

Sofia University "St. Kliment Ohridski"

European Master's Degree in Human Rights and Democratisation
A.Y. 2016/2017

“Sorry for the inconvenience, we are being killed”-
The complicity of the Mexican State on the face of femicide

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Abstract

Everyday 6 women are killed in Mexico. Femicide is a term made popular by the women killed in Ciudad Juarez, however it is now a global phenomena. Nevertheless Mexico, was the first country to receive an international court sentence on this subject, and will remain this thesis subject of study. The Mexican has signed and ratified all of the international and regional instruments on women's rights, it has received the biggest number of recommendations on this subject matter and has reformed its legislation and criminal code to typify this form of violence. Why is it then that the number of feminicides continue to increase? Why has the Mexican State failed in protecting women against this form of violence? This is the question developed on this research. The thesis starts with the importance of defining concepts, it mentions the various international instruments and mechanisms for women's rights that acknowledge this form of violence, and finishing with an analysis of the Mexican framework, concluding that it is not that Mexico is incapable of protect women against femicide, but by perpetuating gender violence, corruption, impunity, and continuously dismissing the victims the State is complicit to the crimes.

Acknowledgements

My gratitude to Prof. Pantev and Prof. Natov, for their infinite patience and warm hospitality. Bulgaria will always hold a special place in my heart, Благодаря!

To my friends, old and new, my life would suck without you.

To three accents, one lunch. The most wonderful and rich two weeks a close-to-nervous-breakdown girl could ask.

To Gustavo, for the over 15 years of laughter and support. You always remind me to believe in me.

To Don Rudy and Iritos, I am because of you. Your love, understanding and endless support continue to amaze me and fill me with joy. The amount of empathy and love you have for others is what has brought me here. All I want is to make you proud.

To my Mexico, because I believe it can be better.

This thesis may not reach a greater audience, and it may not actively change the situation of women in Mexico, but by writing it I am being witness. I am using this writing as a platform for change. I am using this writing to support the families that relentlessly fight for justice and won't let the subject be shove under a carpet and forgotten.

This is an ongoing fight.

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Introduction

In the five months it took this thesis to develop over 800 women were killed in Mexico. 90% of those murders will never see justice. The relevance and emergency of this pandemic is what drove me to write this thesis, what if it were your friend? What if it were your sister? Mother? Daughter? What if it were me? Femicide is a global issue that demands global attention and response, but for time constrict reasons I will focus on the country that put the term on the map. Over twenty years have passed since the concept of femicide was first used to describe the killing of women in Ciudad Juarez, but now it is synonym of an epidemic afflicting the whole country. Ever since ‘Las Muertas de Juarez’ capture the attention of international and human rights organisations, the Mexican State has been issued over a hundred recommendations to change its legal system and typify the form of violence in its criminal code, it would appear that nothing has change, but it has. Mexico has made reforms to its legislation and has added femicide to its criminal code, and yet everyday 6 women get killed in Mexico.

Why has the Mexican State failed to protect women in the face of femicide? This is the question to answer from this thesis. Two fundamental factors have characterised the murders of women in Mexico, the lack of clarification of these crimes and the irregularities in the investigations of them, which has generated an environment of impunity. Besides the lack of reliable figures that would allow us to grasp the real dimension of this phenomena, irregularities between the official numbers emitted by the different governmental entities in the local and federal ambit, and the numbers gathered by civil society organisations dedicated to the defence of human rights and women’s rights have shown the intention of the government to hide relevant information.

In on of the visits by the UN Special Rapporteur Yakin Ertürk she described violence against women in Mexico as “resembling only the tip of an iceberg with more systemic and complex problems lurking below the surface, which can only be understood in the context of socially entrenched gender inequality on the one hand and a multilayered governance and legal system that does not effectively respond to violent crime, including gender-based

violence, on the other hand¹.” There is a problem when a State is not able to deal with a situation that has been ongoing for more than twenty years, in times of war or peace, that affects all social backgrounds. Where are the political, judiciary institutions going wrong. Why is the State failing us? Is it because of our typical macho culture? Is there such a misogynist problem rooted in our institutions? Is it a lack of resources? Is it just that the government is so corrupted and hungry for power that it does not care? Mexico has ratified the instruments on women’s rights, has adopted the mechanisms to prevent and eradicate violence against women, and has change its legislation and criminal code according to the recommendations and sentences received, proving that we do have the framework and mechanisms to implement the protection needed, which leads me to the hypothesis of this research. It is not that Mexico is incapable of protecting the women, it has the legal framework and mechanisms in place to do so, it is that it doesn’t care to.

This research was conducted using an interdisciplinary approach that was based on the feminist analysis of gender-based violence, violence against women and feminicide, from where our first chapter will begin. The research is divided in three sections, firstly the importance of defining and naming concepts and using a multidisciplinary approach with a feminist perspective will be discussed, followed by the recognition that although this thesis is focused on the epidemic in Mexico, this doesn’t mean that it is not present globally and the international framework and mechanisms for protection of women’s rights will be addressed, lastly we will focus on the evolution of this pandemic in Mexico and confirm if the inactivity of the state is due to lack of capacity or lack of will.

In the first chapter the objective is to provide a clear definition and difference of femicide and feminicide as well as to review the response from the feminist theory. High levels of femicide are often accompanied, and in some cases generated by, a high level of tolerance for violence against women, so the chapter will start from there². Violence against women is one of the most common and naturalised expressions of social violence. As Polly

¹ ECOSOC, Report by Special Rapporteur Yakin Ertürk, 2006/01 E/CN.4/2006/61/Add.4

² Geneva Declaration Secretariat., Global Burden Of Armed Violence 2011 (Cambridge Univ Pr 2012).

Neate said “The fact is, that women are abused because they are women: because we as women are not equal. Abuse feeds off our inequality - and abuse feeds our inequality too³.”

The objective of the second chapter is to analyse the global scale of femicide and the response and recommendations from the most important international and regional institutions. This chapter will also help prove that feminicide is no just a “developing world” problem by using the experience of international and regional organisations, such as the United Nations, Council of Europe and the Organisation of American States. The instruments, mechanisms and frameworks provided will be analysed as well as the relation this organisations have had with the Mexican State when it comes to feminicides.

The objective of chapter three is to assess how feminicide has change in Ciudad Juarez in the past 20 years, find out how the rise of organised crime affected the phenomena of feminicides in the country, and review Mexico’s legal framework specific to violence against women and feminicide. On this chapter I argue that feminicide is a State tolerated crime, important statistics will be shared as well as the reaction of the corresponding authorities to this form of violence. Femicide constitutes a serious violation of human rights and Mexico was the first State to receive a sentence from an international court on the subject, this case will also be briefly mentioned as it also influence the creations and reform of laws and mechanisms to fight feminicide.

