reaction that ended her life. In this way, part of the violence that women suffer remains invisible and another part in impunity. Thus the circumstances that caused the violence are not addressed or changed, which only serves to reinforce the cultural construction and its reference points.

When the case is more serious or results in the death of the woman, justifications are sought in the aggressor or in the victim herself.

Graphic 3. The normalization of violence against women

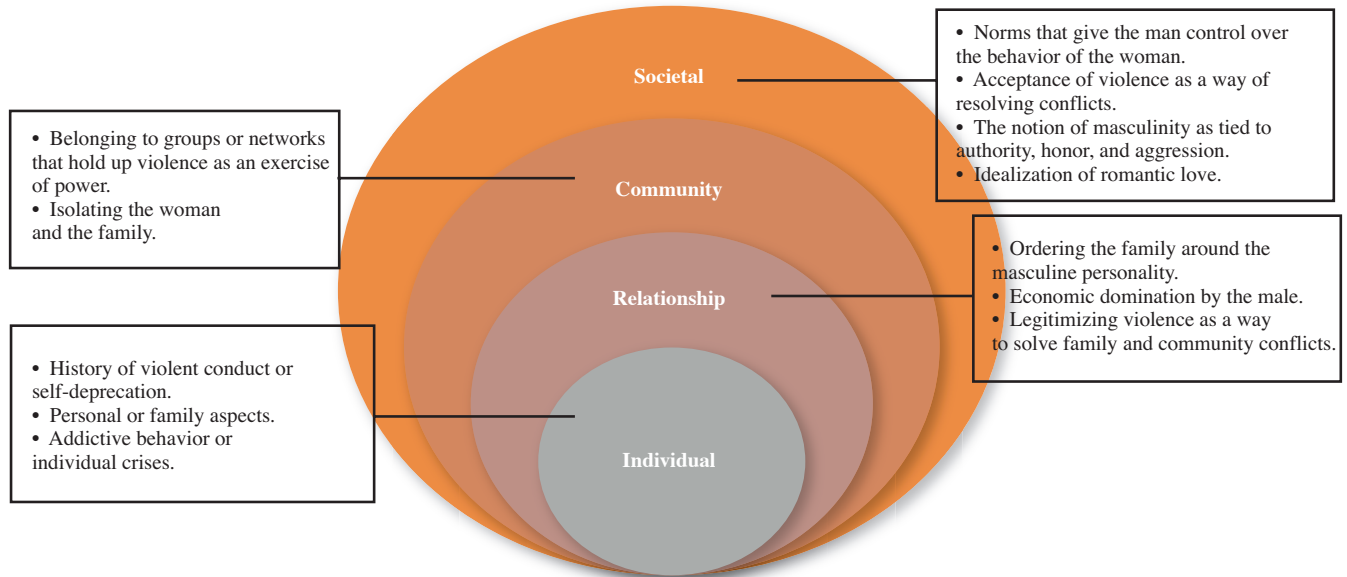
108. By taking into consideration the motives that could be associated with the manifestation of violence, a gender analysis allows for addressing the criminal act comprehensively, placing it in its context, and understanding the situation of violence exercised against the woman.

A framework for interpretation: the feminist ecological model

The feminist ecological model is a useful instrument for contextualizing the different spheres of society in which violent practices against women take place; it offers a comprehensive vision of VAW.

109. The analytical tools collected in the feminist ecological model are necessary for investigating femicides. This model is a useful instrument for contextualizing the different spheres of society in which violent practices against women take place.¹³⁹

110. **Levels of analysis.** The feminist ecological model uses four levels to conceive of the origin of gender-based violence. These should be addressed both in the forensic investigation as well as in the elaboration of the theory of the case by the prosecution. According to this model, VAW is multifaceted—it can be based on a variety of aspects or situations, individual as well as from the cultural and socio-political surroundings. The usefulness of the model is found in its comprehensive vision of VAW. It considers the interaction of diverse factors that interplay in creating the risk of violence and allows for identifying which “domain of influence” produced which factor. The four levels of analysis¹⁴⁰ are:

Graphic 4. Levels of analysis of the feminist ecological model

111. **Social or macro-system level.** This level consists of the attitudes, beliefs, and cultural representations about the sexes that directly influence the stereotypes around what it means to be a man or woman. This level includes patriarchal practices that are based on unequal and oppressive power relations and that conceive of VAW as a legitimate way of relating.

This level consists of the attitudes, beliefs, and cultural representation about the sexes.

112. Other social-level factors that influence, facilitate, and perpetuate VAW are:

- the notion of masculinity tied to domination, that exalts the capacity to break another's will and is based on the denial of "otherness;"
- the rigidity of gender roles, the stigmatization of male and female behavior, and inflexibility in the sexual division around which societies are organized, such as codes of conduct and dress;
- the idea of masculine possession or ownership of women associated with the dehumanization of women and her objectification;
- the approval of violence as a mechanism for resolving conflicts of everyday life;
- social consent of the physical punishment of women. Although it may be increasingly rejected, in many places this type of physical violence continues to be legitimized and grounded in the social role of guarantor assigned to men vis-à-vis the behavior and lives of women, which grants them the "right" to physically punish a woman;

"The discrimination and violence that is reflected in gender-related killings of women can be understood as multiple concentric circles, each intersecting with the other. These circles include structural, institutional, interpersonal and individual factors. The structural factors include macro-level social, economic and political systems; institutional factors include formal and informal social networks and institutions; interpersonal factors include personal relationships between partners, among family members and within the community; and individual factors include personality and individual capacities to respond to violence."

Special Rapporteur on Violence against Women, its causes and consequences (2012), para. 17.

- the idealization of romantic love, which corresponds to a cultural construction that legitimizes the patriarchal order of subordination and domination of men over women, in which men are allowed certain relationships and attitudes that are not authorized for women (ranging from going out with people other than their partner, separating from their partner, and starting a new relationship with someone after the separation, to conceiving of women's sexuality as an exercise of autonomy in which the man does not have influence);
- the disrespect of the abilities of women, which disqualifies women from carrying out work and tasks that have historically been associated with men.

113. The impact of these factors can be seen, for example, in the subordinate and unequal work relations between a male boss and a female employee, or in the feminization of tasks within groups, for example the secretary, maid, or hostess etc. This generates disrespect for the abilities of women and can lead to abusive practices and manifestations of violence. The impact of this can also be seen in school relations that result in practices that normalize violence and feminine subordination and that create environments conducive to harassment (“bullying”) and other forms of aggression.

114. **Community, exosystem, or ecosystem level.** This level is associated with the structural factors that affect the everyday settings in which power relations develop. Some of these factors are:

- the public/private dichotomy in which the cycle of VAW isolates a woman from her social and family networks. This situation keeps a woman from being able to reach out to an institution or member of her network to seek help, counseling, or intervention.
- the affirmation of group identity, in cases where the exercise of violence against women is part of the context of organized violence—for example, the violence produced by gangs, illegal armed groups, or even the permanent influence of the legal armed forces of the state. This factor is also manifested in the idea of each man being part of the group that is “men.” This creates the perception and belief among men that if they do not act in the way that is expected of a man, then he is a bad man and the notion of the group would be questioned based on the weakness shown. The practices of sexual violence, torture, or illegal rendition that end in femicide are violent means used to affirm and reaffirm the belonging to a group or to seek the acceptance of other men.

115. **Relationship or microsystem level.** This domain is related to the family organization and immediate conditions of cohabitation. It involves, among others, factors such as:

- the patriarchal ordering of the family—the hierarchical organization of the family around the male as the decision-maker;
- the economic domination of the male, which reinforces the idea of inferiority and dependence of the woman vis-à-vis the male provider;
- family conflicts and the way in which disagreements are handled within the family; and
- the consumption of addictive substances and/or addictive habits, such as alcohol, some kinds of drugs, gambling, among others, which in addition to influences at the individual level also affect the relationship level. These substances and situations act as social stressors and influence the expression and manifestation of violence.

116. This level includes the factors that elevate risk because of the interactions with partners and other members of the family. These factors make up a person's close social circle; they can shape one's behavior and determine the diversity of one's experiences. The microsystem analysis allows for bringing to light the gender aspects and hierarchies in the interpersonal relationships of the victim in her immediate surroundings, namely her closest relationships within her family, with her partners, and among those that make up her family group and the group of her closest friends.

The community, exosystem, or ecosystem level is associated with the structural factors that affect the everyday settings in which power relations develop.

The relationship or microsystem level is related to the family organization and immediate conditions of cohabitation.

117. **Individual level, personal history, or micro-social domain.** This domain consists of two dimensions that can be analyzed in relation to a suspected femicide and that determine the personal background of both the victim and the perpetrator. The first dimension is the individual, which is determined by biological factors such as age and sex. The second dimension looks at a person's social background, which relates to having learned to see violence as normal and to the cultural character of having seen and repeated violence as a way of imposing oneself over another.

118. Even though it is impossible to generalize aggressors, some of the risk factors that should be analyzed include a history of violent conduct, personality traits, addictive behavior, and individual crises, among others, as is described further in Chapter V. This is the most complex level because it requires breaking from stereotypes and confronting justifications that are based on, among other factors, transitory mental health issues or elevated levels of alcohol consumption or other addictive substances that keep one from exercising full mental capabilities.

The intersectionality of discrimination in the analysis of femicides: attention to economic, cultural, age, and racial differences

119. Women are not a homogenous group. They are not affected in the same way by the multiple manifestations of violence and social injustices produced by patriarchal structures.¹⁴¹ To analyze VAW, and in particular the acts that precede or follow femicide, investigations must recognize that the violence that affects women is determined not only by their sexual and gender status but also by differences in terms of economic status, culture, age, race, language, religion/cosmogony, phenotype, etc.¹⁴² It is impossible to homogenize the profile of female victims of violence. The task of contextualizing the life and surroundings of a victim will be distinct in each case. An intersectional analysis is indispensable for studying the forms of violence that might have affected the femicide victim before, during, or after the crime.¹⁴³

120. An intersectional analysis allows for considering the different ways that discriminations (related to race, gender, sexuality, rural origin, etc.) interact with other varied and complex factors of exclusion, without subordinating or qualifying one in favor of the other. Rather each category can be taken as a tool that allows for bringing to light the differential impacts of violence against women. The intersectionality of factors that are present within the same woman must be understood as related to a global structure of domination.

121. Thus, the analysis of the context of violence surrounding a heterosexual, married, adult woman who generally complies with the normative roles established for women and may have been assassinated in the course of patrimonial violence is different than the analysis that ought to be carried out in the case of the killing of a young, lesbian, bisexual, or transgender woman who subverted the normative order. In the latter, the relation between the victim's sexual condition and the femicide is more relevant as possibly having triggered the murder.

122. In communities in which indigenous peoples live with other populations, economic, political, social, and other variables will intersect with the cultural conditions. As the Special Rapporteur affirmed in her report, the cases of killings of aboriginal and indigenous women tend to be marked by the failure of the police to protect them, to quickly and exhaustively investigate cases of disappearances and/or killings, and to recognize the social and economic conditions in which they live. These failures make indigenous and minority women vulnerable to this type of violence.¹⁴⁴

The individual level consists of two dimensions:

- the individual dimension determined by biological factors and
- the social dimension related to a person's social background.

It is impossible to homogenize the profile of female victims of violence.

The intersectional analysis is indispensable for carrying out the study of the forms of violence.

An intersectional analysis allows for considering the different ways that discriminations interact and bringing to light the differential impacts of violence against women.

123. A variety of anthropological and sociological tools and instruments are useful to reveal these contextual differences of the victims and the victimizing practices against women. One of these tools is cultural or anthropological expert testimony or judicial anthropological evidence. In the case of indigenous peoples and other ethnic groups this allows for analyzing the facts and identifying cultural factors that have encouraged, allowed, or caused the criminal act or for simply analyzing and identifying the context of the crime. This category of expert opinion “paves the way for an intelligible intercultural understanding”¹⁴⁵ of the cultural practices and contexts that can be difficult for persons unfamiliar with these realities to comprehend.

124. The use of cultural experts should avoid any tendency to generalize women from particular ethnic groups and instead should seek to understand experiences from the multiple identities and different inequalities that have influence over an individual woman.

125. Below is a practical example of intersectional analysis that can be useful for examining testimonies and statements by victims and witness of femicides:

Table 1. Example of an intersectional approach to violence against women: analysis of the language used by witnesses or victims

Statement	Analysis
<i>“They kill us for being women.” “We are disposable.”</i>	Example of an analysis of violence and discrimination against women from a gender perspective.
<i>“They kill them for being ‘poor women’ with low levels of formal education.”</i>	Example of an intersectional analysis (dimensions of overlapping social exclusion: gender/social class).
<i>“They exploit, sell, and abuse them for being poor, young, rural, migrant, indigenous women.”</i>	Example of an intersectional analysis (dimensions of overlapping social exclusion: gender/social class/ethnicity/geographic location/migration status).
<i>“They exploit and rape them for being poor, working-class, and lesbian.”</i>	Example of an intersectional analysis (dimensions of overlapping social exclusion: gender/social class/sexuality/geographic location (urban)).
<i>“They don’t have any rights: they are impoverished and excluded for being rural, Mayan, widows, and old.”</i>	Example of an intersectional analysis (overlapping dimensions: gender/social class/sexuality/geographic location (rural)/age/State violence (they were “widowed” because of State terrorism).
<i>“The incorporation of women into the factories (maquilas) was done in ‘conditions of super exploitation’ and has generated a cultural effect and a violent, destructive, and lethal social reaction for Central American women and girls.”</i>	Example of an intersectional analysis in the transnational context (overlapping dimensions: gender/social class/sexuality/geographic location (rural)/age (girls and older women)/economic violence (they are commodified by neoliberal capitalism).

Table adapted from: Muñoz Cabrera (2011), p. 55.

126. In sum, the proper use of a gender analysis and an intersectional analysis in the investigation and trial of the crimes of femicide allows for going beyond the simple labeling of crimes of passion toward placing proper importance on the political, economic, social, cultural, and gender factors faced by the women affected by lethal violence in the region.¹⁴⁶

Graphic 5. Reminder: The importance of incorporating a gender perspective in the criminal investigation

An investigation of violence against women that is free from discriminatory stereotypes and prejudices not only responds to legal obligations but also paves the way for building a more just and equitable society.

Incorporating a gender perspective in the criminal investigation helps prevent the continuation of the violence committed in the private or public sphere through later institutional violence.

What must be investigated in cases of femicide? Context, scenarios, perpetrators, victims, types of violence, and manifestations of violence before and after the femicide

127. In order to properly investigate the killing of a woman from a gender perspective and also one of intersectionality of discrimination, an investigation must start from objective and solid references that avoid prejudices that might affect the investigation itself. **The task is not to explain the femicide according to the characteristics of the aggressor but rather to identify the aggressor based on the characteristics of the femicide.** Without disregarding the distinct elements of the criminal codifications established in the countries in the region, as is elaborated in Annex 1, below are several recommendations for investigating the killings of women.

128. **Context and scenarios.** Femicides have multiple expressions and contexts. The “gender-related motives” behind the crime are born from shared societal references, but their expression through criminal acts is the result of an interaction with the individual factors of each perpetrator. This common context of cultural references is what allows perpetrators to have a shared motivation at the time of committing the femicide.

129. Femicides take place in both the private sphere and the public sphere and in diverse circumstances and settings that can vary even within the same country.¹⁴⁷ They can occur within the family, a domestic unit, in any other interpersonal relationship, or in the community. The investigations carried out in Central America have allowed the following non-exhaustive list of femicidal scenarios to be identified:¹⁴⁸

- • Partner or other intimate relationship, current or past, permanent or occasional;
- Family relationships, by blood or marriage;
- Death in the same place and at the hands of a man that attacks or tries to kill another women;
- Sexual harassment by men that the victim knows;
- Sexual attack by men that are known or unknown to the victim;
- Sexual commerce, by clients or pimps;
- Trafficking and smuggling for all categories of exploitation;

To properly investigate a killing of a woman it is necessary to start from objective and solid references that avoid prejudices that might affect the investigation itself.

Los femicidios ocurren tanto en el ámbito privado como en el ámbito público.

- Gangs with which the woman has some kind of connection, as a member, through the involvement of her family, or previous harassment by that gang;
- In the context of networks or mafias for whom gender control is a method of consolidating their power;
- Revenge by men against third persons.

130. **Perpetrator (private or state).** The perpetrator of this crime can be any individual (usually male) or group of private individuals (such as prostitution or human-trafficking networks, gangs, mafias, or other kinds of organized crime). Femicide can also be perpetrated or tolerated by the state and its agents, by action or omission.

Focusing on the aggressor allows for understanding the gender-related motives.

131. Focusing on the aggressor allows for understanding the gender-related motives and other elements connected to them, such as a dimension of hate toward women and conduct that is derived from it. This idea can be conveyed under the concept of “hate crimes” or the fact that it is considered a “moral” crime—i.e. a crime that is carried out generally without any material compensation. This is in contrast to instrumental crimes, such as robbery and drug-trafficking. In moral crimes, the aggressor feels rewarded from a sense of victory that comes from imposing his position over the life of the assassinated woman. In carrying out the crime, the degree of rage, anger, and violence that the perpetrator expresses is more a consequence of these ideas than a product of an emotional reaction, which is what is generally suggested when treating these cases a “crime of passion.” Despite the emotional baggage present in most femicides, the perpetrator shows control in the way in which he carries out the crime and the acts that follow.

Femicides are criminal acts that are carried out progressively through the interpretation that perpetrators make of women’s behavior.

132. Femicides are criminal acts that are carried out progressively through the interpretation that perpetrators make of the behavior of the women that end up being their victims. Together with other contextual factors present at the time of the aggression, it is during this planning that the different elements associated with femicides appear and toward which the investigation should be oriented. One of the most notable elements of VAW is the fact that it is a kind of violence that is continuous and sustained over time, a characteristic that will take shape in the way the femicide is carried out depending on the type. In cases where there is a relationship between the perpetrator and the victim, this continuous violence will be directed toward the same women in the private scenario where they lived together. In cases of sexual violence, the aggressor directs his violence against different women in the scenario of public life.

Gender-related motives allow for creating a conception of women around two basic ideas: women as possessions and women as objects.

133. **Direct victim.** The direct victim of the crime will be a female of any age. Gender-related motives allow for creating a conception of women around two basic ideas: women as possessions, as something that belongs to the man; and women as objects, as a “thing” that can be used by men in the way that they want and then disposed of whenever and in the way that is deemed opportune. These cultural constructions are not imposed; it is not obligatory that all men accept and assume them. However they do allow for those that start along the way of believing either of the conceptions to find references to continue toward their objectives until achieving them.

134. These two conceptions about women allow for grouping the different forms of femicide into three overall categories to organize the different elements that emerge as part of the criminal acts: first, intimate or family femicide, which is part of the idea of women as possessions, characterized by the existence of a prior relationship, with or without cohabitation, between the victim and the perpetrator; second, sexual femicide, which is centered on the idea of women as objects to be used and thrown out; and third, femicide in a group context, which is marked by more rigid context that defines the man-woman relationship and their particular roles.

135. These two ideas, “women as possessions” and “women as objects,” are not incompatible and should not be taken as strict categories. They allow for a broad range of violent and femicidal conduct. This means that there can be cases with elements of the three contexts. At the same time, these two ideas are references for elaborating the perpetrator’s criminal conduct and bringing to light a series of common elements that allow for associating this conduct with gender-related motives and thus linking the criminal acts to a femicidal context.

136. Forms of violence in the execution of the crime.

Investigating the types of violence in the execution of the crime requires identifying how the gender-based motives played out in the criminal conduct. It is not enough to start from a general context of inequality and sexist and misogynist attitudes. Many men will have incorporated these contextual (exosystem) and socio-cultural (macro-system) factors into their identity and behavior, but the presence of these stereotypes alone do not indicate that they are the author of a crime. Moreover, as in the context of general inequality, the apparent lack of these factors in comparison with other men also does not indicate innocence of a suspect.

Characteristics that demonstrate gender-based motives in the case of femicides in Ciudad Juárez, México, according to the Inter-American Court:

- 1) the context: a generalized situation of violence against women, which was influenced by a culture of discrimination;
- 2) the profile of the victims: three young women, of limited economic resources, working-class or students, like many of the homicide victims of Ciudad Juárez; and
- 3) the nature of the crimes: the young women were disappeared, their bodies were abandoned in a cotton field, with evidence of physical aggression and sexual violence before death.

IACtHR, Case of González et al. (“Cotton Field”) Vs. Mexico

Human behavior is a dynamic process and the final result depends on the interaction of different factors and elements influenced by the circumstances in which the behavior takes place. These circumstances may precipitate or condition the action to such an extent that they alter the initial intention or will of the aggressor. These circumstances make it possible for a man without notable sexist stereotypes to be capable of carrying out lethal aggression against a woman when presented with a series of elements that he assesses subjectively. Even though it does not stem from marked sexist stereotypes, his conduct may reflect some of the emotional and cognitive factors that accompany the gender-based motives of femicide, such as hate, feeling humiliated by the victim, the image of a “bad man” coming from the attitude of a woman, the moral response to act “as a man should,” etc.

137. To speak of the “gender-based reasons” behind the crime means identifying the elements of the criminal motive that are associated with the perpetrator’s assessment that her conduct deviates from the roles established as “appropriate or normal” by the culture. To understand the criminal conduct in the cases of femicide, it is necessary to understand how the aggressors use the existing cultural references to make their decision and carry out their conduct.

138. **Las manifestaciones de la VCM anteriores al femicidio.** The killings of women tend to be the consequence of diverse manifestations of violence beforehand. The legal inquiry into these forms of violence is fundamental for designing the investigation (developing the working hypothesis and lines of work), demonstrating the context of discrimination and violence in which femicides are frequently framed, and demonstrating the objective elements of the definition of the crime as set out in several penal codes in the region. A clear example can be found in the new Bolivian legislation, which criminalizes the killing of women “when, prior to the murderous act, the woman has been the victim of physical, psychological, sexual, or economic violence, committed by the same aggressor.”¹⁴⁹ Prior violence can be manifested in several types of violence:

Investigating the types of violence in the execution of the crime requires identifying how the gender-based motives played out in the criminal conduct.

To speak of the “gender-based reasons” behind the crime means identifying the elements associated with the criminal motive.

The legal inquiry into these manifestations of violence is fundamental for designing the investigation, demonstrating the context of discrimination and violence, and establishing the objective elements of the criminal definition.

Prior violence can be manifested in several types of violence:

- Physical violence
- Sexual violence
- Psychological violence
- Economic violence
- Patrimonial violence

- **Physical violence:** Any act that harms or injures the body, even though it may not produce marks or traces on the body. This type of violence includes, among others, strikes against any part of the body whether it leaves a mark or not, pushing, internal and external injuries, hair-pulling, etc.¹⁵⁰
- **Sexual violence:** In its broadest sense it includes any act of a sexual nature that is non-consensual. It includes, among others, exhibition, observation, and imposition of non-consensual sexual acts, whether or not the aggressor has or had some type of romantic, affectionate, or familial relation with the victim and regardless of whether the aggressor has physical contact with the victim or not. Acts of sexual violence include: non-consensual sexual relations, forced abortion or pregnancy, among others.¹⁵¹ At the international level other categories are also considered, including sexual slavery, forced prostitution, and forced nudity.¹⁵² The lack of consent can be interpreted from different types of coercion, physical or not. The age for being able to consent to sexual relations varies from one country to the next.
- **Psychological violence:** Any conduct or intentional omission that causes emotional harm or a lowering of the self-esteem of a woman, through threats, humiliation, harassment, demands of obedience or submission, verbal coercion, insults, isolation, or any other limitation to her personal liberty. Psychological violence includes guilt, surveillance, isolation, control, manipulation, demands of obedience or submission, the imposition of a servant role, among others, which cause harm or undermine self-determination.¹⁵³
- **Economic violence:** Any action or omission that affects the use, enjoyment, availability, or accessibility of the woman's economic resources or those of her child or children, limiting her economic autonomy and increasing her dependence on the male provider. Economic violence as a form of control manifests itself, among other ways, through the practices of manipulation and limitation on the income of the woman, coercion in the use or investment of her economic resources for the interests of the man, and threats of denying basic economic resources for food and clothing.¹⁵⁴

139. These four types of violence against women are the forms that are most frequently found in the existing national laws in the region. Some of the legislations contemplate other types of violence that constitute violations of the rights of women, such as patrimonial or symbolic violence.

- **Patrimonial violence:** Any act or omission that undermines the liberty of women to use or access her material assets, whether acquired within the relationship or as a result of inheritance, work, etc. This includes harms to common or individual property through the transformation, removal, destruction, diversion, harm, loss, limitation, or retention of objects, personal documents, goods, stocks, and property rights. Among others, there may be the manipulation of shared or individual material property and the manipulated or non-authorized sale of some asset.¹⁵⁵ Some national laws incorporate the conduct of patrimonial violence to the definition of economic violence. However, it is important to distinguish limiting economic resources (economic violence) from taking control and advantage of the personal property and real estate of a woman (patrimonial violence).
- **Symbolic violence:** Includes all the social, economic, political, cultural, and religious messages, values, symbols, icons, signs, and impositions that reproduce and consolidate the relations of domination, exclusion, inequality, and discrimination of women.¹⁵⁶ This type of violence manifests itself for example in the imposition of cultural or religious practices and the generation of harmful stereotypes for women.

140. These types of violence occur in the sphere of partner or ex-partner relationships, cohabiting or not, as well as in all other types of interpersonal relationship. These kinds of violence can be exercised in institutional settings as well as community or social scenarios.

Specific contexts and circumstances

141. The circumstances and context that can lead to the modification of some of the elements associated with femicides and the emergence of elements particular to those contexts and circumstances have been grouped according to two points of reference, as can be seen in Table 2: 1) the victim of the femicide and 2) the context of the crime. The aim is to identify the objective elements that can determine the influence of the context and circumstances on the perpetrator, given that it is the person that commits the crime that adjusts his conduct according to the different factors of influence in the moment of the commission of the crime or during the planning.

Table 2. Circumstances and contexts related to the different types of femicides that can modify the elements of the investigation

VICTIMS	Girls
	Elderly women
	Women with disabilities
	Indigenous women
	Transsexual or transgender persons
	Migrant women
CONTEXTS	Conflict zones or scenarios
	Forced disappearances

The circumstances and context can lead to the modification of some of the elements associated with femicides and the emergence of elements particular to those contexts and circumstances.

Elements associated with the characteristics of the victims

Girls or adolescents

142. Killings of girls generally occur in two scenarios: the intimate or family setting and sexual scenarios.

143. The femicide of girls in the family context takes place most often in the following circumstances:

- A situation of violence against a woman in which the violence is also directed against her children, often more violently against girls as they tend to be identified with the mother. These femicides are produced while cohabitating with the father in a family relationship.
- A situation of violence against a woman following a separation. In these cases some perpetrators decide to end the life of the children as a way to harm the mother. These homicides tend to be accompanied by the suicide of the aggressor.

144. The sexual femicide of girls is preceded in many cases by a prior history of sexual abuse carried out by family members or caretakers who finally kill the girl. Other times, the sexual violence is produced outside of the family but within the scope of a relationship with the girl, such as in school, leisure activities, extracurricular activities, etc. The sexual violence of girls within the family tends to be produced at early ages; cases outside the family tend to happen during adolescence.

It is important to identify the situation of prior violence against the mother and against the girl.

145. In addition to adapting the general elements of femicide to the circumstances related to the age of the victim, it is also important to identify the situation of prior violence against the mother and against the girl. In terms of the autopsy findings, which can reveal elements related to the family or sexual context, the modifications of the general pattern relate to the disproportion of force between the aggressor and the victim, especially when the girl is very young. This means that for these ages the predominant causes of death are methods such as strangulation, suffocation, drowning, and traumas. The intensity of the violence tends to increase depending on the age, including traumas with greater force and the use of weapons (stabbing or cutting) and exceptionally, firearms. There may also be killings by poisoning; when these occur it tends to be at young ages and sometimes as part of a mixed homicide method in which the intoxication was applied to put the victim to sleep and reduce her resistance and then her life was ended by asphyxiation (strangulation, suffocation, or drowning).

Elderly women

The elements that should be emphasized are the history of prior violence and the elements related to sexual violence.

146. Femicides of older women involve the same contexts - intimate and sexual. The elements in each case will be characterized according to the circumstances of each one.

147. From the point of view of the investigation, the elements that should be emphasized in addition to the general ones are the history of prior violence, which is often extended throughout the entire life of a relationship with the perpetrator, and the elements related to sexual violence. These elements must be analyzed mainly in the autopsy findings, in the victim's characteristics, in the perpetrator's characteristics, and in the crime scene, where there should be evidence related to the particularities of the lethal aggression.

148. The injuries present in the cadaver may reveal the "excessive violence" characteristic of intimate femicides, but they may also present a reduced number of injuries due to the disproportion of force and the weak resistance that the victims tend to offer. In these cases the most common causes of death are strangulation, suffocation, traumas, and stabbing.

Women with disabilities

The elements for identifying these femicides are similar to the cases of elderly women.

149. Femicides of women with disabilities take place primarily in the context of violence within the family relationships—fathers to daughters, brothers to sisters, etc.—as well as in partner relationships. Less frequently they occur as part of sexual violence in which the attack is carried out taking advantage of the vulnerability of these women.

150. The elements for identifying a femicidal context are those common to all femicides, taking into account that, given the situation of vulnerability, in these instances they tend to appear in a similar way as the cases of elderly women.

Indigenous women

151. The cultures of different indigenous peoples vary according to their cosmogony and the influences from a progressive integration into the current context. Still, there are a series of common reference points, including the fact that inequality between men and women tends to be a constant. Therefore, these cases share the general elements of femicides. The influence of the cultural references of each indigenous group introduces additional elements in the result of the femicide in terms of the message that the perpetrator was transmitting in their particular social context that characterizes his culture.

152. The most common expression of femicide against indigenous women tends to be related to the humiliation of the woman killed through conduct that has a denigrating meaning according to the cultural reference points of her people. These conducts are carried out during the femicidal aggression while the woman is alive or after the femicide, and they are aimed at erasing the symbolic or real elements of her indigenous identity. Some examples of these humiliating conducts are cutting long hair, part of the feminine identity of a certain indigenous group, destroying articles and objects that have meanings related to cultural identity, and using clothes or objects that attack her culture.