Whilst the subject is very important to me, and they where thousands of cases I tried to include, because of time and space restriction they are not mentioned, but this doesn’t mean they go unnoticed or weren’t consider for arriving to the conclusion. Femicide is a hard topic, but one that has to be constantly brought to light so that the crimes don’t go unnoticed in a patriarchal, gender divided society.

³ 'How You Can Help Grow Solidarity And Sisterhood For All Women Everywhere' (HuffPost UK, 2017) <http://www.huffingtonpost.co.uk/polly-neate/all-women-everywhere_b_15208948.html> accessed 30 June 2017.

Chapter 1

Why has the Mexican State failed on the face of femicide? In order to address this question I need to first establish the slow and difficult acknowledgement of the existence of violence against women. On this first chapter I will discuss the basis of this extreme representation of discrimination by first defining where it came from with the first section defining what and how Gender-based violence has evolved. On the second section I will define and differentiate femicide and femicide as two complementing but not interchangeable terms and the debate that the concepts have sparked. On the third section I will speak about feminism and the importance this theory has had for the establishment of this concept and its inclusion in the academic, legal and day to day vocabulary.

1.1 Gender-Based Violence

Femicide and femicide evolve from the basis of Gender-based Violence (GBV), but before I address the evolution, I feel it is important to establish what is GBV. Firstly, there is an ongoing debate between the definition of gender vs. the definition of sex in the feminist discourse that should be mentioned. The first chapter of this thesis could be dedicated solely to this debate, however I'll just mention the key differences that have been stated by feminist academics and how they reflect on the overall definition. The debate does have an impact on how the concepts are defined and interrelated, impacting other definitions. I agree with Aleida Lujan Pinelo when on her thesis she poses the question "if both sex and gender are socially constructed, why do we have a need to differentiate them?" In some definitions the terms women, sex and gender do appear as synonyms, however they should not be assumed as the same⁴. Whilst it is important to conceptualise the terms of 'gender' and 'sex' the difference in opinion does not impede their use in creating an inclusive definition of GBV and its different manifestations. Gayle Rubin, for example, makes a distinction between the

⁴ Aleida Lujan Pinelo, 'A Theoretical Approach To The Concept Of Femicide/Femicide' (MA, Erasmus Mundus Master's Degree in Women's and Gender Studies 2015)

psychological and the biological characteristics of 'gender' and 'sex'. She defines gender as the "arbitrarily designed social determination and hierarchical organisation of the sexes⁵." According to Judith Butler, "Sex is to be understood depending on the field of power in which it is articulated" meaning that even though there is a body that scientist recognise as male or female, the way we use language to communicate will carry a culturally constructed meaning of 'sex'⁶. Anne Fausto-Sterling states that gender is a social construction and in order to see how it works we must analyse how sexes are constructed under a dualistic paradigm⁷. Joan Scott defines gender as "a constitutive element of social relationships based on perceived differences between the sexes and a primary way of signifying relationships of power"⁸. In the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 'sex' refers to the biological and physiological differences of men and women, and at the same time they make the distinction that it may not always be possible to define sex along clear divided lines of male-female only as it is made evident by inter-sex individuals.⁹ The Convention also refers to 'gender' as identities, attributes and roles of women and men that are socially constructed that result in hierarchical relationships and in an unequal distribution of power and rights that favours men and disadvantages women. Recently, feminists, in a more literal and serious manner have started to apply 'gender' as a way to refer to the social organisation of relations between the sexes. With the new feminist wave it became obvious that speaking about 'women' was analytically insufficient, specially if we wanted to understand how discrimination worked. The concept of 'gender' started to be used instead of 'women' which service in analysing how we can interpret sexual diversity

5 Gayle Rubin, *The Traffic In Women: Notes On The "Political Economy" Of Sex* (1975) <<https://genderstudiesgroupdu.files.wordpress.com/2014/08/the-traffic-in-women.pdf>> accessed 14 May 2017.

6 Judith Butler, *Gender Trouble. Feminism And The Subversion Of Identity* (Routledge 1990).

7 Anne Fausto-Sterling, 'THE FIVE SEXES' (1993) 33 *The Sciences*.

8 Joan W. Scott, 'Gender: A Useful Category Of Historical Analysis' (1986) 91 *The American Historical Review* <<http://dsyr.cide.edu/documents/302584/303331/02.-Scott.pdf>> accessed 16 May 2017.

9 United Nations (1993, December 20). 'A/RES/48/104. Declaration On The Elimination Of Violence Against Women' (Un.org, 2017) <<http://www.un.org/documents/ga/res/48/a48r104.htm>> accessed 16 May 2017.

and what roles, attitudes, desires, interests and spaces are assigned to people based solely on the anatomy they are born with¹⁰.

With this in mind I move towards Gender Violence as a practice used to showcase manliness and the power domination towards women or other men, to impose the will and desires of ‘macho-men’ towards women or men considered weak, and although GBV is described to be the violence practiced against women, it is in fact the result of a structural discrimination, a subordination culture, and a patriarchal dominance that also includes the forms of violence that, based on the predominance of heterosexuality and gender stereotypes, lesbians, gays, travesties and transgender individuals are subjected to. The incorporation of the category of ‘gender’ has been fundamental to understand the diverse forms of violence that are based on stereotypes and gender discrimination. International organisations have begun to distinguish the forms in which GBV targets women versus other subjects/minorities that are also victims of this form of violence effectively evolving the common use of GBV, that was used interchangeably to describe violence against women (VAW) and made invisible other forms of violence where gender plays an important role. Nonetheless it is a slow development and GBV, VAW are still used as transposable synonyms, focusing on specific forms of violence that women suffer just because they are women, and which occur under a patriarchal structure. Even if they continue to be used interchangeably the one thing they do share is that patriarchy constitutes the structural base which fundamentals gender violence.

The European Institute for Gender Equality stresses the importance to “retain the gender-based aspect of the concept as it highlights the fact that violence against women is an expression of power inequalities between women and men”¹¹. For the purposes of this thesis we will focus on GBV and its current impact and representation of violence that is targeted against women for the sole fact that they are women keeping in mind that this concept, GBV, is evolving to include others forms of violences that are gender motivated. As Catia Confortini so eloquently put it “...gender relations are implicated in the very creation of

¹⁰ Estefania Vela Barba, 'El Feminismo, La Violencia En Contra De Las Mujeres Y Los Hombres' (El Universal, 2017) <<http://www.eluniversal.com.mx/blogs/estefania-vela-barba/2015/11/27/el-feminismo-la-violencia-en-contra-de-las-mujeres-y-los>> accessed 17 May 2017.