153. As mentioned above, anthropological and cultural studies and expert opinions in each particular context can help significantly to identify these elements particular to each culture.

Transsexual or transgender persons

154. Transsexual or transgender persons deviate from the reference points that the androcentric culture imposes on men and women in its assignment of rigid roles: they are “bad men” or “bad women” for breaking away from their sex. In their new identity they are considered to be a sort of traitor as they denigrate their original sex by not assuming the roles associated with it. Transsexual and transgender persons are considered negatively and critically in the structural sense (for the change of sex) and in the relational (for the behavior that they assume upon this change), in such a way that the violence directed against them is intensified around these two points, rooted in the constructed notions of gender and assigned roles.

155. Their situation is not one that can be corrected since it is not simply “a behavior that deviates from the normal or expected” but is rather a structural position and radically different in terms of sex and gender. Therefore, the violence that is exercised against these women is much more intense from the outset. The killing is inflicted with severe violence and is charged with a strong emotional component of anger or rage.

156. These circumstances make the forensic and criminal elements for investigating femicides applicable to the lethal violence exercised against transsexual or transgender persons. Based on these elements, the motives behind the criminal conduct can be revealed and it can be determined if there are gender-based motives.

Migrant women

157. The lack of a social support network, the legal or formal situation in the country, and the difficulties that these circumstances imply for her identification, in addition to the multiple discriminations that she may suffer, make migrant women especially vulnerable to femicidal acts.

158. Femicides in this context tend to be committed within partner relationships and in the social sphere as sexual femicides, often together with the enforced disappearance of the woman. The investigation must consider the general elements of femicide according to the intimate or sexual motivation but taking into account the fact that when the action stems from multiple discriminations and therefore with a greater disrespect toward the woman, the degree and intensity of the violence inflicted will be greater.

The influence of the cultural references of each indigenous group introduces additional elements in the result of the femicide in terms of the message that the perpetrator was transmitting in their particular social context that characterizes her culture.

Transsexual and transgender persons are considered negatively and critically in the structural sense and in the relational. The violence directed against them is intensified around these two points.

The violence that is exercised against these women is much more intense from the outset.

The lack of a social support network and the legal or formal situation in the country make migrant women especially vulnerable to femicidal acts.

Elements associated with certain contexts

Femicides in armed conflict zones or settings

159. The circumstances and context of each armed conflict shape the expression of violence against women and the femicides that are produced in these situations. It is important to consider the different forms of violence against women that exist in these circumstances and how their expression is intensified by the others, not in terms of the summation of the cases but as an exponential increase in the violence generated in the conflict. The gender-based motives increase according to the three basic reference points used to carry out violence against women: inequality, reward, and weapon of war.

160. Femicides that in contexts of armed conflict move between the main motivations of femicides: women as possessions and women as sexual objects. However, in these contexts a third femicidal motive emerges, which is a result of the fusion of the first two, giving way to the idea of “women as an object possessed by the other.” In other words, the woman is seen as a possession of the “enemy” that must be attacked in multiple ways to harm him or beat him.

161. Femicides that are a product of the third motive are characterized by three elements: the use of severe violence to cause the death, the use of sexual violence, and the exposition of the dead body in public places, with messages written explicitly on the body or around it, or with manipulations that are denigrating or humiliating for women and the community, such as mutilations, positioning the body in a vexatious way, the placing of objects or clothes that ridicule the woman and the group, etc.

162. The criminal and forensic investigation should be carried out on the basis of these parameters searching for the elements associated with femicides in the five scenarios: the autopsy, the crime scene, circumstances around the facts, the victim, and the perpetrator. In the last two, the investigation in armed conflict zones must not only consider the victim and the perpetrator from the individual point of view as isolated men and women, but instead as a woman belonging to a certain part of the conflict and as a man that is linked to the other side.

Enforced disappearances

163. A high percentage of enforced disappearances of women end in femicide, generally committed with sexual violence. These femicides are characterized by intense violence and often are carried out by groups of organized crime, with messages to the community through the exposition of cadavers, their manipulation, or text written or placed on the bodies.

164. The other form of committing these crimes is through the disappearance of the body of the murdered women, which makes the investigation difficult even where femicide is suspected.

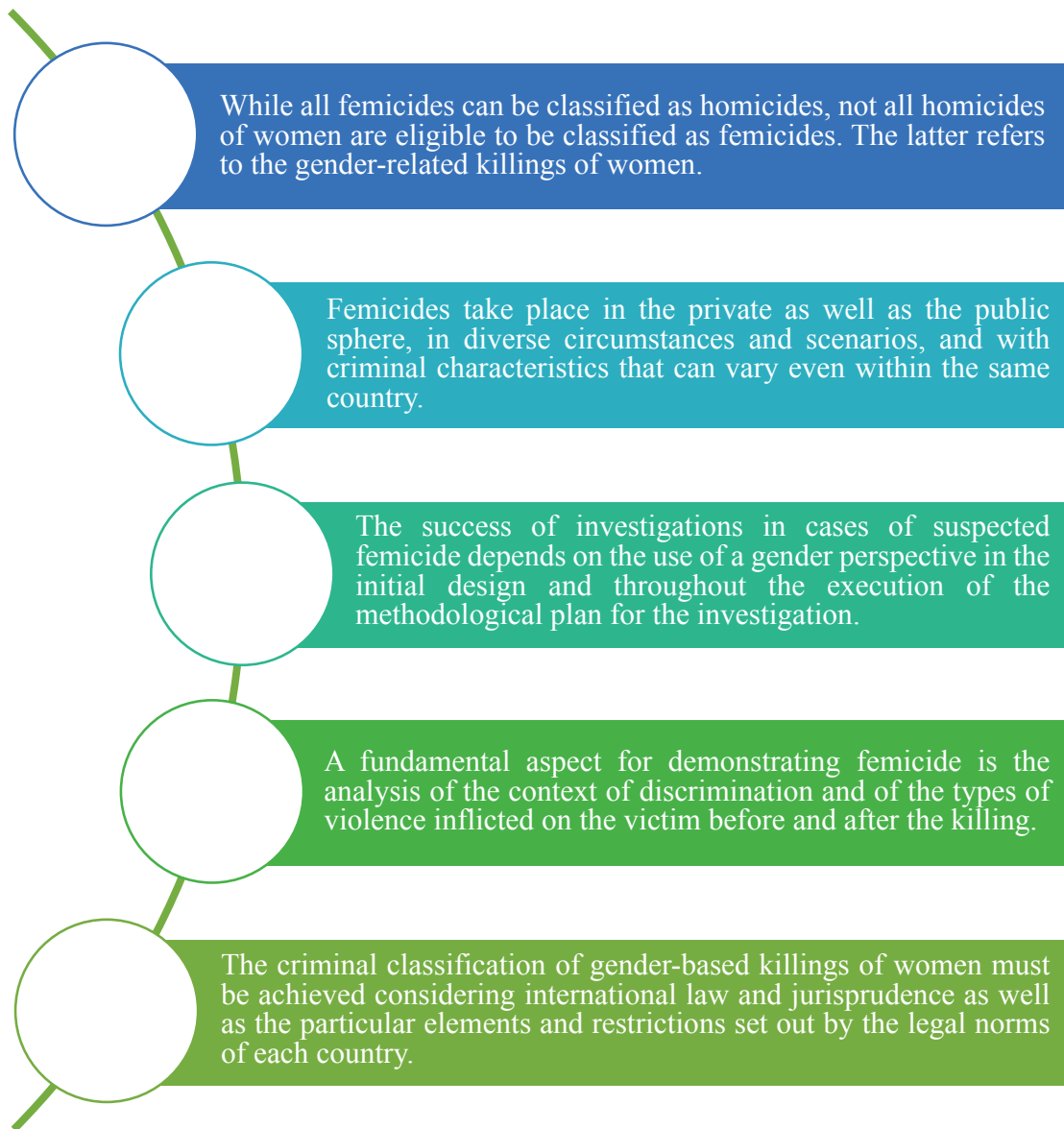
165. For these cases, what is most important is to anticipate the act assuming that behind a reported disappearance there may be a case of femicide that is not always committed in the same moment of the disappearance. Therefore it is essential to act immediately. The investigation must consider whether the report is made in a high-risk zone where there have been other similar crimes. In every case the elements associated with femicides that can be investigated under these circumstances must be identified and documented.

The elements associated to the victim are crucial for reconstructing the hours prior to her disappearance and the existence of risk factors that could have acted against her. This inquiry does not mean putting the victim or her conduct into question but rather identifying the elements that made have led the perpetrators to act. It is also necessary to examine the elements that may be present in the place where the disappearance occurred and, if there is a suspect, to investigate the risk factors in the perpetrator that appear to be associated to femicidal conduct.

In these contexts a third femicidal motive emerges: the woman as an object possessed by the other or by the “enemy.”

These femicides are characterized by the use of severe violence to cause the death, the use of sexual violence, and the exposition of the dead body in public places.

What is most important is to anticipate the act assuming that behind a reported disappearance there may be a case of femicide.

Graphic 6. Basic guidelines for the investigation of femicides

Footnotes

- 135 From a normative perspective, some of the legislation in the region has opted to situate the result of a death of the woman or the girl in “the framework of the unequal power relates between men and women,” as is the case of Guatemala and Nicaragua (Decree No. 22-2008 of Guatemala; Law No. 779 of 2012 of Nicaragua). Other countries have decided to classify a death as femicide when it happened “as a result of her condition as a woman,” which is the case of Colombia (Law 1257 of Colombia), or when “motives of hate or contempt for her as a female” are factors in the outcome as is the case in El Salvador (Decree No. 520 of 2010 of El Salvador). The Mexican and Honduran legislations have established that a crime rises to femicide when the death was produce for “gender-related reasons” (Decree of June 13, 2012 of Mexico; Decree No. 23-2013 of Honduras).
- 136 See IACHR, *Access to Justice for Women Victims of Violence in the Americas* (2007).
- 137 See United Nations General Assembly, *Report of the Secretary General, In-depth study on all forms of violence against women*, UN doc. A/61/122/Add.1 (July 6, 2006).
- 138 Delphy, C. (1995).
- 139 This model has been used in several reports and studies carried out by United Nations and OAS entities, including among others, Pan American Health Organization and the World Health Organization’s “World Report on Violence and Health” (2002); the WHO’s “Multi-country Study on Women’s Health and Domestic Violence against Women” (2004); and the UN Secretary General’s “In-depth Study on All Forms of Violence against Women” (2006).
- 140 These levels of analysis also correspond to the ecological model for analyzing violence that the Pan American Health Organization has adopted. For more, see WHO & London School of Hygiene and Tropical Medicine, *Preventing Intimate Partner and Sexual Violence against Women* (2010), pp. 18 et seq.
- 141 Marion Young, I. (2011), p. 16.
- 142 On this, see Article 9 of the Convention of Belém do Pará and Convention 169 of the International Labor Organization.
- 143 Grupo de Memoria Histórica (2011).
- 144 Pola Z., M. J. (2009).
- 145 Valladares de la Cruz, L. (2006), p. 8.
- 146 Pola Z., M. J. (2009), p. 23.
- 147 Chiarotti, S. (2011), p. 75.
- 148 These elements are also mentioned in the research of Chiarotti, S. (2011), p. 75; Monárrez Fragoso, J. (2005), p. 44; Segato, R. L. (2012); Bernabéu Albert, S. & Mena García, C. (2012); Carcedo, A. (2009), pp. 612 & 662.
- 149 Law No. 348 of 2013 of Bolivia, art. 252 bis.
- 150 This type of violence is defined in Guatemala’s Decree No. 22-2008, in El Salvador’s Decree No. 520 of 2010, in Nicaragua’s Law No. 779 of 2012, and in Russell D. E. & Radford, J. (2006).
- 151 This type of violence is defined in Costa Rica’s Law No. 8589 of 2007, Guatemala’s Decree No. 22-2008, Nicaragua’s Law 779 of 2012, El Salvador’s Decree No. 520 of 2010, and in Russell D. E. & Radford, J. (2006), in Russell D. E. (2013).
- 152 On this, see the Rome Statute of the International Criminal Court and Elements of Crimes.
- 153 This type of violence is defined in Costa Rica’s Law No. 8589 of 2007, Guatemala’s Decree No. 22-2008, Nicaragua’s Law 779 of 2012, and in Russell D. E. & Radford, J. (2006), Russell D. E. (2013).
- 154 This type of violence is defined in Guatemala’s Decree No. 22-2008 and El Salvador’s Decree No. 520 of 2010. Nicaragua’s Law 779 of 2012 and Russell D. E. & Radford, J. (2006) offer a joint definition of economic violence and patrimonial violence.
- 155 This type of violence is defined in Costa Rica’s Law No. 8589 of 2007 and in Russell D. E. (2013).
- 156 This type of violence is defined in El Salvador’s Decree No. 520 of 2010 and in Russell D. E. & Radford, J. (2006).

Chapter IV.

The design of the criminal investigation of femicides

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Chapter IV.

The design of the criminal investigation of femicides

Notice of the crime and institutional action

166. **Authorities and competency.** In the countries of the region where the principle of ex officio investigation is in force, all public servants that are put on notice that a femicide has taken place (*notitia criminis*), regardless of how that notice comes—through a report, complaint, anonymous, telephone—are required to activate a police or judicial investigation into possible responsible parties. Given that a legally protected interest has been affected, it is not necessary to have a complaint from the family members or next-of-kin of the victim in order to launch or continue the investigation tasks.

167. In those countries in the region that have adopted accusatorial criminal process regimes or regimes with an accusatory tendency,¹⁵⁷ it is assumed that the prosecutorial entities (*Ministerios Públicos, Procuradurías, or Fiscalías*) have the constitutional or legal mandate to investigate these crimes. In those countries that still have a mixed or inquisitive system the competency tends to fall to the investigative judges (*jueces de instrucción criminal*). Procedurally, competency is assigned to the prosecutorial units in charge of the crimes that affect life and personal or bodily integrity, except in those countries that have created specialized units for the investigation of gender-based violence, intra-familial violence, or femicides.

168. **Intra-institutional coordination in the criminal justice system.** The prosecutorial investigation of femicides depends directly on the coordinated and harmonious work that must exist between the Public Prosecutor's Office and the other state authorities that have judicial police or criminal investigation powers.¹⁵⁸

169. It is necessary to remember that the effectiveness of the investigation in the case of killings of women directly depends on the technical evidence produced by the experts and specialists in the areas of forensic medicine, criminology, and the social and behavioral sciences, among others. For this reason, the coordination between the prosecutor, the judicial investigators, the experts, the forensic or legal medicine institutes, or other auxiliary institutions able to produce technical-scientific evidence is vital for guaranteeing the proper development and implementation of the methodological plan for the investigation.

170. **Inter-institutional coordination.** Given the nature of these crimes, the violent criminal methods, and the way in which notice of the crime is produced—for example the visibility of systematic sexual femicides—it is common for other public servants to also intervene in the investigation. In the beginning of a forensic investigation, at the crime scene or other given place, patrol police, firefighters, and healthcare workers, among others, may also participate. In order to avoid conflicts of competencies, contamination of the crime scene, or tampering of the physical evidence, it is necessary to implement protocols of institutional action, in order to, above all, facilitate the work of the representatives of the Public Prosecutor's Office in the preliminary steps and urgent actions of investigation.¹⁵⁹

The prosecutorial investigation of femicides depends directly on the coordinated and harmonious work that must exist between the Public Prosecutor's Office and the other state authorities.

As an initial hypothesis, the killing of the woman that is being investigated should be considered a femicide so as to ensure the inclusion of a gender perspective as the primary focus for the inquiry into the facts.

Preliminary steps and urgent actions

171. In order to avoid the loss or destruction of evidence gathered from the scene where the body of the victim was found, the investigators with judicial police functions should immediately carry out all the urgent actions, such as the inspection of the crime scene, inspection of the body, interviews, and interrogations. As an initial hypothesis, the killing of the woman that is being investigated should be considered a femicide so as to ensure the inclusion of a gender perspective as the primary focus for the inquiry into the facts. This hypothesis can be proven or thrown out according to the results of the investigation.

172. According to the legal requirements established in the criminal procedure codes and in the protocols of action for the urgent investigative tasks, the public servants mentioned above must identify, collect, and technically preserve the probative material and physical evidence. They must register interviews and interrogations not only in writing but also through audio or visual recording.

173. The recovery of the body from the scene where it is found and the subsequent medical-legal autopsy should preferably be carried out by persons with technical qualifications in criminology and forensic medicine that are part of public institutes of legal or forensic medicine, or alternatively, a public or official hospital. The collection of all the gathered evidence, including that evidence that is taken or produced by electronic means such as cameras, recorders, tablets, etc. should be rigorously submitted according to the proper chain of custody. In all of the processes, it is essential to follow existing criminal investigation protocols, recommendations, and guides in order to advance in the understanding of what happened, preserve the evidentiary elements that exist, and avoid making later phases of the investigation more difficult.

174. **In the initial actions it is key that the investigators are able to recover all the information related to acts that took place before or simultaneously with the femicide,** such as prior reports of violence made to administrative or judicial police; security video footage of the residences of the victim and of the perpetrator, parking lots, shopping centers, public parks; findings regarding the manipulation, use of force, stalking, or invasion of the victim's liberty or privacy through electronic means, social networks, landline or cell phone, etc.¹⁶⁰

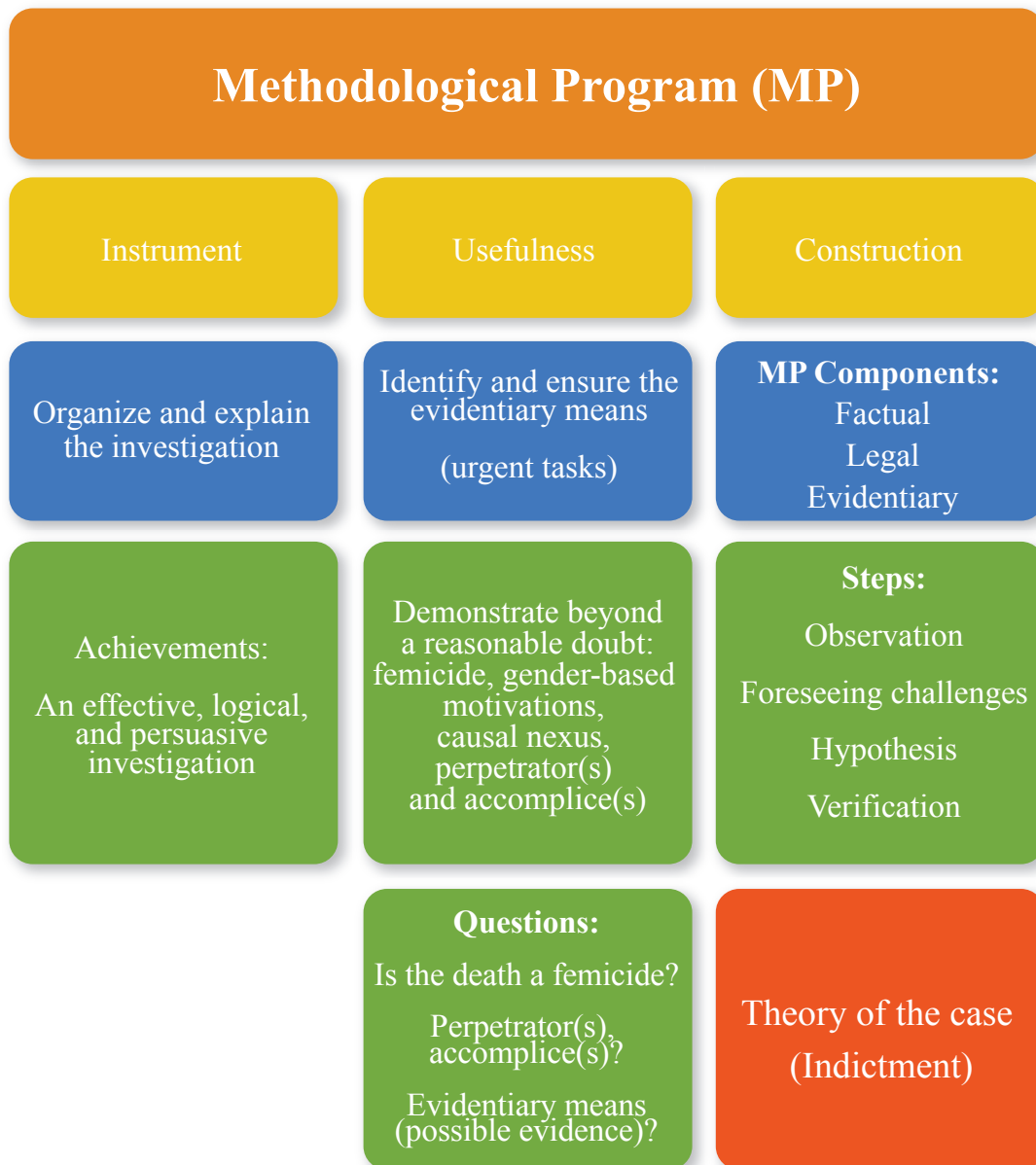
175. In carrying out the urgent tasks, a best practice is to set up meetings between the prosecutors, analysts, and investigators in order to evaluate the advances of the investigation twenty-four hours following the notice of the crime, and at the seventy-two hour mark set up meetings to assess new advances and define the lines of inquiry and the methodological plan.¹⁶¹ These results should result in an executive report addressed to the competent prosecutor so that he or she may assume the direction, coordination, and control of the investigation.

The design of the investigation

The methodological plan or program for the investigation of femicides

176. **Definition.** The methodological program of investigation, which in some countries is also referred to as the draft strategy, plan of work, or design of the case,¹⁶² is a tool that allows for organizing and explaining the investigation in order to identify and ensure the evidentiary means, the material probative elements, and the physical evidence necessary to demonstrate beyond a reasonable doubt¹⁶³ that a criminal act has taken place. In the case of femicide, the crime can be established based on gender-based motivations for its occurrence (the context), the causal nexus between the criminal act and the resulting death, and the responsibility of the perpetrators or accomplices in the punishable act.

Graphic 7. The methodological program of investigation



Adapted from: Avella Franco 2007, p. 16

177. **Advantages.** This program allows the prosecutor or representative of the Office of Public Prosecution, in their role as director of the investigative work, to plan the work of the police in the investigation and the work of his or her own team,¹⁶⁴ so as to guarantee the efficient use of the resources assigned to investigate these crimes. The prosecutor and his or her team should set out the actions that should be taken throughout the investigation in order to demonstrate the gender-based motives, hate, or discrimination that were behind the femicide under investigation.

The implementation of an adequate program of work should ensure that the investigation is:

- effective
- logical
- persuasive

178. The implementation of an adequate program of work should ensure that the investigation is:¹⁶⁵:

- **Effective**, that it reaches the objective of producing a theory of the case that allows for presenting a solid indictment with the proper evidentiary support;
- **Logical**, that it offers a reasonable explanation of the facts, the nature of the crime, and the persons possibly responsible for the crime of femicide, based on the material probative elements and the physical evidence collected; and
- **Persuasive**, that it manages to convince the judge or tribunal in charge of supervising procedural safeguards (*control de garantías*)¹⁶⁶ of the need to take certain appropriate and legal measures in the course of the investigation, such as intercepting communications, obtaining bodily fluids, searches, preventative detention, etc. The intention should also be to convince the judge or tribunal responsible for sentencing of the validity and veracity of the theory of the case in the indictment beyond a reasonable doubt.

179. Other advantages of using a methodological program include that it serves as documentation of the prosecutorial action, which can be very useful in circumstances where there is a high turnover of personnel during the investigation. It allows the new person in charge of the investigation to become quickly and sufficiently familiar with the status of the investigation and where it is in the process.

180. In virtue of the principle of comprehensive investigation,¹⁶⁷ the appropriate time for designing the methodological program is once the representative of Office of Public Prosecutions and the investigatory police have carried out all the preliminary steps and urgent tasks to ensure the material probative elements and the physical evidence in relation to the *notitia criminis* of the killing of a woman. Because these preliminary actions were most likely not carried out by the same prosecutor that will investigate the case, it is necessary to advance in the observation phase following the steps that are described below.

181. The team that is in charge of carrying out the investigation of the facts should assess and process the full set of indicators, physical evidence, and other information obtained above all in the preliminary actions at the crime scene where the body was found and in the autopsy, in order to establish clearly and in an orderly fashion the problems or challenges that emerge in relation to:

- Clarifying the facts, including the fate or location of a disappeared woman (if applicable).
- The proper classification of the legally relevant facts as femicide/femicides or aggravated homicide, or other offenses, if there may have been multiple or concurrent criminal acts.
- The evidentiary requirements,¹⁶⁸ namely the type and class of probative material needed to demonstrate the hypothesis that has been preliminarily set out.

182. From this analysis, the needs that must be covered in the design and implementation of the investigation plan can be derived. The main objective of the plan is to demonstrate the three principal components of the theory of the case: the factual, the legal, and the evidentiary.

The factual component

The objective of the factual component is to articulate factual proposals that allow for understanding in detail what happened and identifying the facts.

183. The prosecutorial investigation should establish the factual basis of the case: the circumstances in terms of time, way, and place in which the acts took place, the protagonists, the manner in which they happened, the actions taken or executed, the instruments used, and the consequences.¹⁶⁹ The objective of this component is to articulate factual proposals that on one hand, allow for understanding in detail the substance of the criminal accusation, and on the other, for identifying the facts relevant for establishing the responsibility or lack thereof of the accused.¹⁷⁰ This correlates procedurally with the principle of congruence that will be very relevant for the indictment, to the extent that the factual basis of the case will determine the focus of the proceeding and thus will limit the scope of debate in the trial to the facts contained in the indictment. The precise

determination of the factual component in the methodological program is important because cases may emerge in which the basis of the facts can be widely accepted, giving way for the defendant(s) to stipulate partially to the facts and lead possibly to an acceptance of responsibility.

Table 3. Preliminary information for elaborating the factual component

Example: Facts of the Case of María Isabel Véliz Franco against Guatemala

María Isabel Véliz Franco, a 15-year-old student, disappeared on December 17, 2001. That same day, her mother, Rosa Elvira Franco Sandoval de Véliz reported her disappearance to the National Civilian Police (NCP), and her body was found the following day. On December 18, 2001, the NCP received a phone call from an anonymous informant that indicated that, on the night of December 17, 2001, this person had seen a female getting out of a Mazda, taking a black bag out of the vehicle, and leaving it in a vacant lot in the city of San Cristobál II, Zone 8 of the municipality of Mixco. This person followed the car and observed it enter 5-24 6th Street, Nueva Monserrate, Zone 7 of Mixco. The black bag turned out to be the lifeless body of María Isabel Véliz Franco.

184. The team should meet to examine all the details that make up the set of facts related to the killing of a woman that is being investigated, including the context of violence against women in which the killing is situated, seeking to answer the following questions:

a) The circumstances of time, method, and place of the death:

- Was there a killing of a woman? With the information preliminarily gathered, is it possible to determine whether the death was an accident, suicide, or homicide?¹⁷¹
- How did the victim die?
- Who was the victim?
- How old was the victim at the time of death? Does this case involve a girl or adolescent?
- Does the body of the victim show signs of sexual violence? Were indicators collected technically from the place where the body was found?
- Does the body of the victim show signs of physical violence that indicate cruelty or ruthlessness such as injuries or mutilations?
- Does the case involve a victim that has been disappeared or is missing? Has her fate or location been identified?
- Where did the crime take place? Was it a private or public place? Where was the body found? Was the body exposed, dumped, or found in a public place?
- Were two or more bodies found? To what type of context does the scene correspond? How can this scene be interpreted?
- Is it necessary to visit and investigate other places related to the place where the facts took place, such as the victim's residence or place of employment, the residence of family members, the children's schools?

b) Identifying those responsible

- Is/are the possible perpetrator(s) or accomplice(s) known?
- If so, has he been identified and his individual role determined?
- Is he a public servant? For which institution does he work?
- Is his location known?
- Do/does the suspect(s) have a criminal history, especially in relation to gender-based violence?
- Do/does the suspect(s) belong to an illegal structure, gang, or group? What kind?

- Do/does the suspect(s) have any type of emotional, work, social, or other tie to the victim? What is the nature of this link?
- If the suspect is not known, what technical and scientific means could be employed to establish who he is/they are? Have surveillance cameras, pictures, videos, telephone interceptions, and line-ups been reviewed?

c) Nature and degree of connection between the suspect(s) and the victim:

- Between the suspect/defendant and the victim, is there or was there a relationship of family by blood or adoption, marriage, cohabitation, romantic, or any other kind of relationship of fact or friendship?
- Between the suspect/defendant and the victim, is there or has there been a work, school, or other relationship that would imply trust or gender-based superiority?
- Are there signs of threats, violence, or injuries on the part of the suspect/defendant against the victim?
- Do/does the suspect(s) have an official record or reports of violence, especially intra-familial or gender-based violence?

d) Determining the harms caused by the crime and the protection of indirect victims and family members:

- Who are the witnesses of the crime, the indirect victims, and the family members?
- Have the indirect victims and the witnesses been adequately attended to through emergency, medical, and psychological assistance?
- Has specialized assistance been contemplated where the indirect victim or witness is a child or adolescent, when they have a disability, or when it is an elderly adult, to ensure their participation in the investigation and the trial?
- Are there specialized support personnel to medically and psychologically attend to indirect victims and family members during the judicial process?
- Has a lawyer or public defender been assigned to advise and legally represent the indirect victims or family members during the judicial process?
- What are the harms that the killing has caused for the indirect victims? What is the nature of these harms?

It is essential to inquire into all the measures that could have been adopted by the different state agencies that had knowledge of prior acts of violence against the murdered person.

185. **Assessment of the measures for detecting the risks of lethal violence and for protection.** It is important for the investigators to remember that femicides are the definitive consequence of a cycle of violence, inequalities, and discrimination. For that reason, it is essential to inquire into all the measures that could have been adopted by the different state agencies that had knowledge of prior acts of violence against the murdered person.

186. The analysis should be oriented toward examining the effectiveness of measures adopted prior to the killing, as well as assessing the action of the authorities from the perspective of due diligence in relation to the protection of the woman and her family members from the aggressor(s). If the conclusion of this examination allows for a finding of negligence or a lack of response to the victim's request for protection, it is the duty of the Office of Public Prosecution to officially refer the case or transfer the information to the competent judicial authority to investigate these omissions or instances of negligence disciplinarily or criminally.