¹¹ 'What Is Gender-Based Violence?' (EIGE, 2017) <<http://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>> accessed 3 June 2017.

violence. Violence is both made possible by the existence of power/gender relations, and power/gender relations rely on violence for their reproduction. Violence and gender are involved in a relationship of mutual constitution”¹². “Gender-based violence is the general term used to capture violence that occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between the two genders, within the context of a specific society.”¹³

VAW is a tale as old as time, however, it wasn’t until the late 1980s that this form of violence became a point of discussion on international human rights law forums. The UN, for example, provided a definition until 1992, it was recognised as a form of discrimination against women and it is was defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately,” making it clear that violence against women was not a random act, but something that targeted women because of their gender, on this power inequality relation. The following year on December of 1993 the Declaration on the Elimination of Violence against Women was established and will be discussed on the second chapter of this thesis. There are different forms of violence against women that are gender-based and they are covered by the declaration, both physical and non-physical, which I think is pertinent to mention to understand how VAW escalates. It consists of domestic violence, physical violence, sexual violence¹⁴, psychological violence, threats of violence or harm, emotional violence, isolation, and economic violence¹⁵. CEDAW also imposed that violence against women could be committed in the family or community and most importantly, for international human rights law, article 2 of CEDAW stated that violence against women could be committed by the State with “poorly drafted or unenforceable laws for VAW, law enforcement agents who violate women, the lack of facilities and education for prevention and treatment of women exposed to violence. The state’s indifference and neglect

¹² Catia Confortini, 'Galtung, Violence, And Gender: The Case For A Peace Studies/Feminism Alliance' (2006) 31 Peace & Change.

¹³ Shelah S Bloom, Violence Against Women And Girls (MEASURE Evaluation, Carolina Population Center 2008).

¹⁴ Which includes within its category up to 11 forms of sexual violence available on the WHO guidelines

¹⁵ 'Defining Gender-Based Violence | The Response To Gender-Based Violence In Eastern Europe And Central Asia' (Health-genderviolence.org, 2017) <<http://www.health-genderviolence.org/training-programme-for-health-care-providers/facts-on-gbv/defining-gender-based-violence/21>> accessed 27 May 2017.

in creating opportunities for women in regard to employment, education, participation and access to social services”¹⁶. This last definition is the closest the UN has gotten to the definition of femicide that will be mentioned on the following section. It is also worth to keep present going into the third chapter, when the actions of the Mexican State will tick all of the boxes on VAW by the State.

The evolution of GBV as a concept now includes violence committed against men, boys, and sexual minorities or those with gender-nonconforming identities, which means that VAW is just one of the representations of GVB, and even though GVB is becoming more mainstream in international arena’s and between human rights movements, the United Nations Population Fund describes GBV as “one of the most pervasive, under-reported and unaddressed human rights violations in the world”¹⁷ this continues to be because of gender inequality in all areas of life, but the reason that statement carries importance and gravity is that the most extreme representation of violence against women, femicide and femicide, is also one of the least discussed. Femicide and femicide are not isolated incidents that arise unexpectedly, but rather a final act in a sequence of gender-base discrimination and whilst the appearance of this discrimination and violence include different types, as I mentioned previously, the thing that they all have in common is the socio-political and economic disempowerment of women and systematic disregard for the equal enjoyment of human rights by women¹⁸. In the next section I will make the distinction on the use of this two concepts and why I will continue to discuss this phenomena as femicide over femicide.

1.2 Femicide or Femicide?

Fortunately this is not a case of what came first, the chicken or the egg, that is not where the birth of this debate derives from. It is clear that the first term to be used to describe

¹⁶ Combating Gender-Based Violence: A Key To Achieving The MDG (UNFPA, UNIFEM, OSAGI 2005) <https://www.unfpa.org/sites/default/files/pub-pdf/combating_gbv_en.pdf> accessed 27 May 2017..

¹⁷ UNFPA Engagement In Ending Gender-Based Violence <http://www.unfpa.org/sites/default/files/resource-pdf/UNFPA_Brochures_on_GBV_Prevention_and_response.pdf> accessed 28 May 2017.

¹⁸ Gender-Related Killings Of Women And Girls (Office of the High Commissioner for Human Rights 2013) <http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Gender_motivated_killings.pdf> accessed 18 May 2017.

this form of violence was the anglo-saxon Femicide. It was first used by American feminist-sociologist Diane Russell in the first International Tribunal on Crimes Against Women in Brussels, Belgium in 1976 when she defined it as “a hate killing of females perpetrated by males”. In this same conference she stated “We must realise that a lot of homicides are in fact femicides. We must recognise the sexual politics of murder. From the burning of witches in the past, to the more recent widespread custom of female infanticide in many societies, to the killing of women for ‘honour’ we realise that femicide has been going on a long time. But since it involves mere females, there was no name for it”. By developing the term Russell intended to highlight and stigmatise a specific type of crime and by giving this crime a name she hoped it would be a step toward reducing the phenomenon worldwide. The definition that Russell gave to femicide has evolved with the years and with research, but the importance is ever present as emphasised on 2011 by Rashida Manjoo the United Nations Special Rapporteur on violence against women on her report that affirmed the importance of adopting a clear definition of femicide in order to carry out effective investigations and prosecutions of these legal crimes¹⁹. Why is creating a term and providing it with a definition so important? Russell explains it herself when she remembers the work of Prof. Catherine MacKinnon’s creation of the term sexual harassment and how its creation was necessary before laws could be formulated. The importance of developing a term for sexist/misogynist killings, therefore, was a prerequisite for feminist groups to organise and combat this forms of violence against women and girls²⁰.

The first print of the definition of femicide was in the co-edited book by Diane Russell and Jill Radford titled ‘Femicide: The Politics of Woman Killing,’ it was defined as “the misogynist killing of women by men²¹.” Russell, alongside Dr. Jane Caputi, defined femicide as “the murder of women performed by men motivated by hate, contempt, pleasure or a sense of ownership of women,”²² and as an act of the most extreme form of sexist

¹⁹ Rashida Manjoo, Report of the Special Rapporteur on violence against women, its causes and consequences. Submitted to the United Nations General Assembly, (August 1, 2011)

²⁰ 'Origin Of Femicide' (Dianarussell.com, 2017) <http://www.dianarussell.com/origin_of_femicide.html> accessed 28 May 2017.

²¹ Jill Radford and Diana E. H Russell, *Femicide : The Politics Of Woman Killing* (Twayne Publishers 1992).

²² Jane Caputi and Diana E. H Russell, *Femicide: Speaking The Unspeakable* ([sn])

terrorisms. Nine years later Russell redefined the term in the co-edited book 'Femicide in Global Perspective' as "the killing of females by males because they are female" and it is this definition that has remain as focus of her work. Femicide does not distinguishes between developed or developing countries, between social classes or ethnic background, the goal in the exercise of this form of violence by men, deliberated or not, is to preserve the male supremacy. It is a political concept that allows the visualisation of the subordination, inequality, marginalisation and at risk position that women find themselves in, just because they are women. Russell and Caputi also agreed that calling a misogynist killing femicide aided in removing the "obscuring veil of non-gendered terms such as homicide and murder²³". Femicide is "a representation of the extreme end of a continuum of anti-feminine terror that includes a wide variety of verbal and physical abuse, such as rape, torture, sexual slavery, incestuous and extra-familial child sexual abuse, physical and emotional battery, sexual harassment, unnecessary gynaecological operations, forced sterilisation, forced heterosexuality, forced maternity, among others that result in death²⁴" becoming femicides.

The term Feminicide was developed in Latin America, as an evolution of the original 'femicide'. Since the introduction of the term in this region there has been an ongoing academic debate on the relevance of using the translation as *femicidio* or *feminicidio*, the scope of their theoretical definition and the different types of feminicide. Mexican feminist and anthropologist Marcela Lagarde first introduced the concept in 1994 as part of the feminist theoretical background, after she was approached and asked to help investigate the killing and disappearance of women in Ciudad Juarez. She based her work and definition on the concept developed by Diane Russell and Jill Radford on their book *Femicide: The politics of women killing*, but decided not to translate femicide as *femicidio* instead using *feminicidio* or feminicide in english. She explained that *femicidio* is homologous to *homicidio*, homicide, and so it translate as the feminine equivalent of homicide leaving the political component

²³ Diana Russell and Jane Caputi, 'Femicide: Sexist Terrorism Against Women', *Femicide : The Politics Of Woman Killing* (Twayne Publishers 1992).

²⁴ Diana Russell and Jane Caputi, 'Femicide: Sexist Terrorism Against Women', *Femicide : The Politics Of Woman Killing* (Twayne Publishers 1992).

absent²⁵. Femicide connotes not only the murder of women by men because they are women but also indicates the States' responsibility for these type of murders whether it be by the actual killing, toleration of the perpetrators' acts of violence, or omission of State responsibility to ensure the safety of its female citizens. As Marcela Lagarde has noted in her work on femicide in Ciudad Juarez, "Femicide occurs when authorities fail to efficiently carry out their duties to prevent and punish [the killing of women] and thus create an environment of impunity"²⁶. Lagarde also identified another pre condition for the presence of femicide and that is the non-existence of the rule of law, under which this type of unlimited violence and unpunished murders take place, also known as impunity. By using femicide Lagarde makes a distinction naming it as a crime against humanity that encompasses the violence, kidnapping and disappearance of girls and women under a scheme of institutional collapse. Femicide involves a fracture on the rule of law that favours impunity and that exists both in times of war and in times of peace indiscriminately. In *Femicidio, delito contra la humanidad* Lagarde explains that femicide happens when the historic conditions generate social practices that are not only hostile but also aggressive and attack the integrity, development, health, liberties and life of women. For the perpetuation of femicide to continue factors like silence, omission, negligence, the complicity of the authorities in charged of preventing and eradicating this crimes and their failure to perform their functions effectively need to exist. When the State fails, impunity rises and femicide does not end, making it a State crime. Femicide follows an ideological and social environment of machismo and misogyny, of normalised violence against women, where legal absences and non existing government policies which in turn generates an insecure existence for women and supports this type of crime. With this Lagarde points to the State's responsibility in prevention, treatment and protection of women against gender violence and should guarantee their liberty and life. The absence of sanctions and punishments for the killers makes the State responsible by action or omission of femicide and should assume its complicity or

²⁵ Elena Laporta, 'Evolución Del Concepto. Un Anglicismo Que Se Desarrolló En Amé- Rica Latina', *Femicidio. De la categoría político-jurí- dica a la justicia universal* (Catarata 2015).

²⁶ Marcela Lagarde, 'Claves Feministas En Torno Al Femicidio. Construcción Teórica, Política Y Jurídica', *Femicidio en América Latina* (UNAM 2011).

direct responsibility. Legarde makes it clear that both gender violence and femicide constitute a political problem and its treatment and solution are a pending subject of current States.

Another big exponent of femicide is Mexican sociologist Julia Monárrez who in the time she has studied this phenomenon has developed new analysis tools, ways for documenting and registering the different types of femicide. Her work has become key to decipher the atrocities connected to the killing of women in Ciudad Juárez, the impunity of the Mexican State and the lack of response from authorities to the growing drug war, in her investigation she says of femicide “The analysis of femicide can present problems with relation to the gathering of data. The disadvantages include the lack of knowledge of the exact number of women killed, the causes or reasons that led to this type of murder and the lack of reliability of the statistics. In the case of Mexico, as many others in Latin America and around the world, this is because national statistics don’t register a motive, the relationship between the victim and the offender, nor the different forms of violence that these women suffered before they were killed. It doesn’t show their address or the place where the corpses were found. When confronted by this situation it is clear the necessity to search for alternative methods to understand femicide better.”²⁷

In Central America sociologists Ana Carcedo and Montserrat Sagot from Costa Rica agreed with Jill Radford and Diane Russell in the term femicide, and they translated it as *femicidio*. They agreed that by using femicide they are targeting the “neutral” terms of homicide and murder and that the concept was useful because “it indicates the social and generalised aspect of violence based on gender inequality and it distances us from individualised, naturalised, or pathologised approaches that tend to blame the victims, and represent assailants as “crazy”, “out of control” or “animals” or to classify this deaths as the result of ‘crimes of passion’”. They advocate that the concept of femicide helps debunk the argumentation that gender violence is a private or personal matter and it shows its social and

²⁷ Julia Monarrez, “Las Diversas Representaciones Del Femicidio Y Los Asesinatos De Mujeres En Ciudad Juárez, 1993- 2005”’, *Violencia contra las mujeres e inseguridad ciudadana en Ciudad Juárez*, Vol. II, *Violencia infligida contra la pareja y femicidio*, México (El Colegio de la Frontera Norte y Miguel Porrúa 2010).

political characteristic, the outcome of relationships of power, domination and privilege between men and women in society.²⁸

From the previous definitions we can highlight that femicide and feminicide are used in different cultural and political circumstances but that they ultimately define and characterise a similar problem while at the same time including or excluding a particularity that the other concept provides and yet whether to use one concept or the other has proven to cause great debate, specially between feminist in Latin America. It is important to acknowledge that *feminicidio* is not a Spanish version of femicide but a link to the structural and systemic conditions of globalisation, development models and human development that enable and even conceal these murders leaving them invisible and unpunished.²⁹ Femicide and feminicide are political terms.