The legal component

187. The second aspect for the investigative team to consider is related to the provisional legal classification of the acts. This legal component establishes the way in which the factual story will be framed within the applicable criminal norm(s)—in this case, the criminal offense of femicide/femicides/aggravated homicide. This is done through legal analysis of the facts according to the substantive and procedural legal provisions.¹⁷² The foundation of this component is the legal assessment of the facts in order to demonstrate the conduct, criminal classification, the unlawfulness, and the guilt.¹⁷³

188. It is not possible to construct a criminal hypothesis without properly classifying the facts of the case according to a particular criminal offense.¹⁷⁴ This is important because it is on the basis of this criminal codification that the primary or general objective of the investigation can be established—namely, collecting the information to prove femicide/femicides—as well as several specific objectives—collecting the information that will serve to demonstrate each of the structural elements of these criminal offenses.¹⁷⁵

189. Taking as the main hypothesis that a femicide, femicides, or homicide aggravated by gender-based motives has occurred, the first assessment is whether it is viable to classify the facts and eventually impute criminal responsibility according to what is set out in national legislation¹⁷⁶ or the applicable federal law.¹⁷⁷

190. As additional hypotheses, it should be seen whether, in light of the facts and the evidence collected, it may be possible to consider alternatives for the indictment, such as other forms of aggravated homicide (with varying degrees of intent and qualifications)¹⁷⁸ or to consider charging concurrent crimes such as kidnapping, enforced disappearance, torture, sexual violence, illegal possession of a firearm, among others.

191. The legal viability of the hypotheses that are presented will depend directly on the probative material collected in the urgent tasks and the preliminary actions of the investigation. The overall analysis of this material can determine which of the modalities set out in the criminal offense will be the subject of the investigation and which should be thrown out.

192. The investigative activities should be organized in such a way so as to permit the collection of the probative means necessary to demonstrate the structural elements of the criminal offense or offenses that are part of the main hypothesis: the legally protected interest; the perpetrator; the method of action; the possible motives; the degree of participation; the victim; descriptive, normative, and subjective elements; generic and specific aggravating circumstances; attenuating circumstances; circumstances to increase or decrease sentence; concurrent crimes; etc.¹⁷⁹ An important aspect to keep in mind is the particular nature of the possible motive of the crime: the motives of discrimination, hate of women, or gender-based motivations.

193. In this context, it is important to avoid relying on circumstances related to criminal responsibility that might justify the conduct of the suspected aggressor or blame the victim for what happened.

194. To this effect, the prosecution should counter the defense's theory of the case when it attempts to justify the death by referencing the victim's failure to report previous violence acts or when it attempts to enter consent to a sexual act into the discussion by mentioning that the victim accepted an invitation by the perpetrator or that it is not possible to demonstrate scratches or signs of violence or resistance on the part of the victim vis-à-vis the sexual act. Moreover, references should be avoided to the history of the victim, for example, mentioning that she was a sex worker, that she had a lover, that she was a "loose" woman, that she consumed drugs, or that she had also committed violent acts against the suspected perpetrator. Finally, no special consideration should be given to possible suicide attempts on the part of the perpetrator(s).¹⁸⁰

The foundation of this component is the legal assessment of the facts in order to demonstrate the conduct, criminal classification, the unlawfulness, and the guilt.

The legal assessment of the facts should consider the particular nature of the possible motive of the crime: the motives of discrimination, hate of women, or gender-based motivations.

The evidentiary component

The evidentiary component is related to the evidentiary support of the case that is required to sustain the factual and legal theories put forward.

In cases of femicide the investigation into the gender-based motives must be careful, methodical, and exhaustive; it must go beyond just the crime scene.

195. The third fundamental aspect is related to the evidentiary support of the case,¹⁸¹ the means of proof, and the material probative elements that are required to sustain the factual and legal theories put forward. This refers to the quantity and quality as well as the means and elements that allow for establishing the facts that took place, the punishable conduct, and the responsibility of the suspects, proving before the judge the consistency of the theory of the case.¹⁸² The representative of the Office of Public Prosecutions and his or her team must put forward an assessment as to the pertinence, necessity, and legal acquisition of the probative means collected and of those that must still be collected—anticipated evidence—or produced in trial, in order to legally demonstrate the killing of a woman and the gender-based motives.

196. In cases of femicide the investigation into the gender-based motives must be careful, methodical, and exhaustive; it must go beyond just the place of the crime and the scene where the body is found. No clue should be thrown out, as can be observed in the following example taken from the case of Véliz Castro:

Her mother, Rosa Elvira Franco, found her body in the morgue; her face was swollen from being beaten; she had a large wound under the heart, and her fingernails had been bent back; her clothes were bloodstained. She also noticed something yellow on the front and back of her trousers. . . . [T]he photographs that are part of the case file show that the zipper on the victim's trousers was open and her underwear torn. . . .

Mrs. Franco, on her own initiative and at her own expense, obtained from the cell phone company information on the outgoing calls from her daughter's cell phone . . . a report was sent to the Public Prosecutor's Office containing an analysis of the incoming and outgoing calls on the victim's cell phone; it was noted that in the moments just prior to her disappearance, there was communication between the victim and possible suspects.¹⁸³

197. In order to prove all the elements of the hypothesis put forward in the methodological program, the investigative team should respond to the following questions:

- Is there a plan for identifying and interviewing the witnesses and everyone that knew the victim, those that were present in the moment of the commission of the crime, those that were found near the crime scene, and those that are indirect victims?
- Is there a plan for collecting information and testimony from the people that can offer evidence related to the history of violence of the aggressor(s) toward the victim?
- Is there a plan for collecting information about the partner or other men close to the victim that have had an intimate, friendship, work, business, or other type of relationship with her?
- Have the administrative records been investigated for reports of threats, disappearance, or manifestations of violence that the victim had previously presented to judicial authorities or social services?
- Is there documentation of similar cases of killings of women?
- Is there a plan to explore whether there is a relationship between the people involved in the crime with other similar cases of killings of women?
- Have the physical and psychological harms suffered by the direct victim, the indirect victims, and family members been assessed?
- What measures of reparation should be offered to the indirect victims and the family members? Have measures been considered that take into consideration the victim's experiences of structural discrimination and inequality and that offer guarantees of non-repetition from the perpetrator?

198. In every case it is necessary to investigate the manifestations of physical, sexual, psychological, economic, patrimonial, or symbolic violence that preceded the death of the victim. To ensure that the context of violence, inequality, or discrimination in which the femicide may have been framed is adequately investigated, the recommendations from the previous chapter should be considered and the following expert opinions and testimony developed:

- According to the classification of the criminal offense that will be charged, **testimony from experts in psychology, social work, or anthropology** in order to determine the following circumstances:
 1. the prior relationship between the victim and suspected aggressor;
 2. the acts of violence and mistreatment prior to the death, based on the feminist ecological model (see infra Chapter III);
 3. the suspected aggressor's presentation of cultural patterns of misogyny, discrimination, or disrespect toward women, through a personality profile.
- **A comparative study between the victim and the suspected aggressor** to determine the possible physical advantage, in order to support the framing of inequality and of power in which the lethal violence was inflicted.¹⁸⁴
- **A study of the social surroundings¹⁸⁵ and a map of the relationships of the victim and her family members**, taking into consideration a focus on intersectional discrimination, in order to identify the ways in which the structural, institutional, interpersonal, and individual factors of the social relations in which the victim operated made her more or less vulnerable to the forms of violence that affected her (such as being a minor, a precarious socio-economic situation, rural origin, education level, maternity, work activity, etc.). These factors can also affect the victims' access to justice and the evolution of the judicial investigations because of discriminatory stereotypes and prejudices among those working in the legal system.¹⁸⁶
- To guarantee the future success of the investigation, when the circumstances of the facts warrant it and the legal framework allows it, **evidence may be presented in advance** (*prueba anticipada or anticipio jurisdiccional de prueba*), in the case of witnesses that are threatened, sick, or in extreme or extraordinary risk in terms of their security and personal integrity
- To complement the work of the forensic experts, where possible, **the reconstruction of the scene where the body was found**, through the use of specialized software with three dimensional virtual animation, as well as other tools of artificial intelligence in order to analyze the patterns of killings of women.

It is necessary to investigate the manifestations of physical, sexual, psychological, economic, patrimonial, or symbolic violence that preceded the death of the victim.

The lines of inquiry

199. One transcendental aspect of the prosecutorial investigation is the determination of the problems or challenges that must be resolved and the formulation of the hypothesis. The construction of the hypothesis aims at establishing logical lines of inquiry that can be followed according to the particular category of femicide. These should be ratified or refuted through the work of verification that is ordered for that purpose. Therefore, these lines of inquiry should be flexible.¹⁸⁷

The objective of these lines of inquiry must be to collect the evidence necessary to support the elements of discrimination, hate for women, or gender-based motives.

200. The Inter-American Court has noted on repeated occasions that state authorities in charge of investigations have “the duty to guarantee that in the course of the same the systematic patterns that allowed the commission of grave violations of human rights in the present case and the context in which they occurred will be assessed.”¹⁸⁸ The Court has advised that, to ensure that it is effective, the investigation should be conducted taking into account the complexity of the facts “and of the structure in which the persons probably involved in the same are located, thus avoiding omission in the gathering of the evidence and in the following of logical lines of investigation.”¹⁸⁹ In the Cotton Field Case (*Campo Algodonero*), the Court advised that “certain lines of inquiry, which fail to analyze the systematic patterns surrounding a specific type of violations of human rights, can render the investigations ineffective.”¹⁹⁰

201. The design of the methodological program should articulate the possible explanatory hypotheses or the lines of inquiry that are derived from the analysis of the existing information in the factual, legal, and evidentiary components of the case. The objective of these lines of inquiry must be to collect the evidence necessary to support the elements of discrimination, hate for women, or gender-based motives demanded by the definition of the criminal offense.

202. The team working on the investigation should examine the viability of the specific lines of inquiry that best adapt to the category of femicide that is being investigated. For example, if systematic sexual femicide is proposed as the explicative hypothesis, the investigative work should aim at clarifying the motive of sexual violence.¹⁹¹ This is done by inquiring into the information derived from the autopsy of the victim or the complementary thanatological or forensic sexological studies searching for indicia of violent sexual acts before or after the death. Likewise, the investigators should carry out a detailed analysis of the information contained in the database of the police or the Public Prosecutor’s Office to look for repeated criminal patterns, frequent appearance of places, similar facts, or signs of sexual violence in the crimes that have been reported by the authorities recently and that may be related given their *modus operandi*.¹⁹²

203. To guarantee increased effectiveness in the search for criminal patterns it is recommended that prosecutorial units investigating these crimes hold periodic meetings that allow them to review the lines of inquiry being advanced. Above all the aim should be: 1) the joinder of proceedings that satisfy the requirements established in the criminal procedure norms for joining cases that have substantial or formal connections and 2) the transfer of evidence and material probative elements in those investigations and cases where it is evident that there is a community of evidence.

204. In order to guarantee the indirect victims and family members’ right to justice, it is very important that periodic meetings are established with the investigative team of the Public Prosecutor’s Office for them to review, validate, and adjust the lines of inquiry. It should be remembered that, in addition to their particular interest in clarifying the truth about the facts and the punishment of those responsible, the victims have valuable information about the life of the victim, the map of her relationships, the history of violence that she may have suffered, and even physical evidence or material probative elements that are important for the facts.

205. In regard to the investigation of structures of organized crime, the possibility to coordinate the investigative work with regional and international organs of police and judicial cooperation should not be forgotten in order to guarantee the effective dismantling of the networks and the *modus operandi* of these structures, above all when borders are used as an escape or hiding mechanisms by possible perpetrators of femicides.

The consolidation of the program, the verification of the hypothesis, and procedural actions

206. Once the analysis of the factual, legal, and evidentiary components of the methodological program has been completed, it is necessary to document the content of the analysis in a report that serves as an oversight of the investigative activities. This document should include the criminal hypothesis, the organization of the theory of the case, the objectives of the investigative work, the actions or stages of the investigation that will be carried out to fulfill the program, and the timing and oversight procedures for these activities.¹⁹³

Footnotes

- 157 Armenta Deu, T. (2012), pp. 193 et seq.; UNODC, *Manual sobre la Investigación del Delito de Trata de Personas*, Guía de autoaprendizaje (2010), p. 76.
- 158 Monterroso Castillo, J. (2007). It does not matter whether these functions are exercised by police bodies, such as in the case of the Chilean Investigation Police, by an organ ascribed to the judicial power or branch, as with the Costa Rican Judicial Investigation Organ, or by an institution dependent on the Public Prosecutor's Office, such as the Colombian Prosecutorial Technical Investigation Corps.
- 159 The importance of intra- and inter-institutional coordination can be seen in: IACtHR, *Case of María Isabel Véliz Franco et al. v. Guatemala*, Merits (Nov. 3, 2011), pp. 27, 30, 106 & 119. Some recommendations and best practices for optimal coordination can be found in Barrero Alba, R., Cartagena Pastor, J. M. Laporta Donat, E. & Peramato Martín, T. (2012) pp. 263 et seq; Ginés Santidrián, E. Mariño Menéndez, F. & Cartagena Pastor, J. M. (2013), p. 17; Castresana Fernández, C. (2009), p. 27; Ibero-American Association of Public Prosecutors & Conference of Ministers of Justice of Ibero-American Countries (2013), p. 156.
- 160 District Secretariat of Planning, District Secretariat of the Woman, *Corporación Casa de la Mujer Trabajadora* (2013), p. 156.
- 161 An example can be seen in the document of General instructions for the criminal investigation of the crime of femicide, No. 6-2013, of the Guatemalan Public Prosecutor's Office.
- 162 Henderson García, O. (2007), p. 138.
- 163 Avella Franco, P. O. (2007), pp. 17 et seq.
- 164 Chihuahuense Institute of the Woman (2011), p. 31. An alternative model of coordinating the investigation is that of functional direction. On this see the Action protocol for applying functional direction, of the Attorney General of the Republic, of the Judicial Investigation Organ, of the Ministry of Government, Police, and Public Security of Costa Rica, General instruction 01/2012.
- 165 Avella Franco, P. O. pp. 17 et seq.
- 166 In large part, the countries of Latin America that have adopted an accusatory regime of criminal procedure or a regime with an accusatory tendency have intended to separate the functions of investigation and trial, which previously had been concentrated in the single figure of the criminal instruction judge. For that, the preference has been for creating the figure of a judge with the function of control of guarantees that has the mandate to review and control the investigative activities, especially those that limit or affect fundamental rights of those persons being investigation, such as the case of real or personal precautionary measures. Armenta Deu, T. (2012), pp. 195 et seq.
- 167 Castresana Fernández, C. (2009), p. 15.
- 168 Henderson García, O. (2007), p. 178.
- 169 Avella Franco, P. O. (2007), pp. 37-38.
- 170 Benavente Chorres, H. (2011), p. 49.
- 171 Here the recommendations set out in the Minnesota Protocol (1991) can be followed. A psychological autopsy of the victim can be a very useful scientific-technical test.
- 172 Avella Franco, P. O. (2007), p. 38.
- 173 Benavente Chorres, H. (2011), p. 49.
- 174 Avella Franco, P. O. (2007), pp. 38 et seq.; Valdés Moreno, C. E. (2008).
- 175 Avella Franco, P. O. (2007), pp. 76 et seq.
- 176 The existing criminal codifications can be consulted in Annex 1 and also in Garita Vilchez, A. I. (2013).
- 177 With regard to feminicides, issues related to the management of legislative competencies do not always allow for properly combatting impunity for these crimes. In the case of Mexico, Toledo Vásquez has warned that despite having feminicide codified as a crime at the federal level, the criminal responsibility of authorities that obstruct the investigation of the killings of women is difficult to prosecute because of the legal requirements that are demanded for these acts to amount to a federal crime. Toledo Vásquez, P. (2013), pp. 23-24.
- 178 The complexity of this topic can be seen in the following analysis: in December 2010 in the state of Guerrero, Mexico, a norm was emitted according to which any homicide of a woman committed by a man was considered a qualified homicide (homicidio calificado), and therefore it is punished with the same sentence that is assigned to femicide. The existence of this offense discourages those working in the judicial system to make the additional effort to prove the offense of femicide, whose objective elements are more complex than simply demonstrating the sex of the victim. See Toledo Vásquez, P. (2013), p. 24.
- 179 Avella Franco, P. O. (2007), pp. 76 et seq.
- 180 AIAMP & COMJIB (2013), p. 41.
- 181 Benavente Chorres, H. (2011), p. 58.
- 182 Avella Franco, P. O. (2007), p. 38.
- 183 IACtHR, *Case of María Isabel Véliz Franco et al. v. Guatemala*, (Nov. 3, 2011), paras. 14, 16 & 18.
- 184 UNIFEM (2008), p. 43; AIAMP & COMJIB (2013), p. 41.
- 185 The social surroundings of a person includes conditions related to their life and work, income, education, and the community to which they belong. All of these facts have a powerful influence in the investigation of femicide. UNIFEM (2008), p. 40.
- 186 IACtHR, *Case of María Isabel Véliz Franco et al. v. Guatemala*, (Nov. 3, 2011), para. 119.
- 187 General Procurator of Justice of the Federal District (2011), pp. 72 et seq.; Myrna Mack Foundation (2008), pp. 135 et seq.; UNIFEM (2008), p. 37.
- 188 IACtHR, *Case of the Radilla-Pacheco v. Mexico* (No. 23, 2009), para. 333.
- 189 IACtHR, *Case of the Radilla-Pacheco v. Mexico* (No. 23, 2009), para. 333; see also IACtHR, *Case of Manuel Cepeda Vargas v. Colombia* (May 26, 2010), paras. 215-17.
- 190 IACtHR, *Case of González et al. ("Cotton Field") v. Mexico* (Nov. 16, 2009), para. 366.
- 191 This is what the Inter-American Court ordered the Mexican State to do in the cases of feminicides in Chihuahua. See IACtHR, *Case of González et al. ("Cotton Field") v. Mexico* (Nov. 16, 2009), para. 455; Saavedra Alessandri, P. (2013), p. 364.
- 192 General Procurator of Justice of the Federal District (2011), p. 74.
- 193 In Colombia there is an institutional directive to use an investigation form in all divisions of the Office of the Attorney General of Nation. This form has a unique national investigation code, which is required for entering it into the Attorney General's information system. This allows for documenting and identifying which member of the prosecutorial system has been assigned to the case and what information they have. The correct functioning of an information system like this can be useful for promoting the coordinated work between different prosecutorial teams that investigate the criminal patterns of femicide.

Chapter V.

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Chapter V.

The signs and indicators of a femicide: medical-forensic action and criminal analysis

208. Alphonse Bertillon asserted that in a criminal investigation “*one can only see what one observes, and one observes only things which are already in the mind.*” This chapter presents the observation—in other words, what must be kept in mind in order to see the signs and indicators of femicide, to understand what happened and what it really means. Both the medical-forensic action and the criminal analysis must be oriented toward an understanding of the gender analysis applicable to lethal violence described in Chapter III.

209. From the medical-forensic point-of-view, to refer to “gender-based motives” means:

- to find the elements associated with the criminal motive that makes the aggressors attack women having determined that their conduct or lifestyle departs from the roles established by the culture as “appropriate or normal;”
- to identify how this perception translated into a series of criminal elements in the aggressors’ behavior, both at the cognitive level, such as the decisions that were taken at the time of planning and executing the femicide, and on the emotional level, such as hate, rage, etc.

210. The elements associated with femicides must be sought out, identified, and documented in the different phases and scenarios of the criminal investigation, as illustrated in Table 4.

From the medical-forensic point-of-view, to refer to “gender-based motives” means:

- to find the elements associated with the criminal motive
- to identify how this perception translated into a series of criminal elements at the cognitive level.

Table 4. Elements for structuring the investigative action

GENERAL FEMICIDAL/FEMINICIDAL CONTEXTS	Intimate or familial femicide/feminicide
	Sexual femicide/feminicide
	Femicide/feminicide in a group context
	Other types of femicides/feminicides
DEATHS OF WOMEN TO WHICH THIS MODEL PROTOCOL SHOULD BE APPLIED	Criminal killings
	Deaths that are “suspected to be criminal” ¹⁹⁴
	Suicide
	Some accidents
PHASES AND SCENARIOS IN WHICH TO LOCATE AND IDENTIFY THE ELEMENTS ASSOCIATED WITH THE DIFFERENT TYPES AND CONTEXTS OF FEMICIDES	Autopsy
	Crime scene
	Circumstances surrounding the facts
	Victim
	Perpetrator

211. It is important to underscore that **these elements**, taken individually or in isolation:
- **are not exclusive:** several of them can be present in other homicides without necessarily meaning that it is a femicide;
 - **are not specific:** they can present in an isolated way even when there has not been a femicide;
 - **are not obligatory:** they may be missing even though there has been a femicide.

The complexity of femicides cannot be resolved by automatic responses, improvisations, or simplifications.

212. It must be kept in mind that the very act of the crime, with its specific circumstances and unforeseen factors, can alter completely the appearance of the elements that characterize a femicide. This highlights the importance of the human dimension and the need to follow a comprehensive process that will only offer answers at the end of assessment of the facts and their relation to the different contexts. The complexity of femicides cannot be resolved by automatic responses, improvisations, or simplifications. The solution demands professionalism and responsibility based on the working knowledge of the characteristics associated with femicides.

The solution demands professionalism and responsibility based on the working knowledge of the characteristics associated with femicides.

213. As described above, femicides have multiple expressions and contexts. The Model Protocol will emphasize three of these:

- the setting of a partner, emotional, or familial relationship
- the sexual motive in the public sphere
- the group context with a double component: a relationship defined by the organization of the group and the position of inferiority of the victim because she is female.

214. These contexts are not to be considered mutually exclusive or rigid divisions, but rather as general frameworks that define the presence of a series of elements in the criminal acts. Therefore, depending on the circumstances, there may be cases with shared elements from the three contexts.

215. As was mentioned previously, the Model Protocol offers specific reference points associated with femicides that can be identified and incorporated into the investigation. It is not incompatible with the use of other criminal and forensic investigation protocols, guides, recommendations, and tools and it does not seek to limit them in any way.

The signs and indicators of femicide in the scope of partner and familial relationships

216. The signs and indicators that appear in connection with femicides in these circumstances are the consequence of the ideas and emotions, such as anger, rage, hate, revenge, disrespect, punishment, humiliation, etc., that accompany the gender-based motive that is individually constructed (a man, a woman, a set of circumstances) based on the elements that the social and cultural contexts set before the aggressors.

The signs and indicators of intimate femicides in the autopsy findings

217. In this context, the autopsy may present the following information:
- **the use of excessive violence** (“overkill”), understood as the excessive use of force beyond what is necessary to reach the desired objective.¹⁹⁵ This translates into the presence of multiple injuries brought on by the weapon or instrument used to cause the death, such as multiple injuries from a knife or gun, shots, blunt force, etc.;

- Despite the high number of **injuries**, the majority tend to be **found in vital zones**, which reflects the control maintained by the aggressor during the homicide;
- **The high intensity of the violence** inflicted, through the appearance of traumas, stabbings, cuts, strangulation, etc.;
- **The use of more than one method to kill.** This is related to excessive violence and translates into the combination of several instruments or ways to carry out the aggression. This reflects the dynamic of the femicide and the contextual factors. Examples include blunt-force traumas caused by hands or objects and then followed by stabbing; or blunt force together with strangulation; or injuries from a knife and a gun, etc. The combinations of the forms of aggression and the number vary significantly.¹⁹⁶
- **The use of an easily accessible domestic instrument**, such as a kitchen knife, a hammer, or other tool. If the aggressor has weapons on hand, for example if he is a hunter, it is common for these to be used and the victim may have been previously threatened with their use.
- **The use of the hands** as a direct homicidal tool, without turning to weapons or other instruments. In these cases, the femicide is inflicted through blunt-force trauma, strangulation, suffocation, or a combination of these methods.¹⁹⁷
- **The presence of different types of injuries from different moments, prior to the femicidal aggression.** Some of these injuries may be relatively recent, as a consequence of the increase in violence that frequently precedes a femicide; other injuries may be older and present as scars.¹⁹⁸

In intimate femicides it is common that the killing is preceded by examples of excessive violence, which translates into the use of a combination of several instruments or forms of inflicting the aggression, for example through blunt-force trauma caused by hands or objects and followed by a stabbing; blunt force and strangulation; or the use of a knife and a gun. In systematic sexual femicides, the killing of the woman tends to be preceded by deprivations of liberty (kidnapping or enforced disappearance), physical or psychological torture and sexual violence (not only vaginal penetration but also touching or forced oral/anal sex). In these types of femicides, the bodies of the murdered women are subjected to post mortem barbarities such as sexual violence, mutilation, dismemberment, and decapitation. Finally, the bodies of the victims tend to be buried in mass graves or abandoned in remote areas.

The autopsy may present the following information:

- the use of excessive force,
- injuries concentrated in vital zones,
- intensity of the violence inflicted,
- use of more than one method to kill,
- use of an easily accessible domestic instrument,
- use of the hands,
- the presence of different types of injuries from different moments, prior to the femicidal aggression.

218. The autopsy should also search for possible consequences of gender-based violence in the health of the woman, some of which affect the results of the necropsy findings. These are discussed further in the section below titled “*The signs and indicators associated with the impact and consequences of gender-based violence on the health of the woman.*”

The signs and indicators related to the crime scene

219. In cases of cohabitation, the femicide most frequently takes place within the **home**.¹⁹⁹

220. **The place** where the femicide is committed **reveals signs of the aggression and the symbolic violence** that is often present in the aggressions inflicted against the woman. Examples of these signs include mistreatment of pets and breaking of objects, furniture, pictures, etc., especially those that had a special significance for the woman—family photographs, souvenirs, gifts, etc.

The place where the femicide is committed reveals signs of the aggression and the symbolic violence.

221. Where there is no cohabitation, the femicide tends to occur in the **victim's residence or the aggressor's**.

222. When there is no cohabitation, some of the femicides take place in public places related to the victim's routine, such as the workplace, school, or common place sought for leisure—the park, or where she practiced a sport or exercise, etc.

223. In cases of femicide committed in a public place, the act tends to take place during the day, there are usually witnesses, and the aggressors do not take precautions to hide their responsibility.

The signs and indicators related to the circumstances surrounding an intimate femicide

One of the most frequent circumstances in intimate femicides is the victim's separation or divorce from the aggressor.

224. One of the most frequent circumstances in intimate femicides is the victim's **separation or divorce from the aggressor**.²⁰⁰ Many aggressors appear accepting of the idea of separating because they believe the woman will return after a short time. Upon realizing that the woman is not returning they decide to commit femicide.²⁰¹

225. **Reporting an aggression** committed as gender-based violence within the relationship also appears associated to femicide, although not as strongly as separation. When the report is combined with a separation, or when the report is made after having complained about the aggressor on several occasions, the association with femicide is stronger.

226. **Problems related to child custody**, disputes over economic questions or related to shared property from a time of cohabitation are also frequently associated with femicides.

The signs and indicators related to the prior situation of the victim of intimate femicide

227. Gender-based violence is characterized by its continuity over time and by the direct and indirect impacts in the woman's life and surroundings. The criminal investigation of a possible femicide should take into consideration the history of the victim to contextualize the investigation and to be able to adequately resolve the crime.

The signs and indicators associated with the background of the relationship and the possible existence of gender-based violence

228. To gather the most relevant information on this point, semi-structured interviews with the family members and persons close to the victim such as friends, co-workers, neighbors, etc. (see Annex 2) should be carried out.

229. Depending on the circumstances, a "**psychological autopsy**" can be done to understand the situation of the woman before the femicide, highlighting her psycho-biography and life status before the lethal aggression, its evolution over the previous months, as well as the state of her mental health and possible impacts from violence she suffered.

The signs and indicators associated with the impact and consequences of gender-based violence on the health of the woman

230. In numerous studies the WHO and PAHO have revealed the important repercussions that gender-based violence has on women. Being subjected to the permanent control of the aggressor and different forms of humiliation, criticism, and emotional rejection, together with repeated threats and aggressions produce important impacts on the physical and psychological levels. In fact, women who are victims of gender-based violence more frequently reach out to healthcare services to seek clinical assistance for problems and the negative perception they have of their health.

231. In the report “*Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence*,” the WHO documents the existing information on the connection between the exposure to gender-based violence and different negative health impacts. The report underscores how these impacts are produced through a complex response to acute and chronic neurological, neuroendocrine, and immunological stress.

232. The people in charge of the investigation of a possible femicide should have the clinical-health records of the woman, in addition to verifying questions related to the health of the murdered woman through interviews with her personal doctor and with family members and those close to her. They should collect all the information available regarding the impact that gender-based violence has had on the health of the woman.

** The physical consequences and impacts on women victims of gender-based violence*

233. The work of Ellsberg and others²⁰² describes the following impacts as consequences of gender-based violence:

- chronic pain, such as headaches and backaches, etc.
- changes in the central nervous system, including dizziness, vertigo, loss of consciousness, epileptic seizures, etc.
- gastrointestinal changes, such as loss of appetite, changes in eating habits, irritable bowel, etc.
- high blood pressure,
- colds and respiratory infections, caused by changes to the immune system.

234. Because in 40-45% of the cases there are sexual aggressions together with the physical and psychological violence, women also suffer a series of impacts to the genito-urinary system, including:

- vaginal bleeding;
- vaginal discharge;
- vaginal fibrosis;
- lower libido
- genital irritation;
- painful intercourse;
- chronic pelvic pain;
- urinary tract infections;
- refusal by the aggressor to wear a condom;
- problems related to “secretly” using contraception and without medical supervision;
- sexually transmitted infections;
- HIV;
- induced abortion;
- premature birth;
- underweight newborns.

The people in charge of the investigation of a possible femicide should have the clinical- health records of the woman, in addition to verifying questions related to the health of the murdered woman.

** The psychological consequences and impacts on women victims of gender-based violence*

235. Experiencing violence within one's own home and inflicted by the person with whom she has an emotional relationship, together with the socio-cultural circumstances that make a woman feel responsible for what is happening and incapable of doing something to avoid or resolve it, produces a great emotion impact on women victims of gender-based violence.

236. The main impacts are:

- depression;
- low self-esteem;
- stress reactions;
- consumption of toxic substances, such as alcohol and drugs;
- post-traumatic stress;
- suicide thoughts and attempts.