Conceptually, feminicide encompasses more than femicide because it holds responsible not only the male perpetrators but also the state and judicial structures that normalise misogyny. Impunity, silence, and indifference each play a role in feminicide³⁰. I consider the terms not antagonist but ally, both enrich the other and deepen their meaning. Some theorists would rather use both terms as interchangeable, advocating for the joining of forces against the same target instead of the fracturing of possible networks, between those that prefer to use femicide versus those that prefer feminicide, and there are others, like Diane Russell, that disprove altogether the use of feminicide. She gives a series of reasons on why this is, explaining that now there comes distressed when the term feminicide is used rather than femicide, she argues that if perpetrators of feminicide are arrested and imprisoned, then they are no longer consider feminicides to which I would respond that they are in fact no longer feminicide, but femicide. She says that it is preferred to have a global term because “while impunity may also be common in many other countries (apart from Mexico), this is not always the case, many femicides in the US or UK, for example, are prosecuted, and many

²⁸ Ana Carcedo and Montserrat Sagot, *Femicidio En Costa Rica, 1990-1999* (Consejo Directivo de Violencia Intrafamiliar del Sector Salud 2002).

²⁹ M. P. Castaneda Salgado, 'Feminicide In Mexico: An Approach Through Academic, Activist And Artistic Work' (2016) 64 *Current Sociology*.

³⁰ Victoria Sanford, 'From Genocide To Feminicide: Impunity And Human Rights In Twenty-First Century Guatemala' (2008) 7 *Journal of Human Rights*.

of the perpetrators are sentenced and incarcerated.”³¹ I have to completely disagree with her arguments, particularly the last one, it reminds me of a colonialist mindset that does not consider representation or diversity in its definition, of course not all countries suffer of impunity on their justice system, but just because they don’t that doesn’t mean that it is not one of the major problems in addressing this phenomena any where else. By using as an example two of the global north countries she is limiting the scope of her analysis to a very small percentage.

As Monarrez presents it, both terms work together to fight violence against women and one should not be preferred over the other, but we should look towards the meaning of each so we can classify the crime accordingly. With this in mind she acknowledges that there is a difference between femicide and femicide and that the terms should not be used interchangeably, but that they do complement each other and there is no reason both of the terms can’t coexist in the feminist school. For her, femicide takes into consideration in its definition a series of factors like the unequal relationship between genders, the power structure and control men have over women and girls so they can dispose the moment of their death, the reasons that they draw upon to justify the murder, the violent acts that are performed on the victims body, the relationship or kinship between the victim and offender, the structural changes in society, the lack of investigation and prosecution of justice that result in the responsibility and/or complicity of the State. Femicide, she explains, will be understood as the killing of a women because of reasons associated with her gender. Femicide is the most extreme form of gender-based violence, understood as the violence exercised by men against women in their desire to obtain power, domination or control³². I don’t understand why for one term to exist it must ‘override’ or eliminate the other, it surprises me that Russell is so poignant in undermining the term femicide when it was she that first implied the importance of naming properly a crime in order to fight against it. Once you learn the definition of femicide it is clear for me the importance of having this term

³¹ Diane Rusell, 'Origin Of Femicide' (Dianarussell.com, 2017) <http://www.dianarussell.com/origin_of_femicide.html> accessed 30 May 2017.

³² Graciela Atencio, FEMINICIDIO-FEMICIDIO: UN PARADIGMA PARA EL ANÁLISIS DE LA VIOLENCIA DE GÉNERO (2011) <<http://www.infogenero.net/documentos/FEMINICIDIO-femicidio-paradigma%20para%20su%20 analisis-Graciela%20Atencio.pdf>> accessed 29 May 2017.

exist as it precisely names the misogynistic killing of women and the inaction of a State that was supposed to be the guardian of their citizens and it is why I will continue to use this as the basis of the rest of the thesis.

With that in mind and considering all the definitions both of feminicide and femicide academics have identified 16 different types of feminicide, this being because given the circumstances in which they occur, these crimes change in *modus operandi* though the general premise of “for gender reasons” stays the same. Patricia Olamendi collected the different types of feminicide described by the OHCHR in her book as following: Intimate, Non Intimate, Infantile, Familiar, By Connection, Unorganised systematic sexual feminicide, Organised systemic sexual feminicide, by prostitution or stigmatised occupations, by trafficking, by smuggling, transphobic, lesbophobic, racist, and by genital mutilation³³.

All of these crimes have as a common thread the view of women as usable, expandable, disposable objects and they are a combination of what some feminist theories consider as femicide and others feminicide. So to me the importance that these two terms are working together and not against each other is of utmost importance, specially for the feminist school. The concept of femicide contributes to it by using a thorough explanation of how the female gender condition is rooted in sociocultural constructions that transform the difference between sexed bodies into ideological bases of inequality and domination. The concept of feminicide, as Lagarde explains it, introduces a linguistic stress on the female condition and questions at the same time the social motives and the impunity derived from the lack of decisive action on the part of the state to prevent, punish and eradicate violence against women.

It is clear to me that instead of working against each other and pitching theorists against one another, we can use the terms as complimentary and this will help not only the feminist school, but the social movement and activism to stop this phenomena. Both terms are different and should not be used interchangeably but they are equally meaningful to describe this urgent problem and emphasise the violation of women's human rights. The feminist school may not yet be in agreement with the use of both concepts, but it has been the propeller of the terms to the mainstream of studies, policies and international frameworks and

³³ Patricia Olamendi, *Feminicidio En Mexico* (1st edn, INMUJERES 2016).

in the following section I will discuss how feminism has provided feminicide and femicide with a platform from where the concepts have been adopted in different academic backgrounds and have been used, based on the feminist studies, to develop policies on and research the phenomena.

1.3 Feminism, Femicide and Feminicide

Many feminists identify feminism as a critical theory but one that affirms that in criticising a concept, there is a recognition that when you introduce it in a new surrounding, it loses some of its components and characteristics while at the same time it gains others that transform it³⁴. This is a definition that I find represents a focal point in the femicide and feminicide debate, this understanding of critical theory defines that a critique is not a negation or dismissal of a previous existing concept, so when some scholars and theorists are using the term feminicide they are not trying to replace and eliminate femicide, one does not discredit the transformative and political potential the other can have, but enriches it to represent the needs of different societies³⁵. By using this asseveration I don't mean to discredit the ongoing debate between different schools of feminism and feminist theories, but in my opinion this debate becomes opaque compared with the urgency there is to address the global phenomena. I referenced the feminist critical theory because we can acknowledge how a concept created in English to identify and address a crime that had no previous advocates or definition, when translated to Spanish carried on the meaning and ideas, while also transforming into a concept that described not only the particularities of the same fundamental problem, but also addressed the difficulties that were not reflected by the previous term considering the social and historical backgrounds. Elizabeth Grosz defines the feminist philosophy as one where the invention of new practices, values and techniques reorient problems and open up new concerns, other than the ones established by patriarchal,

³⁴ C. Corradi and others, 'Theories Of Femicide And Their Significance For Social Research' (2016) 64 *Current Sociology*.

³⁵ Aleida Lujan Pinelo, 'A Theoretical Approach To The Concept Of Femicide/Feminicide' (Master's Degree, Erasmus Mundus Master's Degree in Women's and Gender Studies 2015).

racist and colonialist theorist³⁶. By naming the problem, feminist theorist gave one of the major contributions to the fight against femicide and feminicide. Creating a gender perspective and separating the gender-neutral term of homicide from femicide brought to the attention of society the gender-based evidence of woman-killing in a way that is different from the killing of men, even if men are murdered more frequently than women, they are rarely murdered because of their gender. This relation between the feminist theory and feminicide is more than just the first studying and defining the later. With the diffusion and growth of the feminist movement, theorists agree that the social emergence of women and the questioning of the male ways of domination have increased violences toward them. The appropriation of their own bodies, the transformation in their reproductive life and sexuality and their economic and political empowerment threaten the 'status quo' of male domination. Inchaustegui proposes a hypothesis in which she explains that violence against women, including feminicide, are mechanisms of male domination "acting to contain women's advances and preserve men's dominant positions in the whole of social life."³⁷ But by giving a name to this form of violence, feminists woke the attention of society, activists and policy makers around the world, for, as Russell described, "You can't mobilise against something with no name³⁸." Rivera classifies this as part of the 'politics of naming' school of thought, meaning that when you name and give a meaning to a concept it produces a change in reality³⁹. The action of 'naming' has become a key feminist paradigm, one that has been a constant struggle in politics as in the daily lives of women that soon took over the academic spaces, research papers, streets, artistic expressions and the courts to promote awareness of what happens when this mechanisms of male domination end women's lives. In the international criminal context, with respect to the violent and systematic death of women, there was an emphasis in the need to name the crime in order to recognise its traits and define

³⁶ Elizabeth Grosz, *Becoming Undone* (Duke University Press 2011).

³⁷ Teresa Inchaustegui Romero, 'Sociología Y Política Del Femicidio; Algunas Claves Interpretativas A Partir De Caso Mexicano' (2014) 29 *Sociedade e Estado*.

³⁸ C. Corradi and others, 'Theories Of Femicide And Their Significance For Social Research' (2016) 64 *Current Sociology*.

³⁹ River Garretas María Milagros, *LA HISTORIA DE LAS MUJERES QUE NOMBRA EL MUNDO EN FEMENINO* (Universidad de Barcelona 2004).

its scope⁴⁰. Feminist literature is witness of the political debates held to figure out the place that this gender-specific crime would occupy as a legal mechanism of defence to make visible the killing of women because they are women⁴¹. The study of femicide has evolved, as has the concept, to include different definitions, translations, and theories from diverse academic backgrounds. I believe femicide is a social phenomenon that can't be studied under one school of thought or theoretical background and should be approached in an interdisciplinary fashion. The term femicide, and later femicide, appeared as feminist concepts that demonstrated the relationship between theoretical, political and social realities.

The concepts of femicide and femicide have been developed by feminists of all academic backgrounds giving it an interdisciplinary dimension which has proven to be useful in introducing the study into scientific research that will in turn aid policy makers and institutions understand what are the causes of the phenomena and what are the ways in which it can be fought. For instance, a feminist approach confronts and evidences the patriarchal domination while it investigates the killing of women and the lack of reaction from the State, a sociological approach focuses on the examination of the special characteristics in the killing of women that make it a phenomenon and a human rights approach extends femicide beyond the lethal and into the extreme forms of violence against women and human rights abuses⁴². By combining the three approaches when researching the phenomena there is a more rounded analysis of the situation a country is dealing with.

According to feminist theorists Taylor and Jasinski, oppressive views of women are not only not culturally sanctioned but also embedded in and expressed through all social institutions, creating a society that is dominated by patriarchal views where power is the fundamental principle⁴³. Power is a key concept in the feminist analysis, however, the point is not that men are inherently violent and as consequence women are the perpetual victims, but

⁴⁰ Dora Ines Munévar M., 'Delito De Femicidio. Muerte Violenta De Mujeres Por Razones De Género' (2012) 14 Revista Estudios Socio-Jurídicos

⁴¹ Graciela Atencio, FEMINICIDIO-FEMICIDIO: UN PARADIGMA PARA EL ANÁLISIS DE LA VIOLENCIA DE GÉNERO (2011) <<http://www.infogenero.net/documentos/FEMINICIDIO-femicidio-paradigma%20para%20su%20analisis-Graciela%20Atencio.pdf>> accessed 29 May 2017.

⁴² C. Corradi and others, 'Theories Of Femicide And Their Significance For Social Research' (2016) 64 Current Sociology.

⁴³ Rae Taylor and Jana L. Jasinski, 'Femicide And The Feminist Perspective' (2011) 15 Homicide Studies.

that the roles they occupy in the private and public sphere place them at an unequal level which facilitates that the relationship evolves from unequal to violent. That is why feminism does not define gender violence as a simple fault in character that portrays men as evil animals that attack weak innocent women, but as a result of a system of inequalities that historically speaking has benefited men over women. Another feminist theorist, Femenías, associates 'generalised feminisation' for example, in the labor market, economy and politics, with the increase in gender violence and violence against women. She points out a direct relationship between the two (generalised feminisation and violence), that affects both men and women, and spews when men have to occupy places traditionally assigned as feminine⁴⁴. Feminists base this analysis in facts they can quantify like the rates of violence against women, rape, femicide and feminicide, as well as the unequal distribution of the employment rate, cost of paid labour and status between genders, which is not only experienced in the global south but are also predominant in the global north. However there are two significant weaknesses in this approach and they are: the capturing of the misogynist motivation and the data available on feminicides⁴⁵. If there is no due diligence when investigating a possible feminicide case, if there is no gender perspective training in our judiciary systems and the killing is simple recorded as murder in the system, it may be impossible to tell why or how it took place and this is only considering the cases that are reported, what about all of the disappeared women that are yet to be found or that the cases are not reported? It is still practically impossible to obtain a specific figure when dealing with feminicides⁴⁶. Still social investigators, gender analysts and feminist lawyers follow up on violence against women making it visible and keeping a database so that we can have statistics that help document and map cases so that a proper investigation to fight impunity and obtain access to justice can develop.

I can turn back to Grosz's definition of the feminist philosophy mentioned at the beginning of this section and see how feminist theorists created a term to explain a concern

⁴⁴ Femenías ML, 'Violencias Del Mundo Global: Inscripciones E Identidades Esencializadas', Feminismo, género e igualdad. (2nd edn, Pensamiento Iberoamericano 2011).

⁴⁵ That a woman was murder simply because she was a woman.