** The study of the health of the children of a woman victim of gender-based violence*

237. The exposure to gender-based violence by children living in the environment characterized by aggressions and control inflicted by the father over the mother, together with the attacks that the children often also receive, produces a series of behavioral, emotional, and physical impacts that reflect a significant deterioration in their health. These impacts should be studied in order to determine the extent and depth of the violence inflicted by the aggressor and to approach therapeutically the children that have suffered from it.

The signs and indicators related to the perpetrator of intimate femicide

The elements that this Model Protocol puts forward do not seek to suggest that their presence in a man indicates that he is the perpetrator, but only that the circumstances are compatible with a femicidal context.

238. The elements that are associated with perpetrators of gender-based violence are, above all, those related to his history of violence in the partner or familial relationship that culminates with the femicide.

239. Those elements are grounded in the general factors of the social and cultural context that each aggressor adopts to justify the violence and to inflict it in accordance to his ideas and the surrounding circumstances. These are common elements that should be applied in a particular context characterized by a perpetrator, a victim, and a set of circumstance.

240. This exercise is never an attempt to demonstrate criminal responsibility for the acts through the presence of these elements. The objective is to contextualize the crime as a femicide so that the investigation is launched with these reference points and can be successfully carried out to conclusion. Establishing criminal responsibility, the indictment, and other police or legal elements will be done through the established procedures. The elements that this Model Protocol offer do not seek to suggest that their presence in a man indicates that he is the perpetrator, but only that the circumstances are compatible with a femicidal context and that the investigation should advance without discarding this hypothesis to continue to identify and integrate the rest of the elements that can be found in other settings.

The background associated with perpetrators of gender-based violence that may go so far as to commit intimate femicide

241. The most significant elements that appear to be associated with perpetrators of femicide are:
- having lived in violent family contexts, especially those where there was gender-based violence;
 - having been victims of violence;
 - having suffered sexual abuse as a child;
 - having inflicted gender-based violence against other partners;
 - using violence outside the familial context.

The background of the relationship and the possible existence of gender-based violence

242. Just as the situation of the couple before the killing must be investigated through the victim's surroundings, the same approach should be carried out looking at the background directly with the suspected aggressor.

243. To obtain this information, the same semi-structured interview should be followed with the aggressor and the people close to him, such as friends, co-workers, neighbors, etc. (see Annex 3).

The behavior and attitude adopted by the perpetrator of a femicide in relation to the partner or family member after the crime

244. The behavior of the perpetrator of a femicide responds to his motives and to the meaning that he gives them. These elements condition his behavior before the femicide, the aggression itself, and the behavior that continues after the materialization of the femicide.

245. The gender-based motives seek to satisfy what the aggressor considers an attack on his authority or a humiliation by the woman, and aim to punish her for this conduct done against him. He is not seeking a material or immediate benefit, but rather to recover through the aggression what the perpetrator believes the woman has destroyed with her behavior and attitude. Thus, many include these crimes within the category of "moral crimes."

246. The perpetrator of a femicide seeks a two-fold objective with the crime: the punishment of the woman and his own vindication as a man reinforced in the socio-cultural values that justify gender-based violence.

247. These circumstances, which are directly expressed in the perpetrator's conduct after the femicide, are characterized by two fundamental actions:

- voluntarily turning oneself over to the authorities or security forces, whether directly or through family members, neighbors, friends, etc.
- suicide or suicide attempt after the femicide, in the category of a "homicide-suicide" or "femicide-suicide." This depends on, among other factors, the degree of social rejection of these crimes: the greater the social critique or rejection, the higher the level of suicide among perpetrators.

The perpetrator of a femicide seeks a two-fold objective with the crime: the punishment of the woman and his own vindication as a man reinforced in the socio-cultural values that justify gender-based violence.

Elements identified as “risk factors” associated with cases of intimate femicides

248. Violence against women in the family sphere tends to be characterized by its continuity. It is not time that defines its characteristics but rather the will of the aggressor. It is a dynamic and evolving process that changes according to modifications in the circumstances and the aggressor’s perception of this evolution.

249. The general background of the perpetrator and the history of violence establish a series of general reference points within which the relationship develops, marked by the aggressions and control inflicted by the perpetrator. This setting, with its changes and modifications, seeks to impose the guidelines that the perpetrators considers appropriate for the family or partner relationship, but these are not sufficient to explain the femicide as part of the violence.

Table 5. Risk factors associated with femicides in the scope of partner relationships

Instrument to document the risk factor	Risk factors associated with femicide/feminicide
Conflict tactic scale (CTS) ²⁰³	<ul style="list-style-type: none"> - Different forms of physical aggressions with different instruments - Threats with firearms or knives - Prior aggressions with firearms or knives
Danger assessment instrument ²⁰⁴	<ul style="list-style-type: none"> - Increase in the number of aggressions - Increase in the duration of each aggression - Increase in the intensity of each aggression - Possession of a firearm - Having committed a sexual aggression: <ul style="list-style-type: none"> - once; - repeatedly; - at the beginning of the relationship - Alcohol and drug consumption: <ul style="list-style-type: none"> - frequency - level of intoxication - Violence outside the family or partner relationship - Death threats, especially if the woman perceives them to be credible - Exercising control over all the aspects of the woman’s life - Jealousy: <ul style="list-style-type: none"> - In general - With regard to the children - Mistreatment of the woman during pregnancy - Violence against the children - Suicide attempts or threats by the woman - Presence of factors considered to be “social stressors”: poverty, belong to minority group, youth, etc.
Spousal assault risk assessment (SARA) ²⁰⁵	<ul style="list-style-type: none"> - Recent problems related to work or employment - Recent suicidal or homicidal thoughts - Personality disorders - Violation of or failure to comply with restraining orders - Minimizing the violence inflicted on his partner - Attitudes that support or foster violence against the partner
Danger assessment tool (DA) ²⁰⁶	<ul style="list-style-type: none"> - Recent abandonment by the partner - The woman had children that were not from the current partner - Jealous man - Controlling man - Aggression against the children - Stalking, persecution, or spying on the woman.

Table 6. Signs and indicators associated with intimate femicides

AUTOPSY	CRIME SCENE	CIRCUMSTANCES	VICTIM	PERPETRATOR
Excessive violence.	Cohabitation; most frequent place: the home.	Separation or divorce.	Prior violence in the relationship: semi-structured interview of surroundings (Annex 2).	Prior violence in the relationship: semi-structured interview (Annex 3).
Most injuries located in vital zones.	Signs of aggression and symbolic violence.	Colder and more emotionally distant aggressors act when they reach the "point of no return" upon confirming that the woman will not return to them after a separation.	Psychological autopsy.	Existence of elements associated with gender-based violence.
Great intensity and force in the strikes and application of the homicidal weapon.	No cohabitation; most frequent place: the victim's or the aggressor's residence.	Prior reports of gender-based violence.	Physical consequences and changes caused by gender-based violence.	Behavior after the crime: voluntary submission to authorities, suicide or attempt.
More than one homicidal method.	Other places: public spaces related to daily routine.	Problems related to child custody or finances.	Psychological consequences and changes caused by gender-based violence.	Presence of elements identified as femicide/femicide risk factors in gender-based violence.
Hands as a direct homicidal method.	No effort to hide from possible witnesses.		Situation and health of the children. Possible impacts from gender-based violence.	
Injuries from different dates.				

250. Some of the risk factors are more related to extreme violence and femicide, although their assessment should not be done in an isolated fashion but rather as part of a set of elements and information obtained.

251. Table 5 presents some of the most significant elements associated to femicides as described by instruments for assessing the risk in gender-based violence. Only the most important elements of each instrument are mentioned, without repeated what is common among them.

The signs and indicators of sexual femicide

Every killing of a woman that evidences a direct or symbolic sexual component must be considered a femicide.

252. Every killing of a woman that evidences a direct or symbolic sexual component must be considered a femicide.²⁰⁷

253. The concept of “sexual homicide” is complex because a homicide of this type does not always reveal the sexual component in the result of the aggression. This situation results from the fact that many aggressors obtain psycho-sexual gratification from rituals related to their domination fantasies and acts and control of the victims. The evidence left by these symbolic acts in places other than the body zones related with sexuality can make it appear, at the outset, that the crime is one without a sexual motive. For that reason, classic authors refer to rape as an act of a sexual nature that satisfies non-sexual needs. It is more a question of power than of sex; of power through sex.

The concept of “sexual homicide” is complex because a homicide of this type does not always reveal the sexual component in the result of the aggression.

254. In sexual femicide the killing generates sexual satisfaction or arousal. The manifestations and results of these femicides can vary depending on the aggressor, his motives, and the circumstances that allow for a greater or lesser degree of planning and therefore the ability to carry out a certain ritual behavior along with the femicide to satisfy his fantasies.

255. All cases deal with a behavior that is part of gender-based violence and is rooted in the socio-cultural context that has justified VAW throughout history, including sexual aggressions and rape, with arguments based on the woman’s provocation from her way of dressing or comporting herself. As such, sexual femicide shares elements with the other types of femicide. The shared elements emerge from the ideas and motivations of the aggressors toward women and the emotional charge that accompanies their violent conduct, such as rage, anger, hate, contempt, etc.

256. The study of the elements, signs, and indicators associated with sexual femicides is based on the concept of violence as a continuum and femicide as a process. Revitch and Schlesinger (1978, 1981) and Schlesinger (2004) concluded that homicides follow a hypothetical evolution that goes from homicides motivated by external or “socio-genic” factors to an extreme opposite in which the homicides are internally or “psycho-genically” motivated. According to this model, the killers are divided into five categories: environmental, situational, impulsive, catathymic, and compulsive. The killers in sexual femicides tend to belong to the catathymic and compulsive groups. This does not mean however that those in the other groups cannot commit a femicide of this type given a confluence of different factors.

257. Those that are in the group related to **catathymic sexual femicides** inflict very violent aggressions built on latent and fixed ideas that are rigid and inaccessible to logical reasoning. Their conduct is characterized by an important emotional component related to underlying sexual conflicts that have symbolic meaning. They do not tend to plan their attacks and they act relatively spontaneously. Generally they do not express a manifest sexual component during the attack.

258. Those that are in the group related to **compulsive sexual femicides** act based on internal motivational factors rooted in violent thoughts and fantasies that lead to the repetition of their acts and of the sexual femicides, leading to multiple victims. First, they live the violence in their minds and then they act. The external influence is derived from the opportunity and the circumstances for locating the victim that he will attack. The motivation to act always has a sexual character, although the way of experiencing and expressing their fantasies does not always have to be reflected in the genital areas of the victim or other areas related to sexuality. The motivation is more related to power, domination, and control through violence than to sex.

259. Along with these sexual femicides there can be other lethal aggressions related to sexual conduct in a different set of circumstances with more exogenous influence, such as the case when a femicide is produced to hide a sexual aggression and not as part of it, or when the aggressor carries out some sexual conduct following another criminal action that results in the death. These different possibilities should be kept in mind during the investigation.

260. The signs and indicators related to sexual femicides in each of the dimensions considered (autopsy, crime scene, circumstances surrounding the facts, the victim's situation before the femicide, the suspected perpetrator's situation) will depend on the motives and the circumstances of the case. The signs and indicators are characterized by the presence of common elements for gender-based violence as well as by the particular elements of each type of perpetrator and femicide.

The signs and indicators of sexual femicide in the autopsy findings

261. The autopsy findings in cases of sexual femicides are conditioned by the motives of the aggressors, which can vary notably. They can range from aggressors that turn to aggression to reduce or subdue the victim to those that have physical aggression as their main source of arousal as part of their fantasies. These circumstances will translate into another important consequence vis-à-vis the result of the aggression: the time it took to carry out the aggression. The time varies significantly between the aggressions that have a catathymic or emotional component, in which the time tends to be shorter, and those that are compulsive with a psychogenic motivation, during which everything centers around a prolonged and increasingly intense violence.

262. In the autopsy, the result of this femicidal sexual violence will be manifest through a series of elements and findings related to the injuries, the manifestly sexual conduct, and the signs and indicators derived from the fantasies that are part of the motivation.

263. Another factor to consider is the number of perpetrators that have participated in the sexual aggression and subsequent femicide. Where the number of aggressors is greater, even when the violence is not a part of sexual fantasies and it is used to overcome the victim's resistance and dominate her, the shared rage and hate of these perpetrators may give way to a set of very intense injuries.

264. The signs and indicators related to the different expressions of sexual femicide are presented below. It is worth restating that the objective of this Model Protocol is to situate the criminal investigation within the context of a femicide and not to substitute the routine investigatory procedures that lead to clarifying what happened, to determining the suspected perpetrator, and to the formal indictment.

The signs and indicators related to sexual femicides in each of the dimensions considered (autopsy, crime scene, circumstances surrounding the facts, the victim's situation before the femicide, the suspected perpetrator's situation) will depend on the motives and the circumstances of the case.

** Injuries associated with sexual femicides*

265. Injuries tend to be characterized by the general elements of gender-based violence (see the subsection on intimate femicides, *The signs and indicators in autopsy findings*) and the emotional charge that accompany the reasons relied on by the perpetrator at the time of deciding to kill his victim.

266. Together with injuries associated with gender-based motives, there can be other injuries that are indicative of the use of a variable degree of force in order to overcome the resistance of the victim at the time of carrying out the sexual aggression.

267. Other types of injuries are related to the specific motivations of the aggressors, especially those that are related to psychogenic motives and lead to compulsive sexual femicides. These aggressions are part of motivational categories referred to as “anger or revenge” and “sadistic” according to the classification by Burgess and Hazelwood (1995), revised by B. E. Turvey (1999). In these cases, the violence is a direct part of the sexual act and results in grave and complex injuries.

268. The manifestation of this violence can vary significantly, but unlike the “excessive violence” that stems from rage and hate, in sadistic and vengeful sexual femicides the violence is applied to reach an objective related to the use of intense violence to satisfy the perpetrator. There is a lot of violence, but it is not excessive vis-à-vis the objective sought by the aggressor, given that what he seeks is to harm the victim and in doing so satisfy his sexual fantasies.

269. In sexual femicide “motivated by anger” there is a great degree of violence with grave injuries aimed at harming the victim and ending her life. The attack does not tend to last very long, and as a result there are signs of disorganization in the pattern of injuries. The sexual conduct continues throughout the attack and the physical aggressions. The violence is directed against any part of the body without necessarily having a relation to sexual zones.

270. In “sadistic” sexual femicides, violence is an intimate part of the perpetrator’s motivations and fantasies. Therefore, the attack is prolonged over more time and a scene is set up to provoke sexual arousal. The aggressor tends to bind the victim and perform different types of torture, such as bites, penetration with objects, etc. The violence used is defined as ruthless, both because of the intensity as well as the methods and the duration, and it is directed above all toward the zones of the body with some sexual association, such as the genitals, breasts, mouth, anal region. Occasionally, there will be mutilations of parts of the body with special meaning to the perpetrator.

** Signs and indicators related to the direct sexual conduct*

271. The investigation should proceed according to the criminal investigation protocols for the search, localization, documentation, and collection of all the organic and inorganic indicators that allow for establishing the occurrence of a sexual aggression and identifying the aggressor or aggressors through the relevant evidence and analysis, especially through DNA analysis.

272. As part of their fantasies, perpetrators of sadistic sexual femicides sometimes ejaculate over different parts of the body that generally do not have sexual importance. Therefore the search for this type of evidence should extend over the entire body of the victim and all of her clothing.

** Signs and indicators related to sexual fantasies*

273. Sexual fantasies in femicides, especially in the gravest cases of sadism and wrath, can lead the perpetrator to create certain scenes to satisfy his desire. Occasionally, the sexual component of femicide is expressed in this form of inflicting violence, without a sexual component being noticeable in the crime committed.

In sexual femicide “motivated by anger” there is a great degree of violence with grave injuries.

In “sadistic” sexual femicides violence is an intimate part of the perpetrator’s motivations and fantasies.

These signs allow for establishing the occurrence of a sexual aggression and identifying the aggressor or aggressors.

Sexual fantasies in femicides can lead the perpetrator to create certain scenes to satisfy his desire.

274. The investigation of sexual femicides should start from this premise and seek signs and indicators that are frequently associated with scenes characterized by the submission of the victim, her domination over a prolonged period of time, and the use of violence in the form of torture.

275. These circumstances cause injuries through the instruments or materials used to make the sexual fantasy scenes, for example, signs of bondage, bites, certain objects or dress that have been used. These injuries, signs, and indicators should be sought during the autopsy.

Table 7. Reference points for identifying the signs and indicators associated with sexual femicide in the autopsy

Reference points for identifying the signs and indicators associated with sexual femicide during the autopsy.	Injuries associated with sexual femicides.
	Signs and indicators related to direct sexual conduct.
	Signs and indicators related to sexual fantasies.

The signs and indicators associated with the crime scene of a sexual femicide

276. The place where a sexual femicide occurs will present characteristics of the acts that are related to the motives and circumstances. These characteristics center around the following elements:

- the type of sexual femicide in terms of the perpetrator's motivations and their exogenous or psychogenic origins;
- characteristics of the aggressor and his way of acting, which may be more or less organized, impulsive, controlled, anxious, etc.;
- planned or organized femicide;
- number of aggressors;
- relation of the place with the different phases that may occur in a sexual femicide, above all in the most violent. The approach of the victim, the sexual aggression, the femicide, and the abandoning of the body tend to take place in different phase and in different places.

The place where a sexual femicide takes place will present characteristics of the acts that are related to the motives and circumstances.

277. These elements will leave a series of signs and indicators in the place or places related to the femicide characterized by the effects of violence, the presence of instruments or materials used to attack, dominate, subdue, and control the victim, the location of objects that are part of setting up the scene of a fantasy, etc.

278. It is important to highlight that the findings in relation to these elements can be "positive" (when found in the place of the acts) or "negative"—when the characteristics of the findings, for example the injuries on the body, are not justified according to the characteristics of the place in which it was found or the object around it, indicating that they have been inflicted in another place or that the perpetrator has taken them with him, which would reflect a certain degree of planning or organization in the femicide.

279. B. E. Turvey²⁰⁸ describes a series of characteristics associated with the places connected to the most violent femicides at certain phases, especially in the moment of the attack. These characteristics are:

- dark or poorly lit places;
- the time of day: late at night or early in the morning;
- places that are mostly unoccupied at these times;
- the place of the attack is distant from the aggressor's residence;
- the place allows for attacking and transporting the victim to another place that is more distant and safe for him.

280. These characteristics indicate the accessibility of the victim, her vulnerability, and the precautions taken by the perpetrators. In no way should blame be placed on the victim's behavior or routine.

281. Some of the elements and facts that can be collected from the scene of the acts associated with sexual femicide can be obtained through a structured questionnaire such as the one included as Annex 4.

The signs and indicators related to the prior situation of the woman victim of sexual femicide

282. The signs and indicators related to the prior situation of the woman victim of sexual femicide do not impart blame or responsibility on her for what has happened. This analysis is directed toward detecting the elements of vulnerability, accessibility, and opportunity with respect to an aggressor that is planning to carry out a sexual aggression and femicide or to identifying the circumstances that from the social and cultural point of view lead him to justify the aggression.

283. According to a study in the United Kingdom,²⁰⁹ the percentage of the population that considers the victim responsible for having suffered a sexual aggression is 33% if the woman has flirted, 26% if she is dressed in sexy clothing, 22% if the woman is perceived or considered to be promiscuous, and 30% if she has consumed alcohol. These ideas apply to the stereotypes that make aggressors believe that women are looking for a sexual relation through provocation.

284. The situation is not only a question of perception; the consequences go much further. This situation contributes to the fact that the percentage of convictions in rape trials is very low.²¹⁰

285. The objective of identifying the signs and indicators related to sexual femicide is to be situated in the position of the perpetrator in order to understand the elements of the victim that he could have used to carry out the aggression and the femicide. As has been reiterated, in no case is the conduct or lifestyle of the victim being assessed or judged.

286. B. E. Turvey describes a series of characteristics in victims associated with sexual femicides:

- lifestyle includes risk factors;
- psychological state of the victim at the moment of relationship, and her perception of the level of safety;
- places in which they tend to occur: solitary, possibility or not of receiving rapid assistance, routine level of criminality in the zone, etc.;
- the number of people that tend to accompany her when she goes out;
- consumption of intoxicating substances, mainly alcohol and party drugs, both because of the perceived affect that it has on her behavior as well as the possibility it produces for an attack of the sort "chemical submission: (use of a drug or pharmaceutical to affect the level of consciousness of the victim and facilitate the aggression).

287. These factors related to lifestyle, accessibility, and availability to the aggressor mean that frequently the femicidal aggressors act on women that are involved in prostitution.

The signs and indicators related to the prior situation of the woman victim of sexual femicide do not impart blame or responsibility on her for what has happened.

The objective of identifying the signs and indicators related to sexual femicide is to be situated in the position of the perpetrator in order to understand the elements of the victim that he could have used to carry out the aggression and the femicide.

288. It is also advisable to carry out a psychological autopsy to identify the factors of the victim that may have been used by aggressors in his decision and commission of the femicide. The action would allow for getting to know the situation of the woman before her death, highlighting her psycho-biography and life status prior to the lethal aggression, its evolution over the last months, as well as the state of her mental health.

289. In cases of sexual femicide, it may be key to reconstruct in detail what the victim had done in the 24 hours prior to the attack, given that in certain cases this is the time in which the aggressor has chosen her and carried out the femicide.

The signs and indicators related to the perpetrator of sexual femicide

290. The objective of the investigation, as has been underscored here, is not to identify the aggressor in the homicide of a woman, but rather to identify in his conduct the elements and motivations that are gender-based and focus the criminal investigation on the context of a sexual femicide.

291. Perpetrators of sexual femicides act based on the reference points of a culture and society built on inequality and also on the personal motivations that are articulated under the influence of those exogenous elements of the social context and the internal ideas that are born of his experiences and fantasies. These characteristics allows for classifying his way of acting into typologies that will offer information about the motivations and circumstances that are used at the time of acting and committing sexual femicide.

292. The forensic and criminal investigation of sexual femicide is based on a result that does not always reveal the nature of the crime or the meaning of the femicidal conduct. This highlights the importance of relying on reference points regarding the main elements for establishing whether it is a femicide and whether it is of a sexual nature.

293. Different studies have documented some of the signs and indicators present in the sexual aggressors that can carry out a sexual femicide. The studies about assessing risk in the sexual aggressions have also highlighted some elements of the aggressors associated with a greater risk, and therefore the possibility of committing a femicide. Table 8 describes some of these elements in order to facilitate an increased knowledge of the suspected aggressor and situating his conduct within a context of sexual femicide.

294. Table 9 offers a summary of the different signs and indicators associated with sexual femicides.

The objective of the investigation is not to identify the aggressor in the homicide of a woman, but rather to identify in his conduct the gender-based elements and motivations and focus the criminal investigation on the context of a sexual femicide.

Table 8. Risk factors associated with sexual femicides

Factors described by Malamuth and others. ²¹¹	<ul style="list-style-type: none"> - Having grown up in families where violence was present. - Victims of abuse during childhood. - Participation in criminal conduct, himself or his friends. - Having ran away from home for more than 24 hours. - Sexual promiscuity, related with two elements: <ul style="list-style-type: none"> - Age of first sexual encounter. - Number of sexual partners. - Difficulty relating socially. - Hostile masculinity: <ul style="list-style-type: none"> - Negative masculinity assuming rigid stereotypes associated to power, the use of force and violence, etc. - Hostility toward women. - Attitudes related to: <ul style="list-style-type: none"> - Contradictory ideas about sexuality. - Accepting the myths about rape. - Accepting violence against women.
Sexual offender recidivism risk ²¹²	<ul style="list-style-type: none"> - Early sexual activity. - Sexual aggression against minors. - Background of other sexual aggressions. - Antisocial personality. - Recourse to violence in general and having committed other aggressions. - Never having married. - Abandoning treatment and therapy directed at addressing his conduct.
Static-99 ²¹³	<ul style="list-style-type: none"> - Having carried out aggressions against men. - Married or having cohabitated with a partner for no more than two years. - Convictions for prior sexual aggressions. - Use of non-sexual violence. - Having been convicted four or more times for criminal acts.
SVR-20 ²¹⁴	<ul style="list-style-type: none"> - Victim of abuse in childhood. - Psychopathy. - Substance abuse. - Relationship problems. - Recent employment problems - Having committed multiple sexual aggressions. - Having committed different types of sexual aggressions. - Inflicting physical violence on the victims of sexual aggressions. - Use of weapons and death threats during the sexual aggressions. - Minimizing or denying the sexual aggressions committed. - Lack of realistic plans. - Negative attitude toward therapeutic intervention.

Table 9. Signs and indicators associated with sexual femicides

AUTOPSY	CRIME SCENE/ CIRCUMSTANCES	VICTIM	PERPETRATOR
<p>1. INJURIES:</p> <ul style="list-style-type: none"> • General characteristics of injuries of femicides/femicicides. • Injuries to subdue the victim. • Femicides/femicicides “motivated by wrath”: great violence directed against any part of the body. • “Sadistic” femicides/ femicides: great violence on genital areas and areas with sexual meaning for the perpetrator. 	<p>- Signs related to the characteristics of the acts (form of carrying out the attack, the intention of transferring to another place or note, surprise approach or initiation of prior contact, etc.).</p> <p>- See Annex 4.</p>	<p>Characteristics of her routine that may be used by aggressors as reference points to plan the aggression and select the victim.</p>	<p>Risk factors associated with sexual femicides/ femicides:</p> <ul style="list-style-type: none"> - Malamuth. Sexual offender recidivism risk. - Static-99. - SVR-20.
<p>2. SIGNS AND INDICATORS OF DIRECT SEXUAL CONDUCT</p> <p>Use of criminal investigation guides and protocols to search for, locate, document, and collect indicators of all kinds that demonstrate the commission of a sexual aggression, both direct proof as well as those that have to be submitted to different types of analysis, especially DNA analysis.</p>	<p>Signs related to the femicidal motivation.</p>	<p>Analyze the circumstances of accessibility and availability. Especially prostitution.</p>	<p>Characteristics related to “organized” or “disorganized” behavior.</p>
<p>3. SIGNS AND INDICATORS RELATED TO SEXUAL FANTASIES</p> <p>Independently of the injuries that may be produced to satisfy the sexual fantasies of the aggressor, elements should also be sought that would reveal situations of control, submission, torture, and humiliation of the victim, in the latter through the position in which the body is left following the femicide.</p>	<p>Signs related to the circumstances of the act (number of aggressors, resistance of the victim, etc.).</p>	<p>Very important to reconstruct the 24 hours prior to the sexual attack.</p>	<p>Characteristics related to motive. Especially if there is a greater cathartic²¹⁵ or compulsive component in his motive.</p>
	<p>Possibility that there may be several crime scenes.</p>	<p>“Psychological autopsy.”</p>	
	<p>Indicators “in the positive” and “in the negative.”</p>		
	<p>Common and frequent characteristics in the places related to femicides/ femicides.</p>		

The signs and indicators of femicide within the context of a group structure

These are femicides that are committed within a group in which the relationships are determined by the internal reference points of the group, the dynamic that exists within it, and the particular relationship of the aggressor with the victim.

295. The third general context refers to an intermediate situation between the public sphere and the intimate setting of a partner or familial relationship. In femicides committed within a group relation, beyond the socio-cultural factors of the context in which the group is formed, the relationship between the aggressor and the victim is determined by the internal references of the group, the dynamic that exists within it, and the particular relationship of the aggressor with the victim.

296. The position of women with regard to the aggressors that act on gender-based motives, according to a basic scheme that adopt the idea of a continuum of gender-based violence, varies from one extreme characterized by the idea of private property and possession, especially within intimate relations, to the other extreme dominated by the idea of a disposable object for short-term satisfaction, characteristic of sexual femicides.

297. The signs and indicators that appear in femicides carried out within a particular group will be influenced by the following elements:

- the socio-cultural context in which the group was formed;
- the objectives, values, and ideals of the group;
- the structure and characteristics of the group itself (hierarchy, breadth and number of members, internal divisions and sections, etc.);
- the activities of the group (some groups have the objective of exploiting women in different ways);
- the internal dynamic of the group;
- the relationship and interaction of the group with other similar and opposing groups;
- the position of women in the group (position of inferiority, obligation to maintain sexual relations with the group leaders as an initiation ritual, ties to traditional roles from the culture, using women to reward men, etc.);
- the particular position of the victim within the group;
- the particular position of the aggressor within the group;
- the group's relationship and the perpetrator's personal relationship with the victim.

298. These elements will condition the femicidal conduct and will make its particular manifestation vary between the characteristics of the intimate context and those that appear in the public sphere of sexual femicides. However, it is not common to see the same level of violence or the elements of compulsive sexual femicides that characterize those categorized as motivated by wrath or sadism.

299. Another circumstance that appears in the context of armed groups, especially those that act in contexts of armed conflict, is the sexual violence that the group may inflict on the women in the geographic areas it controls. In some circumstances this is sexual violence used as a strategy to maintain social control in the zone, which can constitute sexual femicide. In the manifestations of this violence the elements of the three contexts defined in this Protocol will appear with great or lesser degree of intensity according to the particular circumstances of each femicide.

300. In general, the signs and indicators of femicide carried out in a group context will be characterized by the relative influence of the gender-based motives between the idea of possession and belonging of the intimate relationships and the instrumental idea of women as objects to be used and discarded. These elements are analyzed above in the sections on intimate femicides and on sexual femicides.

301. Moreover, the characteristics of each group, its dynamic, and scope of action will incorporate specific elements. This characteristic emerges in a particular way in the groups related to criminal activities, and especially with respect to the use of instruments and weapons in carrying out the femicide and the place where it occurs.

Elements associated with the passage of time since the commission of the femicide and attempts to destroy the body

302. When the body of the woman is discovered a certain amount of time after the lethal aggression was committed, the difficulties for investigating what happened increase in a way proportional to the time that has passed. All the elements associated with femicides will be affected: those related to the autopsy are affected by the destruction of the body from decay or from environmental modifications that impact it; the crime scene is affected by tampering and changes that it suffers as the days go by; the circumstances surrounding the acts, both with regard to the victim and the perpetrator, are affected by the passage of time and memory loss. However, hiding the victim's body to avoid its identification should be considered itself as an element associated with femicides.

303. Other times, the modification of the elements associated with femicides occurs as a result of the criminals' intentional manipulation of the body in order to destroy it and make identification more difficult. These processes include primarily burning, use of chemical substances such as acid or gas to destroy soft tissue, or dismemberment and scattering of body parts.