⁴⁶ Shelah S Bloom, Violence Against Women And Girls (MEASURE Evaluation, Carolina Population Center 2008).

that the patriarchal society wasn't interested in and looked for practices to address and tackle it, creating a term first in English and then translated into Spanish, that has become influential in changing reality and seeks to improve the lives of women. This theoretical feminist notion was instrumental in the case of Ciudad Juárez, probably the most infamous femicide city in Latin America, for raising awareness as it had the capacity to condense into a single term the misogynist motivation of violence, vulnerability of women and girls, and the imbalance of power between men and women in the Mexican society⁴⁷.

Femicide is a violent complex phenomenon that emerges as part of an intricate system where not only one theory or approach but a combination of them can do it justice⁴⁸. It is by incorporating this feminist term in the political, academic, legal and day-to-day life that feminists have unveiled the structural foundations of gender-based violence that underline femicide, these crimes are not a personal affair nor do they occur in private limits, they are the result of the relations of power, dominance and privilege held by men but naturalised in society by the legal silence and the absence in government actions that guarantee the life and security of women.⁴⁹ Once the concept of femicide is clear we can see how not all killings of women are motivated by the construction of gender relationships, that is to say, differentiate why all femicides are killings of women but not all killings of women are femicides, and this is the feminist political stance behind the concept. Femicide isn't just the description of the crimes that are committed against women and girls, but it also has to do with the social construction of these hate crimes, it is the culmination and most extreme form of gender violence against women⁵⁰. I believe that feminism successfully started the conversation on gender-based violence and the feminist discourse successfully installed itself to work from within the legal and political system, using the available tools as, Aleida Lujan pointed out in her thesis, to make visible and

⁴⁷ Julia Monarrez, 'Femicidio Sexual Serial En Ciudad Juárez: 1993–2001' (2002) 25 *Debate Feminista* <http://www.womenontheborder.org/Articles/femicidio_sexual_SP.pdf> accessed 30 May 2017.

⁴⁸ C. Corradi and others, 'Theories Of Femicide And Their Significance For Social Research' (2016) 64 *Current Sociology*.

⁴⁹ Dora Ines Munévar M., 'Delito De Femicidio. Muerte Violenta De Mujeres Por Razones De Género' (2012) 14 *Revista Estudios Socio-Jurídicos*.

⁵⁰ Julia Monárrez, *Trama De Una Injusticia* (Colegio de la Frontera Norte 2009).

criminalise, if progressively, a system that “assigned a particular and limited value to the lives of women as subjects⁵¹”

Chapter 2

Femicide is a global phenomena. In the following chapter I will discuss the experience and international framework of the United Nations, European Union, and Organisation of American States addressing femicide, whether it has been successful and the influence they have had on the Mexican framework. It is estimated that more than 65,000 women and girls are murdered annually, which constitutes 17% of all intentional homicides⁵². This institutions have acknowledge this and are working on instruments that address this human rights violations creating some of the most relevant mechanisms directed to the protection of women’s rights under an international optic with a clear influence of the feminist movement and their criticisms of the existing human rights paradigm on the creation of this international framework. Mexico is a signatory party to all of them, why has it then failed on the face of femicide?

2.1 UN and Femicide

The first instrument created to ensure gender equality was the Convention on the Elimination of All Forms of Discrimination Against Women, known as CEDAW. It was adopted by the General Assembly on 1979 and came into force on September 1981, it constitutes one of the most operational international human rights treaties of the UN in the fight for equality and has been considered the international women’s human rights

⁵¹ Aleida Lujan Pinelo, 'A Theoretical Approach To The Concept Of Femicide/Femicide' (MA, Erasmus Mundus Master's Degree in Women's and Gender Studies 2015).

⁵² 'OHCHR | Ending Impunity For Femicide Across Latin America' (Ohchr.org, 2017) <<http://www.ohchr.org/EN/NewsEvents/Pages/EndingImpunityLAC.aspx>> accessed 5 June 2017.

declaration⁵³. The convention consists of 30 articles that cover all fields in which States need to take action, establishing not just a declaration in favour of women's rights, but a program on measures to be taken by governments to guarantee the enjoyment of these rights, commit to materialise equality and considers violence as a form of discrimination towards them. In the international arena this convention is considered an important and necessary instrument for women's human rights because of its speciality and uniqueness, specifically, on 6 categories, according to Alda Facio: 1) it expands State responsibility, 2) it compels States to adopt specific measures to eliminate discrimination against women, 3) It allows measures of affirmative action, 4) It recognises the role that culture and tradition have in maintaining discrimination against women and obliges States to eliminate stereotypes of the roles of men and women, 5) It defines discrimination and establishes a concept of substantive equality and 6) It strengthens the concept of indivisibility of Human Rights⁵⁴. CEDAW on its original articles does not explicitly provide a provision on the elimination of VAW, however it was addressed on the general recommendation no. 19. This recommendation has identified GBV as one of the manifestations of discrimination that has, as a primary cause, gender inequality and has classified it as a form of discrimination that, "Seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men⁵⁵." CEDAW has been ratified by 189 States and yet is the convention with the most reservations, overall limiting its impact and function. At least 23 out of 100 Member States have shown a total of 88 critical reservations⁵⁶.

The General Assembly adopted the Declaration on the Elimination of Violence against Women on 1993. Consisting of just 6 articles violence is defined in article 1 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

⁵³ CEDAW 29Th Session 30 June To 25 July 2003' (Un.org, 2017) <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>> accessed 9 June 2017.

⁵⁴ Alda Facio, *The OP-CEDAW As A Mechanism For Implementing Women's Human Rights* (IWRAW Asia Pacific 2008).

⁵⁵ 'General Recommendations Made By The Committee On The Elimination Of Discrimination Against Women' (Un.org, 2017) <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>> accessed 9 June 2017.

⁵⁶ Adriana Ramos de Mello, 'Feminicidio: Un Análisis Criminológico-Jurídico De La Violencia Contra Las Mujeres' (PHD, UNIVERSIT CELONA 2017).

arbitrary deprivation of liberty, whether occurring in public or in private life.⁵⁷” This was a major advance in the struggle to recognise the gravity of VAW. It recognised that violence was not only a problem to be dealt in private and ‘family courts,’ but a problem within the society and one that governments needed to intervene. The Declaration defined explicitly the responsibility of the States as not only responsible for the elimination of violence, but also for providing the legal and preventive measures that should be adopted, while also declaring that the perpetrators of this acts of violence against women could be part of the State, through one of its public officials, or a particular in or outside of the victim’s family unit. This definition was adopted from a previous Convention, of another regional instrument, which I will mention further on this chapter, the Convention Bélem do Pará, however, it still did not explicitly mention femicide nor feminicide as an effect of this form of violence.