304. In these cases, whether the bodies are in decay, mummified, skeleton, or whether they have been partially destroyed, it is necessary to keep in mind that a femicide occurred according to the references created by gender-based motives and in the indicated contexts: the idea of a woman as possession or as an object, contexts that can be modified by the very circumstances of the scenarios set out in this Protocol.

305. For that reason, it is important to keep in mind that the elements associated with femicide were fully present at the time of the commission of the crime and the time surrounding the acts. Afterward the passage of time and human manipulation have affected their presence in the body and the places related to the crime. However, the forensic and police investigation should start from the references described in this Protocol for each phase and seek to locate them in the circumstances in which the investigation is taking place give that, despite the negative factors, there may be elements that have not disappeared. One of the aspects associated with femicide that can last in time is the high degree of violence inflicted in producing the death, which may be manifest in fractures and bone injuries caused by blunt-force traumas and by the weapons used to commit the crime, mainly knives and fire arms.

306. Under these circumstances, the investigation must be carried out by a specialized anthropological team in order to identify the victim, establish the cause and circumstances of her death and its association with a femicidal context, and to obtain, to the extent possible, data and indicia to identify the perpetrator or perpetrators of the crime. The appropriate collection of samples is essential for being able to do the different types of analysis, especially the DNA genetic analysis aimed at identifying the victim, as well as carrying out multi-disciplinary studies.

It is important to keep in mind that the elements associated with femicide were fully present at the time of the commission of the crime and the time surrounding the acts.

Under these circumstances, the investigation must be carried out by a specialized anthropological team.

Integrating the data and information provided by the documentation of the signs and indicators associated with femicide

307. The Istanbul Protocol asserts that “the entire clinical picture produced by torture is much more than the simple sum of lesions produced by methods on a list.”²¹⁶ The success of the criminal investigation is never the result of a simple sum. Sometimes, certain elements that have contaminated the findings must be subtracted; other times the relative value of a minimal indicator must be multiplied. Occasionally, the evidence must even be divided to carry out different analyses that respond to different questions posed by the same element. Even so, the achievements do not depend on a mathematical operation. The success of an investigation comes from the interpretation of the facts in terms of their meaning and this corresponds to the human factor and not technological elements.

308. It is not enough to know what has happened. Sometimes this is a given based on the result of the criminal action that has led to an investigation being opened. To conclude the investigative work, other information must be known such as the motivations at work, the circumstances beyond what is evident, the objectives that were sought, etc.—to understand the conduct that produced all the signs and indicators that the criminal investigation has revealed.

309. Identifying and documenting the elements associated with femicide in its different contexts is not enough. This is even more so when working in a reality characterized by limitations in the investigation and a significant percentage of unsolved cases. The signs and indicators associated with femicides when analyzed in isolation, as was explained above, are not exclusive. In other words, they may also be present in homicides in which in an isolated fashion some of the signs that frequently appear in femicides (for example, a homicide in which the aggressor has used excessive violence with a high number of stabbing wounds with motives other than gender-based ones, such as in the cases of a psychological crises). On the other hand, not all femicides will present each of the elements that are routinely associated with them; for example there may be a femicide in which the woman has been killed by a single stabbing wound.

310. Gaining an understanding of the reality of what happened does not depend on the presence of a greater or lesser number of the signs or indicators. It is not the result of their sum but rather the meaning that is gleaned through the elements identified. It must be remembered at all times that what is being investigated is “acts, an aggressor, a set of circumstances, and a victim.” There are elements that share a series of characteristics that emerge from the motivations that are common across all femicides but that are expressed differently in each case according to the individual component.

311. To facilitate this process, vis-à-vis the presence of signs and indicators associated with femicide in the autopsy, there are different levels that allow the investigative team to situate itself at more or less distance from the context of femicide.

Understanding of the reality of what happened does not depend on a greater or lesser number of signs or indicators.

It is not the result of their sum but rather the meaning that is gleaned from the elements identified.

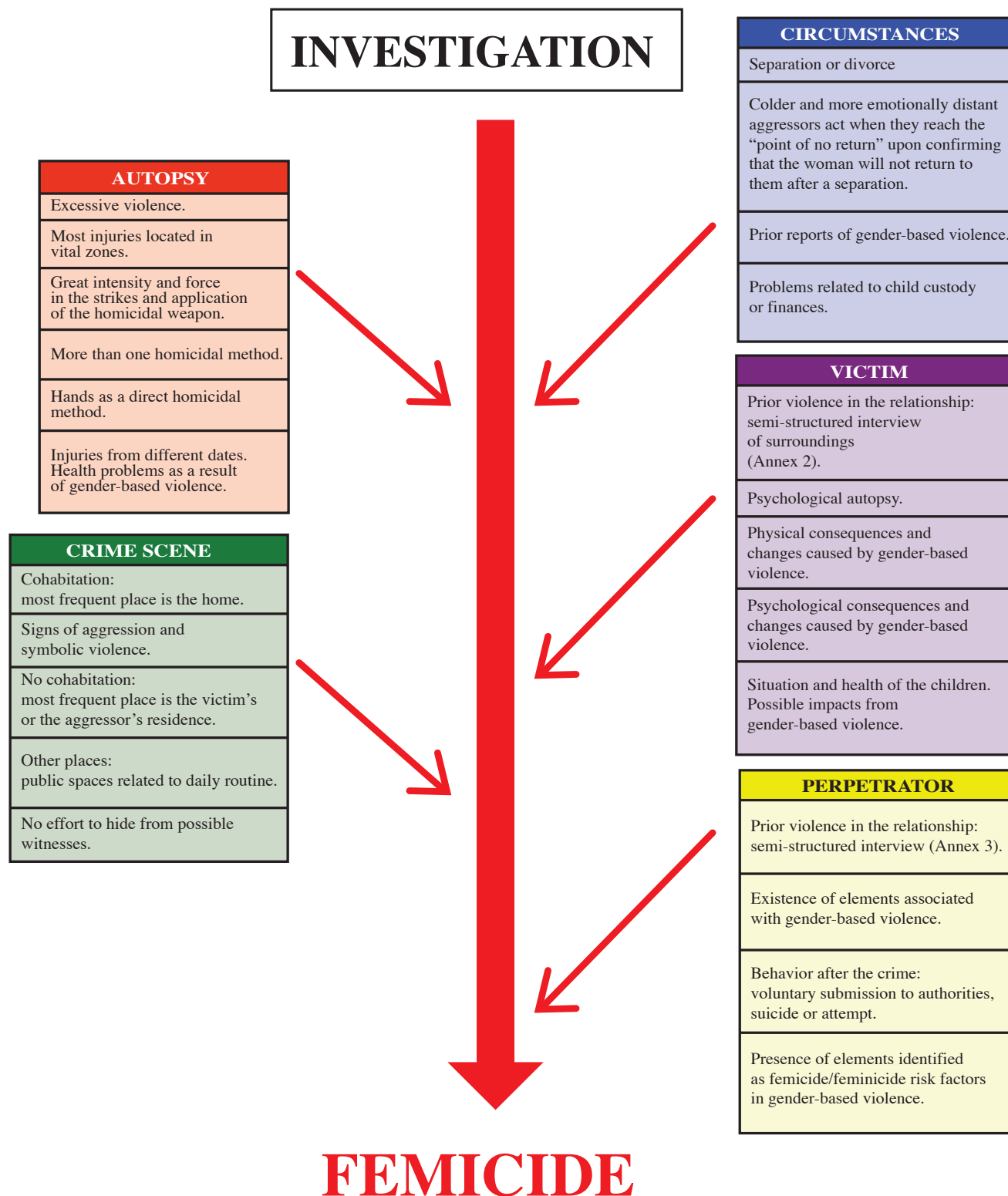
312. These levels are for situating the results of the investigation into the context, and not for establishing criminal responsibility or other legal conclusions. The levels are:

- diagnosis of a femicidal context
- findings that are typical of a femicidal context
- strong relation to a femicidal context
- probable relation to a femicidal context
- no apparent relation to a femicidal context

313. The determination of whether or not it is a femicide will be made in the judicial ruling. These levels are orientations for the investigation to direct it in a certain way, allowing a deeper look into a particular question, or extending the study of certain materials and circumstances. It requires that the person responsible for the investigation make a conclusion about the degree of existing connection to a femicidal context based on the signs and indicators and to explain why the conclusions should be situated in one level or another.

314. As the Istanbul Protocol sets out, *“it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important.”*²¹⁷ With regard to the investigation of femicides, it is the general and comprehensive assessment of the full set of signs and indicators that is important.

It is the general and comprehensive assessment of the full set of signs and indicators that is important.

Graphic 8. In Summary, where can the signs and indicators associated with femicide be found?

Footnotes

- 194 A death that is “suspected to be criminal” is one in which the cause of death is unknown, and therefore the possibility of foul play cannot be disregarded. This is the case where, for example, a person is found dead in their home and there is no indication or suspicion of robbery or any other criminal situation. However, the very fact that how the person died is unknown indicates that it may have been criminal or suicidal (poisoning, asphyxiation, etc.) and this requires that an autopsy be carried out to identify the causes and consequences of this death and its relation or not to criminal acts.
- 195 Different studies have highlighted this characteristic of homicides by gender-based violence. Wolfgang, M. E. (1958) found this excessive violence in 83.1% of the cases. Campbell, J. C. (1992) in 61%, and Crawford, M. & Gartner, R. (1992) in 60%.
- 196 Crawford, M. & Gartner, R. (1992) described the use of multiple mechanisms in 60% of the homicides by gender-based violence. Lorente, M. (2012, 2013) found the use of several mechanisms in 24.5%.
- 197 Goetting, A. (1995) found this form of committing homicide by gender-based violence in 17% of the cases. Lorente, M. (2012, 2013) found it in 30.5% of the femicides.
- 198 These older injuries tend to be found on areas of the body that are covered by clothes and hair, usually in the thorax, abdomen, back, and head.
- 199 Crawford, M. & Gartner, R. (1992) found that 80% of femicides occur in the home.
- 200 Stout, K. (1993) found that 52% of femicides are produced following a break-up. Other studies have also highlighted the relation of femicide to the time that has passed since the separation. Wallace, A. (1986) found that 47% took place within the first two months after a separation, and 91% within the first year. Wilson, M. & Daly, M. (1993) observed that 50% take place in the first two months and 85% during the first year. The break-up, especially a short time after it happens, is an important factor associated with femicide.
- 201 If the aggressor observes that after the separation the woman is reestablishing her life or starting a new romantic relationship, the tie to femicide is more intense.
- 202 Ellsberg, M., Jansen, H., Watts, C. & Garcia-Moreno, C. (2002).
- 203 *Marriage Family Journal* (1979), 41: 55-88.
- 204 Campbell, J. C. (1986), 8(4): 36-51.
- 205 Kropp, O. R. and others (1994).
- 206 Campbell, J. C. (1995).
- 207 According to data from the United States Bureau of Justice Statistics (1999), 91% of rapes are committed against women, a percentage that is even higher in the cases of “sexual homicides.”
- 208 Turvey, B. E. (1999).
- 209 Amnesty International-UK, Report on attitudes to sexual assault in the UK (2005).
- 210 The Home Office Research Studies (2005) highlighted that only 5.6% of the cases of rape result in a conviction.
- 211 Malamuth, N. M. and others (1991), pp. 670-81.
- 212 Hanson, R. K. and others (2003), pp. 154-66.
- 213 Hanson, R. K. & Thornton, D. (2000).
- 214 Boer, D. P., Hart, S. D., Kropp, P. R. & Webster, C. D. (1997)
- 215 A catathymic crisis refers to the transformation or distortion of reality from the intensity of emotions.
- 216 Istanbul Protocol, para. 145.
- 217 Id. para. 188.

Chapter VI.

Elements for building the theory of the case

Elements for building the theory of the case..... 97

Chapter VI.

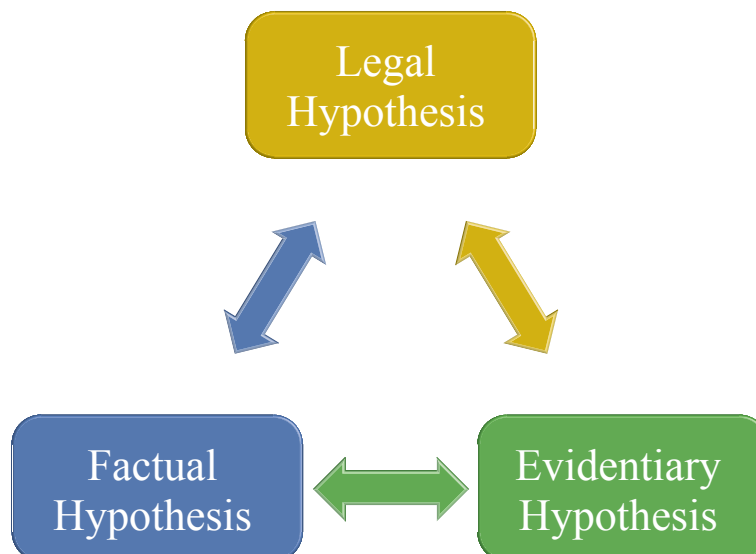
Elements for building the theory of the case

315. As was highlighted in Chapter IV, the design of the investigation allows for focusing on the search for the signs and indicators of femicide. Once these have been properly collected and analyzed (Chapter V), they will serve as the probative elements for supporting the theory of the case in the indictment that will allow the case to successfully reach trial and achieve the punishment of the perpetrator(s) of the femicide.

316. The nucleus of the indictment is the theory of the case, which can be defined as the connection between the factual hypothesis, the legal hypothesis, and the evidentiary hypothesis in a coherent and credible package.²¹⁸ This theory is the final result of the tasks set out in the methodological program of investigation and it is developed based on the evidence, the inferences that can be drawn, and the criminal offense (or offenses) that emerge as applicable.

317. With regard to the prosecution and trial of femicide, beyond the usual recommendations on coherence, comprehensiveness, and strength that should be considered in the presentation of the theory of the case, the three hypotheses that are set forth in the written indictment or in the request for opening a trial must allow for submitting to the judge or court the evidence that proves beyond a reasonable doubt: the killing of a woman; the gender-based motives that the particular criminal code demands for classifying the killing a femicide, feminicide, or aggravated homicide; the harms caused to the victim; and the responsibility of the perpetrator(s) or accomplice(s).

Graphic 9. Analytical dimensions of the theory of the case



318. The main difficulties for building a successful theory of the case in relation to gender-related killings of women can be divided into two categories: 1) the task of demonstrating that the killing of a particular woman was for gender-related reasons; and 2) the fact that those working in the legal system may have different interpretations or opinions with regard to the concept “gender-related killing.”

To prove a femicide, it must be proven that a killing took place.

319. Although it may seem obvious, to prove a femicide it must be proven that a killing took place. The construction of the theory of the case and its presentation to the judiciary must incorporate both the demonstration of the killing of the woman in forensic terms, as well as the contextual elements and forms of violence that allow for concluding that the motivation behind the killing is based on gender-related reasons or motives.

With regard to the factual hypothesis the written indictment must clearly detail each of the acts.

320. With regard to the factual hypothesis the written indictment must clearly detail each of the acts that have legal relevance for demonstrating the charges and the responsibility of the perpetrator(s). During the trial a reconstruction of these acts will be made based on the evidence that establish the facts—such as physical evidence, material probative elements, and indicators.

321. For example, there should be: a description of the position of the body including the position of the head and body parts, the surroundings, the presence or absence of binding on the hands, feet, or mouth, or plastic bags over the head; a detailed assessment and description of the clothing: description, color, stains, etc; and finally, a detailed description of the injuries, with special attention to whether there are signs of resistance on the victim’s body.

322. The following tables refer again to the facts of the case of María Isabel Véliz Franco in order to illustrate the elements of the factual, legal, and evidentiary components that are important to detail in order to support the theory of the case.

Table 10. Possible factual structuring of the theory of the case

Factual Structuring Elements	Factual Hypothesis
o When (temporal variable) A. Broad reference point B. Specific reference point	A. December 17, 2001. B. Time of death: 7:30pm.
o Where (spatial variable)	Municipality X, El Salvador.
o Who did it (perpetrator variable)	A. Juan Sánchez (male). B. Martha Rodríguez (female).
o What did they do (circumstantial variable)	A. Vast injury with a cutting weapon on the thorax. B. Injuries to the fingers. C. Injuries to the vaginal cavity. D. Injuries to the anal cavity.
o To whom was it done (victim variable)	María Isabel Véliz Franco, 14 years old.
o Circumstances of: A. Method B. Instrument C. Other	A. Juan Sánchez met the victim at his home located in Municipality X, El Salvador, and killed her there. B. Cutting weapon.
o Result of the action (result variable)	Death of María Isabel Véliz Franco
o Motive of the action	The victim had a friendship with Mr. Sánchez. The victim repeatedly rejected Mr. Sánchez’ advances. Mr. Sánchez decided to force the victim to have sexual relations, and upon her resistance, he decided to torture and kill her.

Adapted from Myrna Mack Foundation (2008), p. 150.

323. With regard to the legal hypothesis, each element of the criminal offense (or offenses) included in the indictment should be precisely established. The theory of the case should include a separate analysis for each of the charges included in the indictment.

With regard to the legal hypothesis, each element of the criminal offense (or offenses) included in the indictment should be precisely established.

324. In terms of demonstrating the objective elements of the criminal definition of femicide, whether descriptive or normative, it is likely that the perception of the individual within the legal system in charge of investigating the killing may be limited by his or her own gender prejudices or stereotypes. This tends to occur for example when the public servant is dealing with a transphobic femicide and the victim is legally identified as a man even though her identity and gender expression correspond to a female. For this reason it is important that the investigators go beyond simply confirming the sex of the victim through official identification documents and look for the gender expression that the victim adopted socially in order to give meaning to the normative element “woman” within the criminal offense included in the indictment.

Table 11. Possible legal structuring of the theory of the case

Legal Hypothesis	On December 17, 2001, at 7:30pm, Juan Sánchez and Martha Rodríguez committed the crime of aggravated femicide against María Isabel Véliz Franco, minor female.
Legal definition of the criminal offense	
Applicable criminal offense	<p>Femicide (Art. 45, Special Comprehensive Law for a Life Free from Violence for Women, El Salvador)</p> <p>Whoever causes the death of a woman because of motives of hate or contempt for her as a woman, shall be punished with a prison sentence of twenty to thirty five years.</p> <p>This hate or contempt for women shall be established when any of the following circumstances occur:</p> <ul style="list-style-type: none"> a) The killing was preceded by an incident of violence committed by the perpetrator against the woman, regardless of whether the victim had reported the act. b) The perpetrator took advantage of a condition of physical or psychological risk or vulnerability of the female victim. c) The perpetrator took advantage of the superiority that unequal power relations of gender generate for him. d) Prior to the killing of a woman the perpetrator committed any act against her that can be classified as a crime against sexual liberty. e) Killing brought on by mutilation.
Criminally relevant action	Causing the death of a woman.
Category of action	Result crime.
Legally protected asset	Multiple, personal life and integrity.
Possible motives	Abuse of superiority from unequal gender-based power. Sexual act with a minor.
Perpetrator	No particular characteristic required by definition of offense: Juan Sánchez (male), and Martha Rodríguez (female).
Responsibility	Direct perpetration by Juan Sánchez and co-perpetration by Martha Rodríguez
Victim	María Isabel Véliz Castro, 14 years old.
Guiding verb (verbo rector)	Cause the death, kill.

Objective elements of the offense (normative and descriptive)	Woman, Motives of hate, Contempt for women, Conduct classified as a crime against sexual liberty.
Subjective elements	First degree criminal intent, perpetrator intended the acts and the result.
Degree of execution of the crime (date, place, time)	Fully executed crime. December 17, 2001. Municipality X, El Salvador. Time of death in the autopsy report: 7:30p.m.
General and specific aggravating circumstances	The facts fit into three of the categories of aggravating circumstances specified in Article 46: b) If carried out by two or more persons. d) When the victim is a minor, an elderly person, or has a physical or mental disability. e) If the perpetrator enjoyed superiority over the victims based on their trust, friendship, domestic, school, or work relationship.
Concurrent crimes	Concurrent commission of kidnapping or enforced disappearance, torture, and disrespect of a cadaver
Unlawfulness	
Grounds of defense	There is no evidence that would allow for inferring that this would apply in this case.
Unlawful conduct according to criminal law	The resulting death is unlawful, both formally and materially.
Responsibility	
Grounds of exclusion or reduction of responsibility	There is no evidence that would allow for inferring that this would apply in this case.

Adapted from Myrna Mack Foundation (2008), pp. 129-30.

In the evidentiary structuring, special attention should be paid to the validity and probative capacity of the evidence that demonstrates the gender-related motives.

It is important to foresee the defense's strategy and address any evidentiary gaps that can be identified.

325. With regard to the evidentiary structuring of the theory of the case, it should be recalled that the killing of a woman will be declared proven when its occurrence is demonstrated through means of proof that are appropriate, legal, and correctly entered into trial, that are applied to certain objects and persons (source), and from which evidence with probative capacity can be extracted.²¹⁹

326. In the case of feminicides, special attention should be paid to the validity and probative capacity of the evidence that demonstrates the gender-related reasons or hate motives that drove the perpetrators to kill the woman.

327. Likewise, the organization of the evidence for presentation in judicial hearings must contemplate how each piece of evidence contributes to demonstrating the hypothesis of the indictment and also counter-arguing the hypothesis of the defense. This exercise is important for foreseeing the defense's strategy and addressing any evidentiary gaps that can be identified. It can also be useful for identifying the possible use of common prejudices and stereotypes in the defense's strategy, such as "the testimony demonstrates that she provoked the aggression," "her screams incited a defense response from my client," etc.

Table 12. Possible evidentiary structuring of the theory of the case

Evidentiary Structuring Elements	Means of proof
<ul style="list-style-type: none"> o When (temporal variable) <ul style="list-style-type: none"> A. Broad reference point B. Specific reference point 	<ul style="list-style-type: none"> o Witness testimony. o Autopsy report. o Reconstruction of the scene where the body was found through judicial inspection. o Virtual reconstruction of the scene where the body was found, using 3D animation technology. o Analysis of the calls realized from the victim's cellular telephone (ping test). o Analysis of the calls realized from the Juan Sánchez's cellular telephone (ping test).
<ul style="list-style-type: none"> o Where (spatial variable) 	<ul style="list-style-type: none"> o Witness testimony. o Suspects' statement. o Semi-structure interview with family members. o Report from the recovery of the body. o Police report.
<ul style="list-style-type: none"> o Who did it (perpetrator variable) 	<ul style="list-style-type: none"> o Witness testimony. o Suspects' statement. o Semi-structure interview with the suspects. o Complementary studies carried out on the body (DNA and body fluid analysis). o Criminal records. o Psychological expert opinion.
<ul style="list-style-type: none"> o What did they do (circumstantial variable) 	<ul style="list-style-type: none"> o Autopsy report. o Complementary studies carried out on the body (DNA and body fluid analysis). o Anthropological and psychological expert opinions regarding gender-related motives.
<ul style="list-style-type: none"> o To whom was it done (victim variable) 	<ul style="list-style-type: none"> o Birth certificate. o Report from the recovery of the body. o Autopsy report.
<ul style="list-style-type: none"> o Circumstances of: <ul style="list-style-type: none"> A. Method B. Instrument C. Other 	<ul style="list-style-type: none"> o Witness testimony. o Search of the residence at Calle 5-24 Colonia Monserrat in zone 7. o Weapon. o Expert physical forensic opinion on the physical advantage of the aggressor. o Sociological expert opinion on the map of the victim's social relationships and an intersectional analysis. o Birth certificate. o Report from the recovery of the body. o Autopsy report.
<ul style="list-style-type: none"> o Result of the action (result variable) 	<ul style="list-style-type: none"> o Birth certificate. o Report from the recovery of the body. o Autopsy report.
<ul style="list-style-type: none"> o Motive of the action 	<ul style="list-style-type: none"> o Anthropological and psychological expert opinions regarding gender-related motives. o Expert physical forensic opinion on the physical advantage of the aggressor. o Statement from family members. o Witness testimony.

Judges must assume the responsibility to use a system for assessing evidence that breaks from the androcentric logic of criminal law.

328. Finally, a special mention should be made of the role that gender prejudices and stereotypes can have with regard to the assessment of probative material in a case of femicide. Just as in the case of the investigators, preconceived notions about the role that women should play in a patriarchal society undoubtedly condition the response of criminal judges toward the facts that lead to gender-related killings of women.

329. It is of no use for Public Prosecution Offices to incorporate a gender perspective in the investigations of these killings if there is not an impartial, unbiased, and non-androcentric assessment of the evidence by the members of the judiciary. Judges must assume the responsibility to use a system for assessing evidence that breaks from the androcentric logic of criminal law. They must reinterpret the rules and maxims of experience with which they arrive at certainty regarding the facts and the responsibility of the defendant. This is so that the result of the process also recognizes the multiple forms of discrimination, inequality, and violence that affect women in daily life.

Footnotes

218 Baytelman, A. & Duce, J. (2004), p. 58; Benavente Chorres, H. (2011), p. 48.

219 Myrna Mack Foundation (2008), p. 152.

Chapter VII.

The rights of indirect victims, family members, and witnesses in the investigation and prosecution of femicide

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Chapter VII.

The rights of indirect victims, family members, and witnesses in the investigation and prosecution of femicide

330. In the region, the recognition of the rights of victims has advanced not only in terms of their role as the passive subjects of crimes but also in their condition as citizens and fundamental rights-bearers. Important illustrations of this are Mexico's General Law on Victims, which establishes that the State must protect, assist, and provide reparations for persons that suffer attacks or abuses by the authorities or delinquents, and Colombia's Law on Attention, Assistance, and Comprehensive Reparation for victims of the internal armed conflict.²²⁰

331. For the purposes of this document, “**victims**” will be understood as:

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.²²¹

332. The definition above clearly includes the murdered woman, the direct victim, as well as her family members, usually the indirect victims.²²² Nonetheless, it is worth recalling that indirect victims are not always family members of the direct victim, in the case of femicide by association for example. Therefore, it is important to distinguish these two categories in order to include people that are not family members of the direct victim.

The public prosecutor's office and its role as guarantor of the rights of victims

333. The criminal-procedure reforms that installed the accusatory system or accusatorial trend in the countries of the region have generated important transformations in the administration of justice with regard to the new role that the Public Prosecutor's Offices should fulfill as State guarantor of the rights of victims and people negatively affected by crime. In some countries, the prosecutors must request from the judge supervising procedural guarantees the necessary protection measures for the victims and request from the trial judge the measures necessary to assist the victims, those related to the remedy and comprehensive reparation of the people affected by the crime, and in general, to uphold their protection.²²³

The new role of the Public Prosecutor's Office has emerged together with a redefinition of the victim in the accusatorial criminal procedure. The victim is no longer a third party distant from the proceeding but has become an independent procedural subject.

334. This transformation has emerged together with a redefinition of the victim in the accusatorial criminal procedure. The victim is no longer a third party distant from the proceeding but has become an independent procedural subject—under the title of civil party in the criminal proceeding, joint plaintiff (*querellante adhesivo*) in the public action, or party with special standing (special intervener)—which actively participates in the legal process. This transformation has consequently generated a normative modification of the institutional culture of the Public Prosecutor’s Offices, which were previously limited to criminal cases and the investigation of crimes.

The victim and the administration of criminal justice

Guarantees such as access to justice, equality before the law, the right to a defense, the impartiality and independence of the courts, and the effectiveness of rights apply for the defendant as well as the victim.

335. The direct or indirect victims and the family members of the victim have the right to receive dignified treatment from the institutions that make up the criminal justice system that allows them to vindicate their rights. This aspiration is intimately connected to the right to an effective judicial recourse, which demands the individual or collective participation of the persons affected by the crime in the judicial decisions that could affect them. In the national or federal legal systems in the region, this recourse is guaranteed through the victim’s access to the administration of criminal justice and with his or her participation in a trial that is public, oral, contentious, focused, includes the presentation of evidence, and with all guarantees.²²⁴

336. In order to comply with international human rights law and the fundamental rights of all subjects, parties, and participants in a criminal-justice proceeding, policy should establish a system of bilateral guarantees. Guarantees such as access to justice, equality before the law, the right to a defense, the impartiality and independence of the courts, and the effectiveness of rights apply to the defendant as well as the victim. In this way due process — which includes the principle of legality, the right to a defense, its guarantees, and a competent judge—applies equally to victims and defendants.²²⁵

337. These guiding principles are made concrete through the right to free legal representation and through the procedural standing that the legal and regulatory framework of each country assigns to the victim when participating in a criminal proceeding as a civil party, joint plaintiff in a public case, or as a special intervener.²²⁶ Nonetheless, indirect victims and family members can also participate in the criminal proceeding as witnesses of the acts. They should receive differential treatment by the Public Prosecutor’s Office, the judges and the courts depending on the role that they are assuming:

Table 13. Victims’ roles within the criminal proceeding

Victim as a party in the proceeding	Victim as witness
Voluntary participation.	Can be called by the defense, by the Public Prosecutor’s Office, or by another victim that is participating in the process. Can be compelled to testify by judicial authorities.
Communicates his or her own observations and opinions.	Serves the party that has summoned her or him as a witness.
Decides which information he or she would like to share with the Public Prosecutor’s Office.	Provides information by testifying and answered the questions posed.
Participation is possible in all stages of the proceeding.	Can be called to testify in a single or several stages.
Always has a right to legal representation, and sometimes offered by the State.	Normally does not have legal representation.
Does not need to be present in person.	Can give testimony in person.

338. For the victims to formally act as subjects or parties in the criminal proceeding, the prosecution and courts should guarantee that at every stage they are able to articulate their claims and present evidence, which should be fully and seriously evaluated by the judicial authorities before making determinations about the facts, responsibility, sentence, and reparations.²²⁷

The prosecution and courts should guarantee that at every stage victims are able to articulate their claims and present evidence.

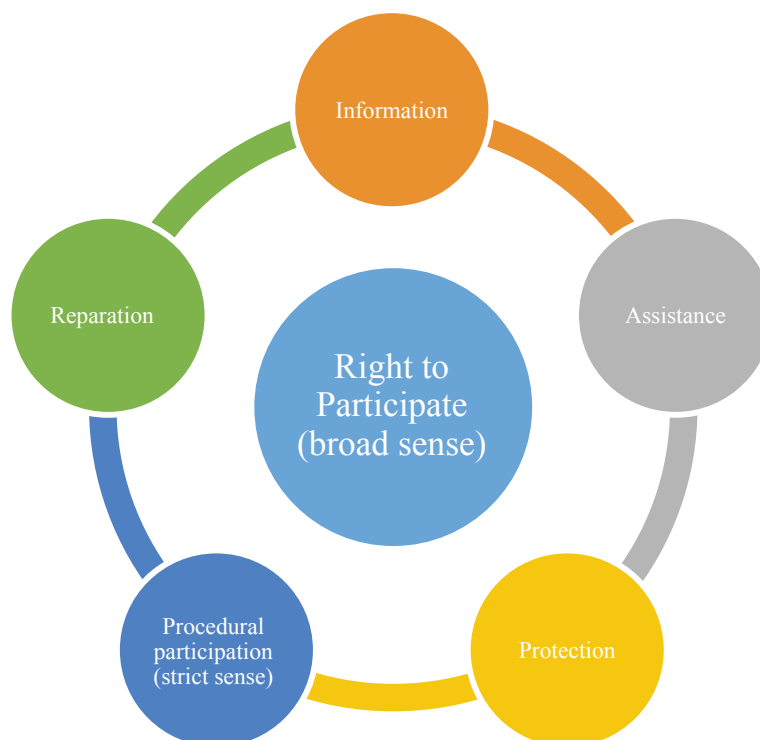
339. This implies that, inter alia, victims may:

- a) question the suspects;
- b) offer evidence about the facts and the responsibility of the perpetrators;
- c) inform the prosecutor or the investigatory team about the facts known;
- d) report assets of the perpetrators of the crime;
- e) present their opinions before the Public Prosecutor's Office and the judges and have them assessed by the authorities; and
- f) offer the prosecutor or the investigatory team their particular perspective on the lines of inquiry and the evidence collects so that it may be taken into account in the related judicial proceedings.

340. Whether these are real possibilities for the victim depends on the concrete practices in each procedural stage at the national or federal level.

341. The victims' right to participation can only be exercised adequately if the judicial process also guarantees the rights to information, assistance, protection, participation, and reparation—in other words, participation in a broad and strict sense.²²⁸ This set of rights, which has enjoyed robust development under international law,²²⁹ contributes to the intervention of victims in the criminal proceedings and puts citizens in closer contact with the administration of justice. In sum, fulfilling the rights of victims depends on the mechanisms set out by judicial authorities, recalling that this participation is a means of guaranteeing truth, justice, and reparations.

Graphic 10. Victims' rights to participate in a broad sense



342. Below are several practical recommendations for guaranteeing these rights from the point of view of the work of the Public Prosecutor's Office and the institutions that make up the justice system.

Guiding principles for working with indirect victims and family members in cases of femicides

Free legal counsel and representation

343. The state has the obligation to provide specialized and free legal counsel and representation for indirect victims and family members in cases of femicide so that they may vindicate their rights in the justice system. This measure is especially necessary if the victims do not have enough resources to hire a trustworthy attorney.²³⁰

Respect for human dignity and differences

344. One of the most important tasks that the prosecutorial offices must carry out when investigating the gender-related killing of a woman is to take all necessary measures to protect the personal and family security of the indirect victims and family members as well as to guarantee their physical and psychological wellbeing, their dignity, and private lives.²³¹

345. The Inter-American Court has established that one of the corollaries with regard to the participation of victims in the process is the obligation that they be treated with humanity and with respect for their dignity and human rights.²³² Human rights norms and practices must be followed, especially those with the specific aim to prohibit discrimination based on race,²³³ sex, ethnic origin,²³⁴ religion, national origin, sexual preference or orientation,²³⁵ disabilities,²³⁶ or other condition.

346. Likewise, the Declaration of Basic Principles of Justice expressly states that “[v]ictims should be treated with humanity and respect for their dignity and human rights.”²³⁷ In this sense, “appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families.”²³⁸ There must be guarantees that no type of evidence related to the victim's prior sexual conduct will be admissible.²³⁹ In all cases victims have the right to have their privacy protected.²⁴⁰

347. The Convention of Belém do Pará adds that special consideration should be given to victims' condition as migrant, refugee or displaced person, pregnant, disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict, or deprived of their freedom. In cases of armed conflict, United Nations Security Council Resolution 1325 calls on states to guarantee the protection and respect the rights of women and children vis-à-vis the police and the judicial system.

Principle 10 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

United Nations General Assembly, Resolution 60/147 of Dec. 16, 2005, UN Doc. A/RES/60/147

One of the corollaries with regard to the participation of victims in the process is the obligation that they be treated with humanity and respect for their dignity and human rights.

Appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families.

348. During the legal truth-finding process, a close relationship will likely develop between the entity in charge of the criminal prosecution and the indirect victims and family members. So that the representatives of the Public Prosecutor's Office can adequately guarantee their rights, it is necessary to identify them and offer them specialized treatment. Below are some suggested guidelines for institutional action.

The victim should be treated with dignity.

349. The victim should be treated with dignity, which means not minimizing or underestimating their suffering and respecting their pain and/or the impact that people endure when they participate in judicial proceedings such as in questioning or oral hearings. For example, sexist or discriminatory comments based on the dominant gender stereotypes should be avoided when asking about the private life of the victim and her social relations, work, or sexual preferences.²⁴¹

Interviews with indirect victims and family members should be held in appropriate places that guarantee privacy and confidentiality.

350. When addressing a group of numerous victims, such as in the case of systemic sexual femicides, special measures should be taken to respect the victims' dignity.²⁴² For example, office hours for attending to the public should allow for offering individual attention to those persons seeking information about the case. Moreover, the convenience of joining in a single attorney the legal representation of all victims should be critically analyzed, especially because their objectives and claims in the proceedings may not be the same—some may be interested in clarifying the truth about what happened while others are interested in the economic compensation for the harms caused.

The confidentiality of information collected in these types of cases must be given particular consideration.

351. Interviews with indirect victims and family members should be held in appropriate places that guarantee privacy and confidentiality.²⁴³ An interview in a public place or a place with a constant flow of people is inadequate for these purposes, as are places that are not sufficiently soundproof and where conversations can be overheard.

It is essential to avoid the influence of discriminatory socio-cultural patterns.

352. The confidentiality of information collected in these types of cases must be given particular consideration guaranteeing to the indirect victims and family members that the facts will not be known by persons outside the proceeding and the most intimate details will not be made public. It is essential to avoid the influence of discriminatory socio-cultural patterns that lead to the disqualification of the victims and contribute to the perception of these crimes as low priority.²⁴⁴

The representatives of the Public Prosecutor's Office should adopt special measures to avoid the re-traumatization of children or adolescents.

353. In cases of femicide, it is common for the direct victim to have been in charge of children, nieces or nephews, and /or other children or adolescents. In those cases, the representatives of the Public Prosecutor's Office should adopt special measures to avoid their re-traumatization. This should be done by incorporating professionals that are specialized in dealing with minors into their team or seeking out assistance from official state entities in charge of family wellbeing or public policies on childhood and adolescence.

354. If it is necessary to question or interview children or adolescents, the statements must only be taken by specialized professionals or the judicial authority assigned by law to that task. The obligations set out in the Convention on the Rights of the Child must be followed:

- not to be compelled to give testimony or to confess guilt;
- to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- to have the free assistance of an interpreter if the child cannot understand or speak the language used;
- to have his or her privacy fully respected at all stages of the proceedings.

If the indirect victims or family members belong to an ethnic group, someone with at least a minimal knowledge of the customs and traditions of the group should be incorporated into the investigation team.

355. In these proceedings, only questions that are not contrary to the child's best interest will be allowed. Procedural options for protecting privacy should be considered, such as the practice of submitting evidence in advance when possible²⁴⁵ or using technical and technological means available, such as taking the statement using a Gesell Chamber²⁴⁶ or closed-circuit television, or putting up a screen that would block the view between the witness and the defendant.

356. If the indirect victims or family members belong to an ethnic group (indigenous,²⁴⁷ afrodescendants, Garifunas, Raizal, Roma, etc.), someone with at least a minimal knowledge of the customs and traditions of the group should be incorporated into the investigation team to best understand how they might relate with state authorities. Likewise, to guarantee their right to effective legal recourse, there should be a permanent translator or interpreter who: 1) knows very well the language of the group to which the victim belongs, 2) has specialized training in gender and the rights of women, and 3) can inform the victims of legal proceedings that are taking place and allow them to interact with authorities.²⁴⁸

357. Specific accommodation should be made for those persons that have an auditory disability or other similar challenge for oral communication.

Avoiding secondary victimization

358. The mandate to guarantee victims' right to effective legal recourse implies adopting policies for accessing the justice system that do not generate harms²⁴⁹ or additional suffering to their physical or psychological wellbeing.

359. According to social psychology and victimology studies, crime victims tend to suffer two different types of victimization:

- 1) a primary victimization, which refers to the process through which a person suffers, directly or indirectly, physical or psychological harms stemming from a criminal act;²⁵⁰ and
- 2) a secondary victimization, related to the set of personal costs for the victim associated with his or her intervention in a criminal proceeding in which that crime is tried.²⁵¹ This concept includes the traumatizing effects of police or judicial questioning, the medical-forensic exams, contact with the perpetrator, the treatment of what happened by the media, among others.

360. In order to minimize these harms, it is recommended that prosecutors and investigators assigned to the gender-violence units or to the investigation of femicides offer the victims greater recognition, consideration, and respect as a guiding principle in their operations. To that end, it may be advisable to adjust the judicial and administrative procedures to the needs of the victims:²⁵²

- Clearly communicate to the indirect victims and family members the possible gains as well as consequences and effects of participating in the investigation and criminal proceeding. In this way, victims can decide whether or not to participate with informed consent regarding the consequences. This recommendation is particularly relevant in the cases of systemic sexual femicides or femicides against stigmatized occupations to the extent that the risk of exposure of the intimate life of the murdered woman is very high and there is a strong possibility of secondary victimization.

The mandate to guarantee victims' right to effective legal recourse implies adopting policies for accessing the justice system that do not generate harms.

It may be advisable to adjust the judicial and administrative procedures to the needs of the victims.

- Inform the victims of their role within the investigation and the criminal proceeding as well as the scope of that role, from the timeline of the process to the different procedural actions, as well as the scope and relevance of any decision that is taken. For these purposes it may be useful to publish easily accessible brochures or guides about the rights of victims and to assign personnel in charge of being consistently available to answer victims' questions or doubts.
- Offer, either directly or through other public or private institutions, comprehensive assistance services to victims during the stage of investigation and trial, such as legal, administrative, health, mental health, social wellbeing, etc.
- Establish independent waiting rooms or rooms for questioning or taking statements to avoid contact with the perpetrator or his relatives or associates.
- Adopt protocols for questions or interrogations that avoid re-opening wounds and generating feelings of impotence, fear, or despondency that may lead to psychological disorders.²⁵³ This recommendation is applicable to any step in which the indirect victim or the family members of the deceased woman must participate directly.
- Implement mechanisms for the efficient notification of victims so they do not have to repeatedly travel to the courthouses or other headquarters for information regarding their case, which often implies investing economic resources that they likely do not have.
- Take measures to avoid the negative consequences on victims that can come from publicity around the case, including possible harassment by perpetrators or unscrupulous journalists. The Public Prosecutor's Office and judicial authorities may consider limiting parties' access to information related to victims' names, addresses, and location.
- Promote the adoption of codes of ethics by media outlets that cover judicial proceedings, especially the public stages and oral trials.

Participation in a broad sense: information, assistance, protection, and reparation

361. The participation of the victims in the investigation and proceeding should be real and not just formal. They must be offered guarantees that allow for the fulfillment of their rights to truth, justice, and comprehensive reparation. This ought to be seen as part of a broad process that includes: complete and understandable information about the process and the communication of that information should be deemed a guarantee; assistance to victims and publicity about assistance programs; effective protection and security for victims; and the defense of their interests in all stages of the process aimed at guaranteeing their comprehensive reparation.

362. Victims must be accompanied throughout the entire legal action and ideally after the proceeding is finalized or the judicial sentence is issued. The state support should be offered until the comprehensive reparation measures are fully implemented.

The participation of the victims in the investigation and proceeding should be real and not just formal.

Victims must be accompanied throughout the entire legal action.

363. Even if the Public Prosecutor's Office has not been legally designated as the direct representative of the interests of the victims, it is important in the criminal proceeding for femicide that the argumentation of the arraignment or indictment—both in substance and in form—incorporates the interests of the victims. The correct presentation of the context of discrimination and violence in which the gender-related killing of women is framed can favor the recognition of the truth of the acts and guarantee justice for the victims in terms of the actions of the court.

Information

Victims should have all the information that would allow them to understand the meaning of the criminal proceeding.

364. To guarantee the principle of voluntary participation, victims should have all the information that would allow them to understand the meaning of the criminal proceeding. This includes knowing who the main actors are, what can be expected from them, what is expected from the victims, and the implications that the proceeding and participation in it may have. The information will allow the victim to make the decision to participate or not in the process.

365. The prosecutors and their teams should help victims understand the full range of possibilities allowed by the law for their participation in the criminal proceeding. Learning the options through an understandable message, victims will be able to choose the participation mechanism that matches their expectations and does not generate risks. There are different forms of participation and in all cases there should be options.

The operation of the Public Prosecutor's Office should tend toward reestablishing the connections of trust through transparency and detailed communication about the case.

366. The communication about the case should also be aimed at making the intentions of the state action explicit. For example, why did it act in one way and not another? What is being sought in the medium and long-term? This should be a constant and dynamic work of communication so that victims can participate actively and substantively.

367. It is very likely that, given the nature of some types of femicides, the participation of victims and their representatives will take place in a context of distrust of the state authorities in general and of the criminal justice system in particular. As a result, the operation of the Public Prosecutor's Office should aim at reestablishing the connections of trust through transparency and detailed communication about the case, including the implications that may come from it. Being honest and realistic are guiding principles for communication, even when dealing with news that is not favorable to the victims or their interests.

Assistance

The participation of the victims should be guaranteed through attention and assistance programs that respond to their physical and material needs.

368. The participation of the victims should be guaranteed through attention and assistance programs that respond to their physical and material necessities, as well as their socio-economic status. Almost all victims require some kind of attention or assistance. For example, responding to these needs international criminal tribunals have adopted precise frameworks that assist victims with transportation, food, and lodging to facilitate their participation in the proceedings. These are material measures that, in many cases, make participation possible for persons that under other circumstances simply would not be able.

369. Likewise, participation should be supported by a clear offer of psychological and social orientation, attention, and treatment²⁵⁴ so that victimization is not aggravated. Turning to criteria put forward by experts in the matter, psychological support to victims means:

- providing emotional support for fear, anguish, and the impact of threats coming as a result of the report or the legal proceedings;
- helping them to be familiar with the process, the challenges, stress management, and the proper information about each. Victims have to be psychologically prepared before facing stressful situations;

- accompanying their process beyond the difficult moments and offering a greater degree of attention and follow-up when necessary.²⁵⁵

370. When participating in the criminal proceeding, the family members of victims usually feel a great degree of personal responsibility. The victims feel responsible for everything that happens in the process and they want to make sure that they have done everything possible to clarify the truth of their family's case. Thus, it is common for them to blame themselves if something goes wrong. For that reason, the process of communication between qualified personnel and the victims is especially important for avoiding re-victimization processes. Victims need to be heard and to receive feedback regarding their contribution to the proceedings.²⁵⁶

When participating in the criminal proceeding, the family members of victims usually feel a great degree of personal responsibility.

371. The representative of the Public Prosecutor's Office and the team should pay special attention to the moments of greatest emotional impact in the particular judicial stages: the direct confrontation of the family members with the perpetrator during questioning and cross-examination, the exhumation, the verification of material evidence collected from a disappeared victim or the delivery of human remains, the taking of DNA or other bodily fluids, interviews with investigative police or other authorities in which the victim is asked to recount what happened to their family member, etc.

372. These moments demand close and professional accompaniment that allows the victim to counter and manage episodes of crisis tied to profound pain, frustration, or rancor.

373. In addition to these concrete situations, in the permanent work of the units investigating gender-based violence and femicides there must be protocols of operations for the public servants that will work with the indirect victims and the family members to offer them guidance, attention, and possibly to remit them to public or private entities that are dedicated to the psychological recovery of people affected by gender-based violence.²⁵⁷

Protection

374. Another essential element of victims' participation in the investigations and judicial proceedings is the adoption and implementation of an institutional system of protection and security for victims that require it. Without guarantees of protection and security, there simply can be no institutional expectation that the victims and family members participate.

Without guarantees of protection and security, there simply can be no institutional expectation that the victims and family members participate.

375. What the state offers in this area must be public and transparent. The victims that have security risks must know the options that are provided by the state. The program should count a real offer and its results must be able to be assessed.

376. Often, filing a report and participating in a judicial proceeding are factors that generate risk of being victimized. The Public Prosecutor's Office must guarantee above all not causing harm to people. The evaluation of the possibility of generating some harm should be carried out by specialized personnel before initiating the contact with the victims, and the evaluation should include psychological elements, social stigmatization, and physical security. This implies considering the practical risks that may be faced by the most vulnerable members of the family circle in terms of security: children, adolescents, and the elderly.

377. Some types of femicide tend to involve constant threats, kidnappings or disappearances, and occasionally the killing of indirect victims, family members, and their legal representatives in order to obstruct the investigations, intimidate the communities, and promote impunity.²⁵⁸ For that reason it is necessary that in the relevant cases, the competent state authorities carry out studies to gauge the level of concrete, extraordinary,²⁵⁹ or extreme²⁶⁰ risk that may be faced by the victims, family members, and other people involved in the investigation of femicides.

It is necessary that in the relevant cases, the authorities carry out studies to gauge the level of risk that may be faced by the victims.

378. The conclusions from these studies of the level of risk should allow for making an assessment of the pros and cons of participation in the process, as well as the strategies that should be implemented to prevent and control the risk, such as the accompaniment of an international organization, national and international public denouncements, among others. Personal participation in oral and other public hearings, including before the media, increase the visibility of the indirect victims and make them more vulnerable to new violent attacks. For this reason the Public Prosecutor's Office should take the necessary measure to reduce the risks of a new victimization during the prosecutorial investigation and after the criminal proceeding.²⁶¹

379. In the region there are now mechanisms such as funds for moving, rescue mechanisms, change of identities for victims, witness protection, permission to leave the country, connection to safe networks, creation of new ways to make a living, and other appropriate measures according to the country.²⁶² This has been reinforced by the *Santiago Guidelines on Victim and Witness Protection*.²⁶³

Reparation

Reparation as a process demands the active participation of the victims.

380. The experience of indirect victims and family members as participants in judicial proceedings is an integral part of the reparation process. Their personal assessment of this exercise is almost as important as the material content of the measures that the courts order. Reparation as a process demands the active participation of the victims. Through participation victims are able to assimilate in the best way possible the recognition of their victimization and the re-establishment or remedy of the rights that were violated.

The communicative and participative process that takes place in the courtroom is an integral element of the process of reparation.

381. The psychosocial perspective underscores the importance of understanding reparation as a process: "Genuine reparation, the process of healing, does not occur only or primarily through the delivery of an object (e.g. a pension, a monument) or acts of reparation (e.g. an apology), it also occurs through the process that takes place around the object or act. The challenge is to create a conducive environment that allows for the process to develop, in such a way that the dilemmas that emerge when reparations are offered can be verbalized, addressed and assumed as important components of any program. The processes, context, and discourses that surround the provision of reparations much receive as much attention as the debate about what will ultimately be offered."²⁶⁴

382. The communicative and participative process that takes place in the courtroom, the way that victims are treated during statements and questioning, or the way a prosecutor intervenes to avoid that the perpetrator presents justifying discourse related to gender-based violence that they committed are integral elements of the process of reparation, among others. These will condition in large part the way that the victims will relate to the reparation measures that are ordered at the end of the process.

383. From the legal perspective, reparations refer to a set of measures aimed at erasing the effects of a crime committed or healing the harm suffered as a result of the punishable conduct. Their nature and amount depend on the gravity of the harm caused in material and immaterial terms.²⁶⁵ Generally, it can be stated that a full and effective reparation of the harms suffered by the indirect victims of femicides should include measures of restitution (returning victim to situation prior to the violation); compensation (for the harms caused by the punishable conduct); rehabilitation (recovery from physical and psychological traumas suffered because of the crime); satisfaction (moral compensation to re-establish the dignity of the victims); and guarantees of non-repetition (commitment from the state to carry out actions aimed at eradicating the factors that cause femicidal violence).

384. The victims' process of participation in criminal proceedings is tied to reparation, given the strict relation to judicial clarification of the truth, including establishing criminal responsibility and the duty to provide reparations. In the case of femicides usually characterized by impunity, the prosecution and the sentence against the perpetrators can fulfill a reparatory role in and of themselves, given the message that it communicates on behalf of the society rejecting feminicidal violence.

The criminal prosecution and the sentence against the perpetrators can fulfill a reparatory role in and of themselves.

385. Redress is tied to the interrelation that exists between the harm produced and the rights to truth and justice.²⁶⁶ With regard to truth, it is connected to the need to know who killed the woman and for what reasons (hate or discrimination). Occasionally, it is necessary to establish the fate or location of the victim when she has disappeared. With regard to justice, it is related to the victims' interest that the perpetrators be tried and punished for violating the rights of the murdered woman.

386. An important dimension of the judicial decisions or the administrative programs that may be designed to provide reparations for indirect victims is the redress of life projects/goals that may have been cut short by the femicide. This aspect includes the possibility of offering scholarships for study, opportunities for vocational training, or other measures that contribute to the reparation of the economic harms that were caused to the family patrimony (direct loss or lost profits) or to their economic wellbeing.

An important dimension is the redress to life projects/goals.

387. For reparation measures to achieve a transformative effect in the lives of women, it is necessary to examine which measures can change the structure of gender exclusion—in other words, which measures will facilitate or not a real closing of the existing gender gaps; which measures foster a new positioning of women vis-à-vis the community, the family, and themselves; and which measures foster their incorporation into other spaces and/or a new level of economic autonomy, etc.²⁶⁷

For reparation measures to achieve a transformative effect in the lives of women it is necessary to examine which measures can change the structure of gender exclusion.

388. Taking up a gender analysis in the reparation of these crimes means considering that although in some cases the woman victim was not the direct economic provider for the family, it is likely that she play a caretaker and protector role for which the family must be provided reparation. This harm goes beyond the logic of compensation and must focus more on the idea of psychological accompaniment and re-establishment of life projects for those that have been affected by the murder of this woman. Other possible reparation measures to consider for the surviving victim and family members include: education measures, such as literacy classes or access to higher levels of education; physical or mental health care; vocational training; employment opportunities or micro-credits for starting a business, among others. These would have a transformative impact on the lives of women and their families, both on a practical level and in the sense of raising their self-esteem.²⁶⁸

389. Finally, in cases of femicides that were committed by public servants, it is indispensable that the state adopt effective measures to avoid the repetition of these acts. This may mean creating vetting policies in police or armed forces that have been involved in carrying out these acts, respecting always due process; disciplinary and judicial punishment of public servant that obstructed investigations or behaved negligently with regard to carrying out the search for disappeared women and the investigation into possible perpetrators; and the eventual reform of norms and laws that foster abuse of the public role and allow the violation of the human rights of women.

In cases of femicides that were committed by public servants, it is indispensable that the state adopt effective measures to avoid the repetition of these acts.

390. In this context it is necessary to reiterate the state's international obligation to provide reparations for the victims and family members when it has been judicially demonstrated that the perpetrators of the femicide is a public servant or agent.

Footnotes

- 220 Law 1448 of 2011, Colombia.
- 221 United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc. A/RES/40/34 (Nov. 29, 1985), art. 1 (hereinafter “Declaration of Basic Principles of Justice”).
- 222 The Declaration of Basic Principles of Justice, in Article 2, clarifies that: “The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”
- 223 Political Constitution of Colombia, art. 250.
- 224 Armenta Deu, T. (2012).
- 225 Cafferata Nores, J. I. (2006), pp. 15-17; IACtHR, Case of Radilla-Pachecho v. Mexico (Nov. 23, 2009); IACtHR, Case of Rosendo Cantú et al. v. Mexico (Aug. 31, 2010).
- 226 The name given to victims as part of the criminal process, as well as their rights and role within that process vary across the countries in the region. The most relevant aspect is that in some procedural regimes the victims can initiate and advance the criminal process even if the prosecution decides to request that the judges close the case or if they decide to abandon for any reason the lead of the criminal proceeding. On this, see Constitutional Court of Colombia, Judgment C-775 of 2003, J. Jaime Araujo Rentería; Constitutional Court of Colombia, Judgment C-454 of 2006, J. Jaime Córdoba Triviño.
- 227 IACtHR, Case of the Rochela Massacre v. Colombia (May 11, 2007), para. 195.
- 228 Tamarit Sumalla, J. M. & Villacampa Estiarte, C. (2006), p. 66.
- 229 See Council of the European Union (2001), Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, 2001/220/JAI, Official Journal L082, 22/03/2001, pp. 0001-0004; Armenta Deu, T. (2011).
- 230 Law No. 11.340, “Maria da Penha Law,” Brasil (Aug. 7, 2006), art. 27: “In all procedural acts, civil and criminal, the woman in a situation of domestic and family violence shall be accompanied by a lawyer.”
- 231 Nash Rojas, C., Mujica Torres, I. & Casas Becerra, L. (2010), pp. 21 et seq.
- 232 IACtHR, Case of Villagrán Morales et al. (“Street Children”) v. Guatemala, Merits, Series C No. 63 (Nov. 19, 1999), para. 173; IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009).
- 233 Convention against Racial Discrimination, art. 6.
- 234 ILO Convention 169, art. 12.
- 235 Yogyakarta Principles.
- 236 Convention on the Rights of Persons with Disabilities, arts. 6 & 16.
- 237 Declaration of Basic Principles of Justice, point 4. United Nations General Assembly, Resolution 60/147 of Dec. 16, 2005, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter “Basic Principles and Guidelines”), UN Doc. A/RES/60/147, point 10.
- 238 Basic Principles and Guidelines, point 10.
- 239 United Nations General Assembly, Resolution 52/86 of Feb. 2, 1998, Crime prevention and criminal justice measures to eliminate violence against women, UN Doc. A/RES/52/68, para. 10. See also IACHR, Access to Justice for Women Victims of Violence in the Americas (2007), para. 54.
- 240 See Declaration of Basic Principles of Justice, point d.
- 241 IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), paras. 154 & 208.
- 242 IACtHR, Case of Fernández Ortega et al. v. Mexico (Aug. 30, 2010), para. 194: “Among other requirements, in the course of a criminal investigation for rape: i) the victim’s statement should be taken in a safe and comfortable environment, providing privacy and inspiring confidence; ii) the victim’s statement should be recorded to avoid the need to repeat it, or to limit this to the strictly necessary; iii) the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis, and continuously if required, under a protocol for such attention aimed at reducing the consequences of the rape; iv) a complete and detailed medical and psychological examination should be made immediately by appropriate trained personnel, of the sex preferred by the victim insofar as this is possible, and the victim should be informed that she can be accompanied by a person of confidence if she so wishes; v) the investigative measures should be coordinated and documented and the evidence handled with care, including taking sufficient samples and performing all possible tests to determine the possible perpetrator of the act, and obtaining other evidence such as the victim’s clothes, immediate examination of the scene of the incident, and the proper chain of custody of the evidence, and vi) access to advisory services or, if applicable, free legal assistance at all stages of the proceedings should be provided.”
- 243 Declaration of Basic Principles of Justice, point 6.a.
- 244 IACHR, Access to Justice for Women Victims of Violence in the Americas (2007), para. 127.
- 245 Armenta Deu, T. (2011), pp. 56-57.
- 246 The Gesell Chamber is a conditioned space, divided into two environments separated by one-way glass that allows for observing human behavior. It is especially used to take testimonial statements from children and adolescents.
- 247 ILO Convention 169, art. 12.
- 248 IACtHR, Case of Fernández Ortega et al. v. Mexico (Aug. 30, 2010).
- 249 A basic principle of institutional intervention with regard to victims: carry out the legal action without generating more harm.
- 250 Tamarit Sumalla, J. M. & Villacampa Estiarte, C. (2006), pp. 51-52.
- 251 *Id.* at p. 52.
- 252 UNODC (1999); United Nations (2001).
- 253 Tamarit Sumalla, J. M. & Villacampa Estiarte, C. (2006), p. 259.
- 254 Inter-American Institute for Human Rights (2007), p. 49.
- 255 Beristain, C. M. (2008), p. 132.
- 256 Inter-American Institute for Human Rights (2007), p. 49.
- 257 The design of these protocols exceeds the scope here. For a perspective on the full set, see: Inter-American Institute for Human Rights (2007).

- 258 Pérez, R. I. (2012), pp. 103 et seq.; IACtHR, Case of González et al. (“Cotton Field”) v. Mexico (Nov. 16, 2009), para. 425; IACtHR, Case of Kawas Fernández v. Honduras, Reparations and Costs, Series C No. 196 (Apr. 3, 2009), para. 107.
- 259 Under Colombian law, for example, the following is considered extraordinary risk: “that which threatens the victim or witness’ right to personal security . . . and which has the following characteristics:
- is specific and individually identifiable.
 - is concrete, grounded in particular and manifest actions and facts, and not in abstract suppositions.
 - is present, and not remote or theoretical.
 - is important, meaning, it threatens to injure valuable legal assets or interests, the physical, psychological, and sexual integrity of the victim or witness.
 - is serious, likely to materialize given the circumstances of the case.
 - is clear and discernable.
 - is exception to the extent that it should not be tolerated by the people generally.
 - is disproportional, vis-à-vis the benefits derived by the person in the situation that is generating the risk.” Decree No. 1131 of May 19, 2010, art. 4.
- 260 Extreme risk is that which, “in addition to being extraordinary, is also grave, imminent, and directed against victim or witness’ life or integrity.” Id.
- 261 Minnesota Protocol (1991), p. 21, section 4.c.
- 262 MESECVI (2012), p. 65.
- 263 AIAMP (2008). Santiago Guidelines on Victim and Witness Protection. Document approved at the AIMP General Assembly in Punta Cana, Dominican Republic, July 9-10, 2008.
- 264 Hamber, B. (2006) “Narrowing the Micro and the Macro: A Psychological Perspective on Reparations in Societies in Transition,” in: ICTJ, The Handbook on Reparations, p. 580.
- 265 IACtHR, Case of the Rochela Massacre v. Colombia (May 11, 2007), paras. 242-45.
- 266 De Greiff, P. (2006).
- 267 Guillerot, J. (2009), pp. 106 et seq.
- 268 Id.

Chapter VIII.

Recommendations for the appropriation and application of the Model Protocol

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Chapter VIII.

Recommendations for the appropriation and application of the Model Protocol

To States generally

391. **Policies to prevent all forms of violence against women.** States in the region must promote the creation, implementation, and strengthening of multiple programs to prevent all forms of violence against girls and women in order to prevent femicides. These policies, which rely on the coordination of all agencies of the state, must be directed at eliminating the risk of lethal violence, establishing critical routes of assistance to women, and applying early detection measures or risk assessments for victims that seek protection from state agencies. To guarantee their effectiveness, a system of indicators should be built to allow for assessing results in the short, medium, and long-term.

Policies to prevent all forms of violence against women.

392. The obligation to act with due diligence to guarantee that women have de jure and de facto access to effective legal remedy implies that States must **adopt legal and administrative measures that promote the upholding of the human rights of women and eliminate impunity for cases of femicide.**

393. It is necessary to create a favorable environment and an effective and efficient legal culture to ensure that the truth about the facts is revealed; to satisfy the demands of the right to truth for indirect victims, family members, and society as a whole; to punish those responsible for the crime; and to provide comprehensive reparation and establish measures or guarantees of non-repetition. An important support for building such an environment can come from a public discussion at the societal level, which should also reach the educational processes of the new generations of citizens, about the values that reinforce practices of violence against women, the need to energetically reject those practices, and to definitively eradicate them.

394. **Inter-institutional coordination.** The integration of this Model Protocol into the legal practice of each state implies strengthening the structure of the investigation and criminal prosecution and trial charged with revealing the truth about femicides. For this, where they do not exist, exchange and collaboration protocols should be implemented between members of the police, the investigative bodies, and the prosecutorial teams, with special emphasis on the channels of communication and operational procedures between the different authorities that are involved, such as the police, public hospitals, professional associations, etc.

Inter-institutional coordination.

395. **Assigning human, technical, and financial resources.** The legislative and executive branches must prioritize the assignment of public resources, technical but also human and financial, in order to ensure the appropriation of the recommendations presented throughout this document as well as their correct application, monitoring, evaluation, and continuous review.

Assigning human, technical, and financial resources.

**Information systems
and public policy
planning.**

396. **Information systems and public policy planning.** To improve the processes of designing, planning, and evaluating public policies, as well as to achieve the adequate implementation of the recommendations set forth in this document, systems and procedures should be established or optimized to register the data about the killings of women. Improving the quality of the information that is produced by agencies within the criminal justice system, especially those in charge of forensics will allow for gaining a deeper knowledge about the phenomenon of lethal violence that affects women and improving the criminal investigation capacity of the prosecutorial entities.

Information registries.

397. **Information registries.** It is advisable that the data bases and other administrative and judicial registries include information that allows for appropriately characterizing the victims of the killings of women to be able to definitively identify when dealing with a femicide, taking into account the following aspects: characteristics of the victim, age, sex (including the possibility of registering sexual orientation and gender identity), her place of origin, level of education, socio-economic profile; the relation of the victim to the suspected perpetrator (partner or ex-partner, family member, acquaintance, or other); the characteristics of the perpetrator, age, among others; the characteristics of the crime, form and means used; place of the crime, within the home, outside the home; harms suffered as a consequence of the death of the woman; and if possible, other consequences or new manifestations of violence related to the death of the direct victim. In every case, the personal information that has been provided by the victims and the family members should only be incorporated into data bases with express prior authorization by the interested parties and with informed consent regarding the possible uses. Additionally, this information should be protected in accordance to international standards on the matter.

**Publication of
information.**

398. **Publication of information.** It is important that States produce official national data about the number of killings of women, under the characterizations of killings of women by intimate partners or non-intimate persons or intimate femicide and non-intimate femicide. This will allow national information systems to take into account the cases of femicides that take place in the context of intimate partner relations separately and identify all those perpetrators in different situations, whether femicides by association, connected to organized crime, human trafficking or situations of forced migration, sex commerce, or sexual violence or rape in public spaces.

399. Public information about femicides should be transparent, generating specific systems of information that are directed at avoiding the mismanagement of information. It is important to generate technical protocols and agreements to identify the statistics that each country can identify, so as to rely on official statistics that allow for comparing and classifying data at the international level. This will assist in the control of public policies and the generation of debate about these criminal phenomena and the consequences within society.

400. Duly analyzed information should be published regularly in bulletins or in official systems of communications in accordance with the international standards regarding the quality of statistical information.

**Exchange of
information and
analysis.**

401. **Exchange of information and analysis.** In order to evaluate how public policies are functioning, there should be opportunities generated for connecting and dialoguing between the directives of relevant entities in order to institutionalize the exchange, analysis, and sharing of information related to the criminal prosecution of femicides, as well as the study of the effectiveness of the measures taken to prevent them.

To judicial, legal, and prosecutorial organisms

402. **Incorporation of the Model Protocol into the framework of the criminal-justice policy of the state.** State and federal authorities in charge of the prevention and investigation of femicide should study the measures necessary to incorporate the recommendations set out in this Model Protocol into the plans, programs, and projects of the institution of the justice system, in order to maximize the prevention of gender-based violence and the capacity of the criminal justice system to investigate, judge, and punish femicides.

Incorporation of the Model Protocol into the framework of the criminal-justice policy of the state.

403. **Constant monitoring of investigation and sentencing policies.** In coordination with the institutions in charge of the policies for preventing gender-based violence, it is important to establish processes of monitoring and evaluating the application and impact of the investigation and trial policies for femicides, through the development of directives based on the principles set out in this document. The constant monitoring and the dynamic of implementation of the policies will allow for the constant updating of the recommendations set forth in this Model Protocol.

Constant monitoring of investigation and sentencing policies.

404. **Capacity-building and training of public servants.** To promote the adoption of a focus on gender and the rights of women throughout the process of attention, investigation, and trial of cases of violence, it is essential to establishing multi-disciplinary training, re-training, and professionalization programs for those public servants involved in the tasks of: attending to and advising victims; police, forensic, or prosecutorial investigations; and trials. These training programs should take place together with the training schools of the Public Prosecutor's Office, the national human rights institutions such as the Ombudsman's Offices, the judicial organs of each country, and academia in general. To this end, the content of this Model should be integrated into the curriculum of these capacity-building schools.

Capacity-building and training of public servants.

405. **Methodologies for increasing sensitivity to a gender perspective.** Methodologies for increasing sensitivity to gender and transforming gender stereotypes and discriminatory prejudices should be designed and implemented, taking into account a perspective of intersectionality and multiple discriminations. Likewise, continuing education programs should integrate the content of this corpus juris regarding the rights of women as well as the analysis of the specific obligations that are derived from normative mandates in the legislative, administrative, and judicial spheres.

Methodologies for increasing sensitivity to a gender perspective.

406. **Women's access to justice.** To guarantee women's access to justice, it is advisable to establish programs of mass public information to inform all women victims of violence of the prevention mechanisms, the routes of state assistance, and the scope of their rights.

Women's access to justice.

407. Likewise, measures should be implemented to eliminate discriminatory practices, cultural and material barriers, as well as the messages that impede and obstruct the right of access to justice for women and girls. For this, programs can be created for advising and providing psychosocial assistance to family members of the victims of femicides; funds and budgetary allocations can be established with public resources to ensure the free legal representation of indirect victims; and the number of translators of indigenous languages that are available for the prosecutorial units investigating the killings of women can be increased.

408. Finally, a system for disciplinary and judicial punishments may be designed for those public servants implicated in discriminatory, racist, or sexist practices against indirect victims or family members in cases of femicides.

Access to justice and regional differences.

409. **Access to justice and regional differences.** In those geographic zones in countries that have reduced conditions of development or where the inhabitants experience precarious socio-economic situations, it is recommended that policies be established to facilitate and guarantee the access to the judicial stages and recourses through training of public servants and professionals specialized in attention to victims and the prevention and investigation of femicides. Nonetheless, to best implement this Model Protocol, these recommendations should be adapted to the particularities of and the resources of each region or province.

Victim reparation.

410. **Victim reparation.** A reparation fund should be established for the victims of gender-related killings of women, in order to create transformative policies that comprehensively address economic, social, moral, and social dimensions that harm caused the victims. In particular, administrative reparation programs for victims should be designed for those cases where the active or passive participation of state agents in carrying out a femicide has been demonstrated. These programs should adopt effect measures to avoid the repetition of these crimes and consider the possibility of establishing mechanisms for vetting public servants involved in these crimes.

To the media

Informative coverage and social responsibility of the media.

411. **Informative coverage and social responsibility of the media.** It is important that the States, civil society, and the media agree on appropriate mechanisms for guaranteeing the informative coverage of gender-related killings of women in accordance with international standards and adopting as basic principles the respect for the human dignity of the victims and family members, transparency, and impartiality in the coverage of the information. In this task the adoption of codes of ethics for the media's treatment of violence against women can be very useful.

412. The social responsibility that print and digital media, as well as social networks, should show in the coverage of the killings of women is made concrete through the transparent management of the information and the deconstruction of discriminatory and sexist stereotypes, prejudices, and practices. For example, these cases should be handled in the strongest way, reflecting the injustice that the victims have suffered, challenging the myths and the beliefs that promote violence against girls and women, and finally, ensuring that the narrative of the facts and the assigning of responsibility do not convert the violence into an object of desire or curiosity for the listening or viewing public.

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Annex 1.

Summary analysis of the codification of gender-related killings of women in Latin America

Since 2007, in several Latin American countries there has been a process of codifying the crimes of gender-related killings of women under the definitions “femicide” or “feminicide.” These normative recognitions have taken place through their inclusion in special laws on the prevention, attention, and punishment of violence against women (Bolivia, Colombia, El Salvador, Guatemala, Panama, Nicaragua, and Venezuela), or by reforming national criminal laws (Argentina, Chile, Costa Rica, the Dominican Republic, Honduras, Mexico, and Peru) or state laws (Mexico).²⁶⁹

The following is a summary analysis of the legal norms that criminalize the gender-related killing of women in Latin American countries that have civil law systems.²⁷⁰

Criminal-policy options for the criminalization of feminicidal conduct

The processes for criminalizing the gender-related killings of women have not been homogenous and they have been changing over time with the lessons drawn from the promulgation and application of the first laws in Latin America.

Three criminal-policy options can be identified in the criminalization of feminicidal conduct:

Creating an autonomous criminal definition for femicide/feminicide

Costa Rica, Chile, Guatemala, Nicaragua, Honduras, and Panama are the countries that have adopted the technical designation (*nomen iuris*) of “femicide.” El Salvador, Mexico, Peru, and Bolivia opted to codify the crime of “feminicide.” It is worth noting that El Salvador and Nicaragua also have types of aggravated feminicide as autonomous crimes.

This variation in the terminology is not consistent with the debate around the definitions that has taken place in the social sciences and in the feminist political work in the region to distinguish femicide from femicide. The current codification does not enshrine impunity as a definitional element of the crime of femicide.²⁷¹ Nonetheless, Costa Rica, El Salvador, and Mexico decided to include in their legislations specific crimes and punishments to criminalize the conduct of those persons that, in the exercise of a public function, foster, promote, or tolerate impunity in these cases, as well as those acts aimed at obstructing the investigation, prosecution, and punishment of femicides/femicides (see Table 18). In those cases, the sentences include prison time (from 3 months to 8 years), disqualification from public service (from 1 to 10 years), fines, or removal (in Mexico). In El Salvador, the crime of femicide is defined as aggravated if it is carried out by a public or municipal employee, a public authority, or an agent.

The process of criminalization has evolved over the years revealing a tendency toward the broadening of the criminal categories and the forms of executing the conduct. This can be seen when comparing the first criminal definitions, such as in Costa Rica, which punished the killing of “a woman with whom one has a marriage relationship, formally declared or not,”—a criminal definition connected to a restrictive form of intimate femicide—with the new types of codifications promulgated in 2013, such as in the case of Bolivia, which specifically criminalize the killings of women under any of the follow circumstances:

- the perpetrator is or has been the spouse or domestic partner of the victim, is or has been connected to her through an equivalent relation of affect or intimacy, even without cohabitation;
- due to the victim declining to establish with the perpetrator a relation of partnership, love, affect, or intimacy;
- due to the victim being pregnant;
- the victim is in a situation or relationship of subordination or dependence vis-à-vis the perpetrator, or has with the perpetrator a friendship, work, or companionship relationship;
- the victim is in a situation of vulnerability;
- when prior to the killing, the woman had been the victim of physical, psychological, sexual, or economic violence committed by the same aggressor;
- when the act has been preceded by a crime against individual liberty or sexual liberty;
- when the killing is connected to the crime of human trafficking or smuggling;
- when the killing is the result of rites, group dares, or cultural practices.

Including a circumstantial element as an aggravating factor or a sentence enhancement to simple homicide

In Venezuela, Colombia, and Argentina the legislators opted to set out an aggravating factor in the crime of homicide when the perpetrator has had an emotional or marital relationship with the victim, or when the circumstances of the killing have resulted “because the victim was a woman,” when “involving gender-based violence.”

Modification of the crime of parricide

In the cases of Chile (femicide) and Peru (femicide), the legislators decided to include these categories as possible types of carrying out the conduct of parricide. The crime is deemed to have taken place when the woman, victim of the conduct, “is or has been the spouse or domestic-partner of the perpetrator,” or when “she was connected to him.” If this requisite is fulfilled then the act can be legally classified a femicide/femicide.

Main elements of the criminal definitions of femicide/feminicide²⁷²

Legally protected interests

From the perspective of a dogmatic criminal law methodology, the majority of laws consulted incorporate the crime of femicide/feminicide in the titles or chapters of the criminal codes related to the crimes against the lives or integrity of persons. This reveals that the protected legal interest is the very life of the woman that is the victim of the crime, in the physical-biological sense.²⁷³

Nonetheless, there are some positions that consider that femicides are “multi-offense” crimes to the extent that they affect other interests of the victims, such as her dignity or physical and sexual integrity, affecting even her social and family surroundings. This would make these acts deserving of more severe punishments.²⁷⁴

Place where the crime is committed

All of the legislation that was studied includes public and private spaces as possible scenarios where these crimes can take place. The Nicaraguan law establishing that if the criminal act occurs in the private sphere the sentence will increase to twenty to twenty-five years in prison.

Perpetrator

The majority of the norms use the generic expression (“one that,” “whoever,” “to whom,”) to refer to the perpetrator, just as in the criminal definitions of homicide (Colombia, Bolivia, Guatemala).

The perpetrator is qualified in the legislations that establish as a requisite that the perpetrator be a man, such as in the cases of Nicaragua, Honduras, and Argentina (in one of the types). The perpetrator is also considered qualified when the norm requires that the person that executes the conduct fulfill a specific condition: maintains or has maintained “a partner relationship” with the victims, whether matrimonial, de facto, free union, or any other equivalent relationship that involves or had involved cohabitation or not, including those in which there is or had been a sentimental relationship, such as in the cases of Venezuela, Costa Rica, Peru, and Chile. One variation of this requisite is when it is set out that there must have been some form of work, friendship, family, companion, educational, or caretaking relationship between the perpetrator and the victim.

Another variation where the perpetrator is required to have a certain characteristic is when the legislation sets out that the perpetrator must be a public servant, such as in El Salvador. Finally, some laws include other variations for the specified perpetrator, such as in Guatemala, Nicaragua, Bolivia, and Mexico, which mention group conduct or organized crime.

Elements of the definition of the crime

Objective elements of the definition

From the perspective of a dogmatic criminal law methodology, with intentional crimes “the determination of the classification of the conduct implies attributing the objective and subjective elements of the perpetrator’s actions to a particular criminal definition.”²⁷⁵ This type of crime contemplates behaviors that are given a very precise meaning. The determination of the meaning of the concrete act is fundamental for establishing the proper classification of the crime committed or whether the act was non-criminal. The criminal classification of the act and its role as substantive guarantee depends on demonstrating the objective and subjective elements of the definition.

The objective elements can be classified as descriptive and normative or evaluative. In ordinary circumstances, the descriptive elements are those that can be captured and comprehended only in the sensory perception, such as the expression “woman.” It is important to note that in the case of femicides/feminicides, the sensory perception may be limited by gender prejudices or preconceived notions of the person that is verifying the fulfillment of this descriptive element. Thus, the gender expression of a trans person must be kept in mind when they are the victim of a transphobic femicide.

The normative elements are those that can only be captured or comprehended through an intellectual or evaluative process, such as the concept of “unequal power relations.”

Some laws in the region opted to incorporate objective, descriptive, and normative element²⁷⁶ in the specific definition, such as:

- situating the result of the killing in “the framework of the unequal power relations between men and women” (Guatemala and Nicaragua);
- criminalizing the killing of the victim when it took place “because of her condition as a woman” (Guatemala and Colombia);
- criminalizing the killing when it involved “motives of hate or contempt for her condition as a woman” (El Salvador and Honduras);
- criminalizing the killing when it is caused “for gender-related reasons” (Mexico and Honduras);
- setting out the motive of hate based on “gender or sexual orientation, gender identity, or its expression,” as an aggravating sentencing factor for aggravated homicide (Argentina).

Subjective elements of the definition

The subjective elements of the definition are related to the attribution of the criminal act according to the meaning that the person gave to the conduct.²⁷⁷ With regard to this criterion, all the legislations consulted implicitly include that the killing must be intentional, meaning that the perpetrator knew of and wanted the result of the woman’s death.²⁷⁸

The procedural verification that the perpetrator intended to kill the victim is what allows for distinguishing an attempted crime from injuries (*lesiones consumadas*), as well as intentional manslaughter. If this verification does not happen, some sectors would assert that this conduct could be properly classified as a conceptual concurrence of intentional injuries with a reckless homicide, if the result was foreseeable.²⁷⁹

There are no categories for the commission of femicide/feminicide equivalent to manslaughter or culpable homicide.

Types of femicides/feminicides

An overall analysis reveals that the different types of femicides/feminicides that are found in the laws of the countries studied can be grouped into several categories. However, in some cases the categories are derived from the circumstances required by the definition of the crime, such as in the case of Guatemala, Nicaragua, and Honduras, and in others, these are related to the elements of the definition that serve to qualify the motive of the killing as gender-based, such as in El Salvador and Mexico.²⁸⁰ The main categories studied are:

Punishability

The countries in the region have opted to assign severe punishments to those found responsible for femicides/feminicides, worth comparing to homicide or aggravated homicide. The most used punishment is imprisonment, which some criminal codes identify as prison sentence, privation of liberty, or reclusion. Several ranges of minimums and maximums are used to individual sentence to impose, which tend to go from:

- 15 to 20 years in Nicaragua and Peru
- 20 to 40 years in Venezuela, Costa Rica, El Salvador, Honduras, and Bolivia
- 30 to 60 years in Guatemala, Mexico, and Colombia
- Life in prison or reclusion in Chile and Argentina

It is worth underlining that in some countries the sentence is conditioned: the sentence cannot be reduced or substituted with another measure in Guatemala; and the author loses all rights vis-à-vis the victim in Mexico.

Aggravating circumstances and other punishments or restrictions of rights

Guatemala, Nicaragua, and Peru established in their law specific aggravating sentencing factors for these conducts. For example, in the case of Peru, femicide is aggravate if the victim: “was a minor,” “was pregnant,” “was under the care or responsibility of the agent,” “was previously submitted to rape or acts of mutilation,” “at the time the crime was committed, the victim had any type of disability,” or “was rendered for the purpose of human trafficking.”

Finally, it should be mentioned that Guatemala codified the prohibition of invoking customs or cultural or religious traditions as a grounds of justification or exculpation for perpetrating, inflicting, supporting, promoting, instigating, or tolerating violence against women. El Salvador expressly prohibited the possibility of using conciliation or mediation processes in these crimes.

**TABLES OF THE CRIMINAL LEGISLATION IN LATIN AMERICA ON
GENDER-RELATED KILLINGS OF WOMEN
(in the civil law systems)**

Table 15. Codification of femicide/femicide in Central America (except Belize)

#	Country	Year	Law	Criminal definition	Punishment
1	Costa Rica	2007	Law No. 8589. Criminalization of Violence against Women	<p>Article 21. Femicide A prison sentence of 20 to 35 years will be imposed to the person that kills a woman with whom he maintained a relationship of marriage, a union declared or not</p>	<p>20-35 years in prison. Article 21. Femicide A prison sentence of 20 to 35 years will be imposed to the person that kills a woman.</p>
2	Guatemala	2008	Law against Femicide and Other Forms of Violence against Women	<p>Article 6. Femicide. The crime of femicide is committed by a person that, within the framework of unequal power relations between men and women, kills a woman for being a woman, availing themselves of any of the following circumstances:</p> <ul style="list-style-type: none"> a. Having tried unsuccessfully to establish or re-establish a partner or intimate relationship with the victim. b. Maintaining family, marriage, cohabitation, intimate, courtship, friendship, companionship or employment relations with the victim during the time at which the act was perpetrated, or having maintained such relations with the victim c. As the result of a repeated expression of violence against the victim. d. As a result of group rituals whether or not using weapons of any kind. e. Disrespecting the body of the victim to satisfy sexual instincts, or committing acts of genital mutilation or any other type of mutilation.. f. Out of misogyny. g. When the act is committed in the presence of the victim's children. h. With the concurrence of any of the qualification circumstances set out in Article 132 of the Criminal Code. 	<p>20-50 years in prison. Article 6. A person found responsible for this crime shall be punished by imprisonment from 25 to 50 years, and sentence reduction may not be granted for any reason. Persons charged with the commission of this crime may not benefit from any alternative measure.</p>

3	El Salvador	2010	Special Comprehensive Law for a Life Free from Violence for Women.	<p>Article 45. Femicide</p> <p>Whoever causes the death of a woman because of motives of hate or contempt for her as a woman, shall be punished with a prison sentence of twenty to thirty five years.</p> <p>This hate or contempt for women shall be established when any of the following circumstances occur:</p> <ol style="list-style-type: none"> The killing was preceded by an incident of violence committed by the perpetrator against the woman, regardless of whether the victim had reported the act. The perpetrator took advantage of a condition of physical or psychological risk or vulnerability of the female victim. The perpetrator took advantage of the superiority that unequal power relations of gender generate for him. Prior to the killing of a woman the perpetrator committed any act against her that can be classified as a crime against sexual liberty. Killing brought on by mutilation. 	<p>20-35 years in prison.</p> <p>Article 45. Femicide. Whoever causes the death of a woman because of motives of hate or contempt for her as a woman, shall be punished with a prison sentence of twenty to thirty five years.</p>
4	Nicaragua	2012	Law No. 779. Comprehensive Law against Violence toward Women and Reforms to Law No. 641, "Criminal Code"	<p>Artículo 9. Femicidio Article 9. Femicide</p> <p>The crime of femicide is committed by a man that, within the framework of unequal power relations between men and women, kills a woman whether in the public or private sphere, in any of the following circumstances:</p> <ol style="list-style-type: none"> Having tried unsuccessfully to establish or re-establish a partner or intimate relationship with the victim. Maintaining family, marriage, cohabitation, intimate, courtship, friendship, companionship employment, education, or caretaking relations with the victim during the time at which the act was perpetrated, or having maintained such relations with the victim As the result of a repeated expression of violence against the victim. As a result of group rituals, of gangs, whether or not using weapons of any kind. Disrespecting the body of the victim to satisfy sexual instincts, or committing acts of genital mutilation or any other type of mutilation.. Out of misogyny. When the act is committed in the presence of the victim's children. With the concurrence of any of the qualification circumstances set out in the crime of murder in the Criminal Code. 	<p>Prisión 15 - 20 años.</p> <p>Artículo 9.</p> <p>Cuando el hecho se diera en el ámbito público la pena será de quince a veinte años de prisión.</p> <p>En ambos casos si concurriera dos o más de las circunstancias mencionadas en los incisos anteriores se aplicará la pena máxima.</p>

5	Mexico (D.F.)	2012	<p>Decree that reverse dispositions to the Federal Criminal Code, the General Law on Access of Women to a Life Free from Violence, the Organic Law of Federal Public Administration, and the Organic Law of the Prosecutor General's Office, Apr. 30, 2012.</p>	<p>Article 325. The crime of femicide is committed by the person that takes the life of a woman for gender-related reasons. Gender-related reasons will be found when the one of the following circumstances occurs:</p> <p>I. The victim shows signs of violence of any kind; II. The victim was inflicted with humiliating or degrading injuries or mutilations, before or after her life was taken, or acts of neurophilia III. There is a history of any type of violence in the family, school or work environment, by the perpetrator against the victim; IV. There was a sentimental, affective, or trusting relationship between the perpetrator and the victim; V. There were prior threats related to the crime, harassment, or injury by the perpetrator against the victim; VI. The victim was held incommunicado, for any amount of time before her life was taken; VII. The body of the victim is exposed or displayed in a public place.</p> <p>In the case that the act does not amount to femicide, the rules of homicide will be applied.</p>	<p>40-60 years in prison. 500-1,000 day fine. Article 325. The person that commits a femicide will receive a 40 to 60 years prison sentence and a fine of 500 to 1000 days. In addition to the punishments described in this article, the perpetrator will lose all rights vis-à-vis the victim, including those rights of succession.</p>
6	Honduras	2013	<p>Decree No. 23-2013, of April 6, 2013, modifying the Criminal Code.</p>	<p>Article 118-A. The crime of femicide is committed by that man or those men that kill a woman for gender-related reasons, with hate or contempt for her condition as a woman and will be punished by a sentence of 30 to 40 years of reclusion, when one or more of the following circumstances are present:</p> <ol style="list-style-type: none"> 1) When the perpetrator of the crime maintains or has maintained a partner relationship with the victim, whether matrimonial, de facto, free union, or any other equivalent relationship that involves or had involved cohabitation or not, including those in which there is or had been a sentimental relationship; 2) When the crime is preceded by acts of domestic or intra-familial violence, whether or not it had been previously reported; 3) When the crime is preceded by a situation of sexual violence, harassment, or persecution of any kind; and 4) When the crime is committed with ruthlessness or when humiliating or degrading injuries or mutilations have been inflicted, before or after the loss of life. 	<p>30-40 years of reclusion Article 118-A: ... will be punished by a sentence of 30 to 40 years of reclusion.</p>

7	Panama	2013	Law No. 82, of October 24, 2013	<p>Article 132-A (Criminal Code) The person that kills a woman in any of the following circumstances, will be punished with a sentence of 25-30 years of prison:</p> <ol style="list-style-type: none"> 1. When there is a partner relationship or there was an unsuccessful attempt to establish or re-establish a relationship of this nature or of affective intimacy or if there are family ties with the victim. 2. When there is a relationship of trust with the victim or a relationship of work, faculty, or any that implies subordination or superiority. 3. When the act is committed in the presence of the victim's children. 4. When the perpetrator has taken advantage of any condition of risk or physical or psychological vulnerability of the victim. 5. When it is the result of group rituals or for revenge. 6. With the disrespect or abuse of the body of the victim, to satisfy sexual instincts or the commission of acts of genital mutilation or any other type of mutilation. 7. When the body of the victim is exposed, left, or thrown in a public or private place or when she has been kept incommunicado, for however long, prior to her death. 8. To cover up a rape. 9. When the victim is pregnant. 10. For any motive based on her condition as a woman or in the context of unequal power relations. 	25-30 years in prison. Article 132-A (Criminal Code). ... will be punished with a sentence of 25-30 years of prison.
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Table 16. Codification of gender-related killings of women in South America

#	Country	Year	Law	Definition	Punishment
1	Venezuela	2007	Organic Law on the Right of Women to a Life Free from Violence (G.O. 38668 of Apr. 23, 2007)	Homicide Article 65. Aggravating circumstances In the cases of intentional homicide in all its qualifications, classified in the Criminal Code, when the perpetrator of the crime set out in this Law is the spouse, ex-spouse, domestic partner, ex-domestic partner, person with whom the victim maintained a married life, stable union, or affective relationship, with or without cohabitation, the sentence to be imposed is between 28 and 30 years of prison.	28-30 years in prison. Article 65. Aggravating circumstances. ... the sentence to be imposed is between 28 and 30 years of prison.
2	Colombia	2008	Law 1257 of 2008 "which dictates norms of sensitization, prevention, and punishment of forms of violence and discrimination against women, reforms the criminal code, the criminal procedure code, Law 294 of 1996, and sets out other pronouncements"	Article 103. Homicide. The person that kills another will incur 208-450 months in prison. Article 104. Aggravating circumstances. The sentence will be 400 to 600 months in prison, if the conduct described in the previous article is committed: ... 11. against a woman because she is a woman.	33.3- 50 years in prison. Article 104. Aggravating circumstances. The sentence will be 400 to 600 months in prison.
3	Chile	2010	Law 20480. Modifying the Criminal Code and Law No. 20.066 on Inter-familial Violence, establishing "femicide," increasing the sentences applicable to this crime, and reforming the norms on parricide	Article 390. On homicide. The person that, knowing the relations that bind them, kills his father, mother, or son, any other ascendants or descendants or the person that is or has been his spouse or domestic partner, will be punished, as parricide, with rigorous imprisonment up to life in prison. If the victim of the crime described above is or has been the spouse or domestic partner of the perpetrator, the crime will have the name of femicide.	Rigorous imprisonment up to life in prison. Art. 29. The sentences of prison, reclusion, confinement, deportation, and minor relegations, in their maximum degrees, include the absolute disqualification from public office and positions during the time of the conviction. Art. 32 bis. The imposition of qualified life in prison implies the privation of liberty of the convicted person for life, under a special regime of compliance.

4	Argentina	2012	Law 26.791, modifying the Federal Criminal Code	<p>Aggravate Homicide</p> <p>Article 80. Title. Life in prison will be imposed, applying that set out in article 52, on the person that kills:</p> <ol style="list-style-type: none"> 1. Ascendant or descendant, spouse, ex-spouse, or that person with whom he maintained or had maintained a partner relationship, with or without cohabitation. 4. For pleasure, greed, hate based on race, religion, gender or sexual orientation, gender identity, or its expression. 11. A woman when the act was perpetrated by a man and involving gender-based violence. 12. With the objective of causing suffering to a person with whom he maintained or had maintained a relationship in terms included under number 1. 	<p>Life in prison or reclusion.</p> <p>Article 80. Life in prison or reclusion will be imposed, applying that set out in article 52</p>
5	Bolivia	2013	Law No. 348, of March 9, 2013	<p>Article 252 bis. A punishment of imprisonment of 30 years without the right to a pardon will be imposed on the person that kills a woman under any of the following circumstances:</p> <ol style="list-style-type: none"> 1. the perpetrator is or has been the spouse or domestic partner of the victim, is or has been connected to her through an equivalent relation of affect or intimacy, even without cohabitation; 2. due to the victim declining to establish with the perpetrator a relation of partnership, love, affect, or intimacy; 3. due to the victim being pregnant; 4. the victim is in a situation of subordination or dependence vis-à-vis the perpetrator, or has with the perpetrator a friendship, work, or companionship relationship; 5. the victim is in a situation of vulnerability; 6. when prior to the killing, the woman had been the victim of physical, psychological, sexual, or economic violence committed by the same aggressor; 7. when the act has been preceded by a crime against individual liberty or sexual liberty; 8. when the killing is connected to the crime of human trafficking or smuggling; 9. when the killing is the result of rites, group dares, or cultural practices. 	<p>30 years in prison, no pardon.</p> <p>Article 252 bis. (Femicide) A punishment of imprisonment of 30 years without the right to a pardon will be imposed.</p>

6	Peru	2013	<p>Law 30068, which incorporates Article 108-a into the Criminal Code and modifies Articles 107, 46-b and 46-c of the Criminal Code and Article 46 of the Penal Enforcement Code, to prevent, punish, and eradicate femicide</p>	<p>Article 108-A. Femicide. A sentence of privation of liberty of no less than 15 years will be imposed on the person that kills a woman for her condition as a woman, in any of the following contexts:</p> <ol style="list-style-type: none"> 1. Family violence; 2. Coercion, sexual harassment; 3. Abuse of power, trust, or any other position or relation that gives authority to the agent; 4. Any form of discrimination against the women, whether or not there is a spouse or cohabitation relation with the agent. 	<p>No less than 15 years in prison. Article 108-A Femicide. A sentence of privation of liberty of no less than 15 years will be imposed.</p>
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Table 17. Codification of femicide/femicide: Regulation of aggravated crimes, aggravating factors, and other punishments or restrictions of rights

Country	Aggravated Crime	Aggravating Circumstances	Other punishment or restriction of rights
Guatemala	<p>No</p>	<p>Article 10. Aggravating circumstances. The circumstances that aggravate the violence against women should be analyzed according to the following:</p> <ul style="list-style-type: none"> a) In relation to the personal circumstances of perpetrator. b) In relation to the personal circumstances of the victim. c) In relation to the existing power relations between the victim and the perpetrator. d) In relation to the context of the violent act and the harm produced in the victim. e) In relation to the means and mechanisms used to commit the act and the harm produced. 	<p>Prohibition of grounds of justification Article 9. Prohibition of grounds of justification. In the codified crimes against women customs or cultural or religious traditions cannot be invoked as grounds of justification or exculpation for the for perpetrating, inflicting, supporting, promoting, instigating, or tolerating violence against women.</p>
El Salvador	<p>Aggravated Femicide. 30-50 years in prison. Art. 46 of Special Comprehensive Law. Aggravated Femicide. The crime of femicide will be punished with the sentence of 30-50 years in prison, in the following cases:</p> <ul style="list-style-type: none"> a) If carried out by a public or municipal servant, public authority, or agent. b) If carried out by two or more persons. c) If committed in front on any family member of the victim. d) When the victim is a minor, an elderly person, or has a physical or mental disability. e) If the perpetrator enjoyed superiority over the victims based on their trust, friendship, domestic, school, or work relationship. 	<p>No</p>	<p>Prohibition of conciliation and mediation. Art. 58. Prohibition of Conciliation and Mediation. Conciliation or mediation are prohibited for any of the crimes included in this law.</p>

Nicaragua	<p>20-25 years in prison (private sphere) Article 9. When the act takes place in the private sphere the sentence will be 20-25 years in prison. In both cases if two or more of the circumstances mentioned in the previous section happen in concurrence, the maximum sentence will be applied.</p>	<p>Art. 9 Femicide. From one third up to 30 years. The sentences established in the previous number will be increased by a third when there is the concurrence of any of the circumstances of the murder, up to 30 years in prison.</p>	No
Perú	No	<p>No less than 25 years in prison. Possibility of life in prison. Article 108-A Femicide The privation of liberty sentence will not be less than 25 years, when in concurrence with any of the following aggravating circumstances:</p> <ol style="list-style-type: none"> 1. The victim was a minor; 2. The victim was pregnant; 3. The victim was under the care or responsibility of the agent; 4. The victim was previously submitted to rape or acts of mutilation; 5. At the time the crime was committed, the victim had any type of disability; 6. The victim was rendered for the purpose of human trafficking; 7. When there was a concurrence with any of the aggravating circumstances established in Article 108. <p>The sentence will be life in prison when there is a concurrence of two or more aggravating circumstances.</p>	No

Table 18. Codification of femicide/feminicide: Regulation of crimes committed by public servants

Country	Crime of a Public Servant
Costa Rica	<p>3 months – 3 years in prison, disqualification from public service for 1-4 years. Article 41 of the Law on the Criminalization of Violence against Women. Obstruction of the access to justice. The person that, in the exercise of a public function, fosters, through an illicit means, the impunity or obstruction of the police, judicial, or administrative investigation of physical, sexual, psychological, or patrimonial violence, committed against a woman, will be punished with 3 months – 3 years in prison and disqualification from the exercise of any public service for 1 to 4 years.</p>
El Salvador	<p>2-4 years in prison and disqualification from public service for 2-4 years. Article 47 of the Special Comprehensive Law for a Life Free from Violence for Women. Obstruction of the access to justice. The person that in the exercise of a public service fosters, promotes, or tolerates, impunity or obstruction of the investigation, prosecution, and punishment of the crimes established in this law, will be punished with 2-4 years in prison and disqualification from the public service that they provided for the same amount of time. Article 46. Aggravated Femicide. The crime of femicide will be punished with the sentence of 30-50 years in prison, in the following cases: a) If carried out by a public or municipal servant, public authority, or agent.</p>
México (Federal)	<p>3-8 years in prison and 500-1500 days of fine, destitution, and disqualification from public service for 3-10 years. Article 325 of the Federal Criminal Code. Femicide. The public servant that maliciously or negligently delays or impedes the pursuit or administration of justice will receive a sentence of 3-8 years in prison and 500-1500 days of fine, and in addition will be removed and disqualified for 3-10 years from holding any other public commission, position, or employment.</p>

Footnotes

- 269 In April 2012 the crime of femicide was incorporated into the Federal Criminal Code of the United Mexican States. As of August 2013, 23 of the 31 Mexican States had incorporated femicide/femicide into their respective state penal codes. The States that had not yet included this classification are: Baja California Sur, Chihuahua, Hidalgo, Michoacán, Nuevo León, Oaxaca, Puebla, and Zacatecas. Goche, F. (2013).
- 270 Reference is made to the normative text in force in each country as of July 2013, the time of this writing. A historical perspective of the process of classifying the crimes of femicide/femicide and the distinct types can be found in: Toledo Vásquez, P. (2009) and (2012); Chiarotti, S. (2011); Garita Vélchez, A. I. (2012).
- 271 Regarding the difficulty of this inclusion in the definitions of the crimes, see Lemaitre (2008), pp. 566 et seq.; Toledo (2009), pp. 141 et seq.
- 272 Other versions of this type of analysis can be found in Garita Vélchez, A. I. (2012); Toledo Vásquez, P. (2012).
- 273 Buompadre, J. E. (2012), pp. 7 et seq.
- 274 Garita Vélchez, A. I. (2012), p. 22.
- 275 Bustos Ramírez, J. J. & Hormazábel Malareé, H. (1999), p. 60.
- 276 See id. pp. 48 et seq.; Hurtado Pozo, J. (2000), pp. 125 et seq.
- 277 Bustos Ramírez, J. J. & Hormazábel Malareé, H. (1999), p. 60.
- 278 Barreto Alba, R., Cartagena Pastor, J. M., Laporta Donat, E. & Permato Martín, T. (2012), p. 31.
- 279 Id.
- 280 Clearly this grouping simplifies some of the variants established in the national criminal codes. Nonetheless, it is included because of its illustrative and pedagogical value.

Annex 2.

Elements to include in a semi-structured interview with those around the victim regarding her situation before the homicide and the possible existence of gender-based violence

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Elements to include in a semi-structured interview with those around the victim regarding her situation before the homicide and the possible existence of gender-based violence

Inquire into the existence of some of these conducts related to a situation of violence within an interpersonal relationship:

1. *Verbal and/or emotional violence:*
 - *Insults, yelling, approaching the victim in a physically intimidating way.*
 - *Insistence that the victim is crazy, stupid, or useless.*
 - *Manifesting constant jealousy and suspicion.*
 - *Hitting doors.*
 - *Searching through drawers and belongings*
2. *Economic and patrimonial violence:*
 - *Control over work and salary (could reach the point of withholding money).*
 - *Withdrawing or destroying assets, objects, personal documents, valuables, resources, belongings of the woman to harm her and control her.*
 - *Not giving money necessary for attending to the needs of the family.*
3. *Social violence:*
 - *Social isolation. Impeding or obstructing relations outside the partner relationship.*
 - *Impeding that she accompany him on activities or imposing his presence by force.*
 - *Making himself out to be the victim in public saying that she mistreats him.*
 - *Reporting the victim to the police.*
4. *Sexual violence:*
 - *Degrading treatment of females.*
 - *Humiliations related to her sexual behavior.*
 - *Coercion to have sexual relations using physical force or emotional blackmail.*
 - *Violence and aggression during pregnancy.*

5. *Physical violence:*
- *Pushing.*
 - *Hair-pulling.*
 - *Pinches.*
 - *Bites.*
 - *Slaps.*
 - *Strikes with the hands or with objects.*
 - *Kicks.*
 - *Burns.*
 - *Threats of physical violence or death threats.*
 - *Threats related to the children.*
 - *Intense and continuous humiliations (disqualifying her, ridiculing her).*
 - *Reiterated put downs in front of the family or third persons.*
 - *Control (listening to conversations, reading mails or text messages).*
 - *Impeding or obstructing her access to work, study, or any other activity.*
 - *Not allowing her to decide or participate in decisions. Deciding for her.*
 - *Lack of communication as punishment: not listening or not speaking.*
 - *Abrupt and unjustified mood changes generated by the constant corrections or by the abusers manifestations made in an attempt to make himself out to be the victim.*
 - *Suicide attempts.*
 - *The destruction of objects with a special sentimental value.*
 - *Mistreatment of pets.*
 - *Withholding basic necessities (food, sleep, etc.).*

When did the aggressions begin?

- During the courtship.
- During the marriage.
- At the beginning of cohabitation.
- During pregnancy.
- During the process of getting separated.
- Other.

Have there been aggressions against other people outside the family?

- Yes. Against whom?
- No.

Is it habitual?

- Yes. Against whom?
- No.

Has the violence been reported by:

- A partner or ex-partner?
- Family members?
- Neighbors?
- Police?
- Healthcare workers?
- Social service workers?
- Others?

Has the suspected aggressor been reported for gender-based violence by another partner or ex-partner?

What was the evolution of this violence?

- Frequency.
- Duration of the aggressions.
- Intensity: Was medical attention ever required?

The time of the evolution of this violence?

- The first incident.
- A typical and habitual incident.
- The most severe incident or the one with the greatest impact.

Frequency of the abuse in the last year prior to the homicide?

- Last aggression before the homicide.

Habitual time of day of the violence?

Most common place and moments for using violence?

At the moment of the facts were the minor children present? Did they suffer some harm? Were there other witnesses?

Were harmful instruments used?

Was another person in the family attacked?

Annex 3.

Elements to include in a semi-structured interview with the perpetrator and those around him, regarding the situation of the victim before the homicide and the possible existence of gender-based violence

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Ask about the existence of some of these conducts related to a situation of violence within an interpersonal relationship:

1. *Verbal and/or emotional violence:*
 - *Insults, yelling, approaching the victim in a physically intimidating way.*
 - *Insistence that the victim is crazy, stupid, or useless.*
 - *Manifesting constant jealousy and suspicion.*
 - *Hitting doors.*
 - *Searching through drawers and belongings.*
2. *Economic and patrimonial violence:*
 - *Control over work and salary (could reach the point of withholding money).*
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 - *Not giving money necessary for attending to the needs of the family.*
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- Yes. Against whom?
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Is it habitual?

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- No.

Has the violence been reported by:

- Police?
- Healthcare workers?
- Social service workers?
- Others?

Has the suspected aggressor been reported for gender-based violence by another partner or ex-partner?

What was the evolution of this violence?

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- Last aggression before the homicide.

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Most common place and moments for using violence?

At the moment of the facts were the minor children present? Did they suffer some harm? Were there other witnesses?

Were harmful instruments used?

Was another person in the family attacked?

Annex 4.

Semi-structured questionnaire
about the crime scene to use with
witnesses and with the perpetrator

Annex 4.

Semi-structured questionnaire about the crime scene to use with witnesses and with the perpetrator

1. Questions about the place of the acts:

- About the place, specify:
 - Where was the place of the first contact with the aggressor?
 - Place of the assault
 - Place of the acts
 - Place where the victim was found
- With regard to any of the places, document which kind of space it was:
 - Urban
 - Rural
 - Industrial, commercial, business
 - Agricultural
 - Residential
 - Uninhabited
 - Other
- Where did the victim live?
- Was it where the victim worked?
- Where there possibly any witnesses present?
- About the place of the acts:
 - Was a telephone, alarm, etc. disconnected to gain access to the place?
 - Was there a robbery or destruction, etc.?
 - Are there signs of an attempt to destroy evidence?
 - Are there symbolic objects?
- Was there writing on the victim or at the crime scene?
 - What was written?
 - With what was it written?

2. Questions about the way the acts were carried out:

- The way in which the assault or approach of the victim happened:
 - By deception
 - Authority figure
 - Business person
 - She was offered to be a model or pose for pictures
 - She was offered work, money, objects, etc.
 - A family emergency or illness was implied
 - Wanting “to show her something”
 - Asked for or offered assistance

- Traffic accident
- Requested a sexual relation
- Offered transportation
- Other

- By surprise
 - Outside of a building
 - Inside a building
 - In a vehicle
 - The victim was sleeping
 - Other

- By sudden attack:
 - Acting with an excess of force (grabbing her and/or transporting her)
 - Striking the victim
 - Using some type of weapon or instrument: description
 - Other

- Degree of force used by the aggressor

- Conduct of the victim
 - Passive
 - Verbal
 - Physical

- Sudden change in the attitude or conduct of the aggressor during the attack:
 - Possible cause:

- Was the victim tied?
 - Element used
 - Rope
 - Tape
 - Cords
 - Chains
 - Handcuffs
 - Other
 - The evidence suggests that this element was:
 - Brought to the scene by the aggressor
 - Found at the scene
 - Other
 - Was the restraint excessive for the intended objective?
 - Was she tied to another object (bed, tree, etc.)
 - Was her mouth gagged?
 - How?
 - With what?
 - Were her eyes covered?
 - How?
 - With what?
 - Was her face completely covered?
 - How?
 - With what?

Annex 5

List of the people that participated
in the consultation and review
processes

Annex 5

List of the people that participated in the consultation and review processes

The institutions listed are where the participants were working at the time of they were consulted. We hope that we have not forgotten anyone, and we apologize in advance if we have.

Argentina	María Raquel Asensio	National Public Defender's Office
	Sergio Alejandro Berni	(Defensoría General de la Nación)
	Luis Alberto Bocio	Investigative Police
	Susana Chiarotti	Institute of Forensic Medicine
	Sofía Egaña	Institute of Gender, Law, and Development
	María Laura Garrigós	Forensic Anthropology Team of Argentina
	Natalia Gherardi	National Criminal and Correctional Appeals Chamber, City of Buenos Aires
	Maria Fernanda López Puleio	Latin American Group for Justice and Gender
	Ricardo Luis Lorenzetti	Public Defense Service Ministry (Ministerio Público de la Defensa)
Romina Pzellinsky	Supreme Court of Justice	
Bolivia	Andrés Flores Aguilar	Institute of Forensic Investigations (IDIF)
	Rosa Lema	Police – Special Forces to Combat Violence (Fuerza Especial de Lucha contra la Violencia - FELCV)
	Diego Roca Saucedo	School for Judges
	Freddy Torrico Zambrana	Attorney General's Office
	Margoth Vargas Jordán	Santa Cruz Prosecutor's Office – Special Victims and Protection of Women
Brazil	Renata Araujo Dos Santos	Civil Police of the State of Rio de Janeiro
	Roberto Monteiro Gurgel Santos	Prosecutor General's Office (Procuradoria)
	Aline Yamamoto	Secretariat of Policies for Women – Presidency of the Republic
Chile	Denisse Araya	Raices NGO
	Rubén Ballesteros	Supreme Court of Justice
	Patricio Bustos Street	Legal Medical Service
	Camila Maturana	Corporación Humanas
	Patricia Muñoz Garcia	Prosecutor General's Office – Specialized Unit for Sexual Crimes and Intra-family Violence
	Claudio Nash	University of Chile

	Oswaldo Pizarro Quezada	Public Defenders Office
	Andrés Rivera Duarte	Transsexual Organization for the Dignity of Diversity
	Roberto Carlos Rodríguez Manríquez	Prosecutor General's Office (Ministerio Público) – Specialized Unit for Intra-family Violence and Adolescent Criminal Responsibility
	Soledad Rojas	Chilean Network against Domestic and Sexual Violence
	Marcos Vásquez Meza	Investigative Police
Colombia	Isabel Agatón Santander	Centro de Investigación en Justicia y Estudios Críticos del Derecho
	Natalia Buenahora Streithorst	Attorney General's Office
	Alexandra Cárdenas	National Public Defense System
	Gloria Guzmán	Court of Bogotá
	Patricia del Socorro Hernández Zambrano	Prosecutor, National Justice and Peace Unit of the Attorney General's Office
	Uldi Teresa Jimenez López	Superior Tribunal of the Bogotá Judicial District
	María Dolores Morcillo Méndez	National Institute of Legal Medicine and Forensic Sciences
	Jackeline Salazar	National Police
Costa Rica	Carlos Valdés	National Institute of Legal Medicine and Forensic Sciences
	Jeannette Arias Meza	Supreme Court of Justice – Technical Secretariat on Gender
	Jorge Chavarria Guzmán	Attorney General's Office
	Eugenia Salazar Elizondo	Deputy Prosecutor, Domestic Violence and Sexual Crimes
Dominican Republic	Migdalia Brown	Public Defense
	Magaly Caram	Dominican Association for the Well-being of the Family (PROFAMILIA)
	Jacinto Castillo	National Judiciary School
	Lourdes Contreras	Technical Institute of Santo Domingo (INTEC) – Center for Gender Studies
	Héctor J. Díaz	National Police
	Olga Diná Llaverías	Attorney General's Office - Santo Domingo Province
	Francisco Domínguez Brito	Attorney General's Office
	Mirta Duarte	Criminal Appeals Court of the Duarte Province
	Lauro Emilio Durán	Attorney General's Office - Unit for Gender and Intra-family Violence and Sexual Crimes
	Ana Falette	National Institute of Forensic Sciences
	Martha Olga García Santamaría	Supreme Court of Justice
	Alejandrina Germán	Ministry of Women's Affairs
	Mariano Germán Mejía	Supreme Court of Justice
Iluminada González	Judicial Branch – Justice and Gender Observatory	


	María Grullón	National Institute of Forensic Sciences
	María Hernández	Attorney General's Office – Office of Legal Representation Services for Victims and Witnesses
	Carmen Rosa Aida Hernández de Pastor	Judicial Branch – Family, Childhood, Adolescence, and Gender Directorate
	Yanira Lara	Board of Trustees for Abused-Women Shelters (Patronato de Apoyo a Casos de Mujeres Maltratadas - PACAM)
	Natiaski Marmolejos	Attorney General's Office – Women's Affairs Department
	Teresa Martínez	National Police – Police Specialized in Gender-based Violence
	Zoila Martínez Guante	Ombudsman's Office
	Agnés Mirqueya Mateo Pérez	Autonomous University of Santo Domingo-Institute for Gender Studies and Research
	Deisy Indhira Montas	Trial Court of the Province of Santo Domingo
	Marilyn Pérez	Ministry of Women's Affairs - Department of Non-violence
	Susi Pola	Dominican Association for the Well-being of the Family (PROFAMILIA)
	Manuel Ramírez Suzaña	Appeals Court, San Juan de la Maguana
	Roxanna Patricia Reyes Acosta	Attorney General's Office
	Johanna Reyes Hernández	Attorney General's Office – La Vega Judicial District
	Yeni Berenice Reynoso	Attorney General's Office
	Dulce Rodríguez de Goris	Judicial Branch – Commission for Gender Equality
	Natividad Ramona Santos	Collegiate Court of the National District
	Isaura Suárez	Attorney General's Office – Province of Santo Domingo
	Yildalina Tatem	Judicial Branch – Public Policies
	Sarah Veras Alamanzar	Trial Court of the National District
	Luis Vergés	Center for Behavioral Interventions for Men
	Ana Andrea Villa Camacho	Attorney General's Office
Ecuador	Lucy Elena Blacio Pereira	Supreme Court of Justice
	Silvia Amparo Juma Gudiño	Attorney General's Office
	Karina Peralta	Council of the Judiciary
	Omar Esteban Sevilla Narváez	Ministry of the Interior
El Salvador	Silvia Mercedes Berrios Velásquez	Attorney General's Office – Unit for Crimes against Minors and Women within the Family
	Ima Rocío Guirola	Central American Feminist Network
	Silvia Juárez	Organization of Salvadoran Women for Peace (ORMUSA)
	Aura Mercedes Morales Guerrero	National Civil Police – Investigations Department
	Doris Luz Rivas Galindo	Supreme Court of Justice
	Paula Patricia Velásquez Centeno	Attorney General's Office

France	Daniele Laborde	Delegate of the Human Rights Ombudsman, Humanos, Marseilles
Guatemala	Thelma Esperanza Aldana de López	Specialized Court
	Aura Teresa Colindres Román	Attorney General's Office
	Aída Isabel Granillo Jordan	Attorney General's Office – Prosecutorial Office of Crimes against People's Lives and Integrity
	Angela Amelia León Chinchilla	Court for the Crimes of Femicide and Other Forms of Violence Against Women, Chiquimula
	Hilda Marina Morales Trujillo	Attorney General's Office –Department for Coordinating Victims' Assistance
	Alba Trejos	Presidential Commission for Addressing Femicide in Guatemala
	Miguel Angel Urbina	Independent consultant
Honduras	María Fátima Baide	Appeals Court
	Ingrid Figueroa	Prosecution Office - Women's Affairs, Specialized Femicide Unit
	Maritza Gallardo	OXFAM
	Gladys Lanza	Coalition of Women against Femicides (Tribunal de Mujeres contra los Femicidios)
	Mónica Maureira	OXFAM - Coalition of Women against Femicides (Tribunal de Mujeres contra los Femicidios)
Mexico	Ana Lorena Delgadillo	Fundación para la Justicia
	Julia Estela Monárrez Fragoso	College of the Northern Borden (Colegio de la Frontera - COLEF), Ciudad Juárez
	Patricia Olamendi Torres	Expert, Follow-up Mechanism to the Belém do Pará Convention
Nicaragua	Elinda Castillo Chevez	National Police – Commission on Women and Children
	Odett Emilia Leytón Delgado	Attorney General's Office Specialized Unit against Gender-based Violence
	Alba Luz Ramos Vanegas	Supreme Court of Justice
	Angela Rosa Acevedo	Judicial Branch – Technical Secretariat of Gender
Panama	Mayte Alemany	National Institute for Women's Affairs (INAMU)
	Dora Arosemena	National Institute for Women's Affairs (INAMU)
	Margarita Arosemena	Ministry of Interior
	Calixta Arroyo	National Institute for Women's Affairs (INAMU)
	Victor Atencio	School of the Attorney General's Office
	Rafael Baloyes	Attorney General's Office
	Roberto Barrios	Judicial Investigations Directorate
	Elayne Bressan	Institute of Legal Medicine and Forensic Sciences
	Eliska Candanedo	Institute of Legal Medicine and Forensic Sciences
	Arlene Castillo	Judicial Branch
	Maruquel Castroverde	Attorney General's Office
	Juana Cooke Camargo	International Planned Parenthood Federation (APLAFA)
	Abymelech Córdoba	National Institute for Women's Affairs (INAMU)

	Markelda Coronado	National Institute for Women's Affairs (INAMU)
	Elena Cossu	Attorney General's Office
	Luis Chang	Dirección de Investigación Judicial (DIJ)
	Irma de Arosemena	Judicial Branch
	Jennifer Delgado	Defensoría del Pueblo
	Trinidad Domínguez Vásquez	Judicial Branch – Center for Free Legal Assistance to Crime Victims
	Diana Garcia	Judicial Branch
	Geomara Guerra De Jones	Attorney General's Office
	Militza Hernández	Judicial Branch
	Miguel Angel Herrera	Attorney General's Office
	Sayuri Herrera	Institute of Legal Medicine and Forensic Sciences
	Anayansi Ibarra	National Institute for Women's Affairs (INAMU)
	Edna Jaramillo	Attorney General's Office
	Liriola Leoteau	Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) - Panama.
	Markelda Montenegro de Herrera	National Institute for Women's Affairs (INAMU)
	Gladys Morán	Attorney General's Office
	Vicente Pachar	Institute of Legal Medicine and Forensic Sciences
	Tulia Pardo	Attorney General's Office - School
	Marlene Pérez	FUNDALCOM
	Adolfo Pineda	Attorney General's Office
	Betzaida Pitti	Attorney General's Office
	Cristina Quiel	Judicial Branch
	Otilia Quintanilla	National Institute for Women's Affairs (INAMU)
	Abdiel Rentería	Institute of Legal Medicine and Forensic Sciences
	Angela Russo	Litigation attorney
	Aleyda Terán	Representative in Panama of the Committee of Experts for the Follow-up Mechanism to the Belém do Pará Convention (MESECVI)
	Rodmán Tristán	Attorney General's Office
	Gladys Vallester de Broce	National Institute for Women's Affairs (INAMU)
	Toribia Venado	National Institute for Women's Affairs (INAMU)
	Luz Marina Vergara	National Institute for Women's Affairs (INAMU)
Paraguay	Andrea Arriola	Supreme Court of Justice
	Maria Mercedes Buongermini Palumbo	Supreme Court of Justice – Gender Secretariat
	Porfiria Teresa Martinez Acosta	Attorney General's Office – Unit of Trafficking in Persons and Sexual Exploitation of Children and Adolescents

Peru	Gladys Acosta	Consultant
	Francisca Lucila Echaiz Ramos	Public Defenders Office
	Rosario López Wong	Attorney General's Office
	Ana María Mendieta Trefogli	Ministry of Women's Affairs and Vulnerable Populations – National Program against Familial and Sexual Violence
	Enrique Javier Mendoza Ramirez	Supreme Court of Justice
	Jeannette Llaja	Study for the Defense of Women's Rights (Estudio para la Defensa de los Derechos de las Mujeres - DEMUS)
Spain	Juan M. Cartagena	Forensic Doctor, Specialized in Legal Medicine
	Emilio Ginés	Federation of Associations for the Defence and Promotion of Human Rights
	Miguel Lorente	Professor of Legal Medicine, University of Granada
Venezuela	Jesús Gerardo Peña Rolando	Attorney General's Office
	Octavio José Sisco Ricciardi	Supreme Court of Justice
Uruguay	María de los Angeles Camiño Moreno	Prosecutor's Office
	Julio Ernesto Olivera Negrin	Supreme Court of Justice
International Institutions	Luz Entrena	Conference of Ministers of Justice of Ibero-American Countries (COMJIB)
	Raquel Lozano Marcos	COMMCA/SICA
	Luz Patricia Mejía Guerrero	Inter-American Commission of Women
	Laura Monge Cantero	Central American and Caribbean Council of Public Prosecutors
	Miriam Martha Torrez Sánchez	Commission of Police Chiefs and Directors of Central America, Mexico, and the Caribbean
	Glenda Alicia Vaquerano Cruz	Central American Integration System (SICA) Security Division
UN Agencies	Bibiana Aído Almagro	UN Women
	Camilo Bernal	OHCHR - Consultant
	Verónica Birga	OHCHR
	Iris Blanc	UN Women
	María Carrasco Pueyo	OHCHR
	Carmen De La Cruz	UNDP
	Tilcia Delgado	OHCHR
	Caterina De Tena	UN Women
	Gabriela Dutra	UNDP
	Ibett Estrada	OHCHR - Consultant
	Jeannie Ferreras	OHCHR
	Laura Flores	UNFPA
	Nadine Gasman	UN Women
Harold Guerra	UN Women	

	Soraya Hoyos	UN Women
	Freddy Huaraz	OHCHR
	Amerigo Incalcaterra	OHCHR
	Maria Isabel Miguel	UN Women
	Clemencia Muñoz	UN Women
	Maria Soledad Pazo	OHCHR
	Eider Pérez de Heredia	UN Women
	Silvia Pimentel	CEDAW Committee
	Moni Pizani	UN Women
	Carmen Liliana Reyes	OHCHR
	Elisabeth Robert	UN Women
	Françoise Roth	OHCHR
	Dayanara Salazar	UNFPA
	Kathy Taylor	UNFPA
	Carmen Rosa Villa	OHCHR
	Walter Vizcarra	UNODC
	Margarita Zambrano	OHCHR



The relevance of the Model Protocol stems from the fact that its aim is practical, its content responds to a clear demand coming from national institutions, and the process through which it was developed was participative and involved professionals from justice systems across all of Latin America. It is an example of the joint work of the United Nations with national and regional institutions and organizations. This joint work allowed for the latter's knowledge and experiences to be highlighted and incorporated into the development a tool that contributes to tackling and challenging the lack of accountability for lethal violence against women.

Professor Rashida Manjoo

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