The second world conference of Human Rights took place the same year the Declaration was adopted and the resolution that women’s rights were an inalienable, integral and indivisible part of Human Rights, was officially accepted. The idea that violence against women is a violation of Human Rights was instigated and contributed to the creation of the Beijing Declaration and Action Platform, in 1995, finally dedicated to violence against women⁵⁸. The Beijing Declaration affirms the importance of incorporating the gender perspective in all of the public policies and governmental programs. This declaration provides a fundamental framework for the realisation of women's rights, stating in its preamble that, “Violence against women constitutes a violation of human rights and fundamental freedoms, limiting the recognition, enjoyment and expertise of such rights and freedoms to women in whole or in part.” It also expresses its concern on the subject by saying, “Violence against women is an offence to human dignity and a manifestation of the historically unequal power relationships between men and women.⁵⁹” States agreed to specific responsibilities like including the legislation necessary in their criminal, civil and administrative norms to punish, prevent and eradicate violence against women and establish

⁵⁷ 'A/RES/48/104. Declaration On The Elimination Of Violence Against Women' (Un.org, 2017) <<http://www.un.org/documents/ga/res/48/a48r104.htm>> accessed 3 June 2017.

⁵⁸ 'OHCHR | World Conference On Human Rights' (Ohchr.org, 2017) <<http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx>> accessed 11 June 2017.

⁵⁹ Fourth World Conference On Women, Beijing 1995' (Un.org, 2017) <<http://www.un.org/womenwatch/daw/beijing/platform/violence.htm>> accessed 14 June 2017.

mechanisms so that women can have access to justice, reparation of damages and other fair and effective remedies but it still took 14 years for the first mention of femicide.

It wasn't until 2005 that an official report by the organisation used the term femicide. Dr. Yakin Ertuk, the second Special rapporteur on violence against women, mentions on this report different kinds of femicide and the case of Ciudad Juarez is first discussed. In 2011 the term was mentioned again, this time in a periodical UN report on Italy. In 2012 there was the first ever UN report focused exclusively on gender-based killings and in 2013 there was the first symposium on femicide on the International Day for the Elimination of Violence against Women. It was in this symposium that it was decided that the UN had to categorically include and use the term femicide/femicide in the Declaration on the Elimination of Violence against Women. This was fuelled in part by a report from another UN organisation, World Health Organisation or WHO, in which it reported that an estimate of more than 38% of violent deaths of women were committed by partners and that, "Every year, between 1.5 and 3 million women and girls lose their lives as a result of gender based violence or neglect⁶⁰". Even for a human rights focused organisation like the UN, it took three decades from the first creation of a Convention dedicated to the rights of women to approach this ultimate form of violence, however from then it has become a constant concern and has been included on its major agencies. The Declaration for the Elimination of Violence against women defined femicide as "the most extreme form of violence against women, taking place within the family or public space and can be committed by private individuals or carried out or tolerated by state agents," the Declaration also described that this expression of violence "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 liberty⁶¹."

Some sceptics will argue that these conventions and declarations are all words on paper with no real effect in the status or living condition of women, I beg to differ. These instruments provide States with mechanisms to ensure the elimination of discrimination and

60 Graciela Atencio, *Femicidio* (Los Libros de la Catarata 2015).

61 Camilo Bernal Sarmiento and others, *Latin American Model Protocol For The Investigation Of Gender-Related Killings Of Women (Femicide/Femicide)* (1st edn, OHCHR,).

violence towards women and guarantee that their rights are respected in private, public and in the justice system and it provides women with mechanisms of defence to demand States follow their obligations, it is the governments that fail in following these obligations rendering the importance of these mechanisms clearer. Due diligence, for example, is one of the standard frame of reference in international human rights law, applicable to violence against women “to analyse the acts or omissions of the relevant state entities and evaluate states’ compliance with international obligations⁶².” Access to justice is a central element of these obligations and when the Member States fail to comply it provides with tools to hold them responsible. UN Secretary General addressed the repercussions of impunity on violence against women, specifically in the case of Mexico by saying, “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.⁶³” When impunity is as engraved in the system, as in the case of Mexico, it is necessary that this type of instruments exist, to provide a platform for the civil society, women’s groups, etc. a way to apply pressure on the government and make sure it can be held accountable.

The latest proof of this came in 2014 when UN Women and the Office of the High Commissioner of Human Rights launched the Latin American Model Protocol for the investigations of gender-related killings of women (femicide/feminicide). It is a participatory model in which civil society and experts of all the region were consulted and as a result a set of guidelines were established offering states the necessary steps to “carrying out an effective criminal investigation of gender-related killings, in accordance with the international

⁶² Camilo Bernal Sarmiento and others, *Latin American Model Protocol For The Investigation Of Gender-Related Killings Of Women (Femicide/Feminicide)* (1st edn, OHCHR,).

⁶³ 'United Nations General Assembly 61st Session' (Un.org, 2017) <<http://www.un.org/womenwatch/daw/documents/ga61.htm>> accessed 14 June 2017.

obligations assumed by States.⁶⁴ Phumzile Mlambo-Ngcuka, Under-Secretary-General of the United Nations and Executive Director of UN Women, mentioned the importance of working with the civil society and local feminist movement “which have been key actors in denouncing violence, driving policy change and proposing solutions.⁶⁵” This model has as a goal the gathering of information and ending of impunity by presenting itself as a tool for the police, courts, officials in the justice systems and forensic doctors to properly investigate femicide, its guidelines are largely based in recommendations previously issued, in its majority to Mexico⁶⁶.

The UN has issued over 90 recommendations to Mexico regarding femicide and ways to fight this epidemic, which Mexico has accepted and works to include into its legal framework covering all aspects of the phenomena, from the administration of justice and effective response to victims and their families, the method of investigations, the legislative labor, governmental actions, training of the public officials, among others, continuing its work with the Mexican State and civil organisations to try and address this epidemic, maybe now with the creation of the protocol, the State institutions will be able to coordinate successfully⁶⁷. If the model proves to be a successful, the possibility of developing it to a global protocol, where all institutions can coordinate and share information is worthy of further study, since another international organisations also recognises the importance of adding a framework to fight this form of violence.

The European Union, which I will discuss in the following section, as with the UN the term of femicide had a very slow inclusion into the regional agenda, but once it was included it has been in the centre of attention of feminists and civil society organisations.

⁶⁴ Camilo Bernal Sarmiento and others, *Latin American Model Protocol For The Investigation Of Gender-Related Killings Of Women (Femicide/Feminicide)* (1st edn, OHCHR,).

⁶⁵ 'Killing Women Means Society Pays The Ultimate Price' (UN Women, 2017) <<http://www.unwomen.org/en/news/stories/2016/10/statement-by-the-executive-director-on-femicide#sthash.aV3YfZgH.dpuf>> accessed 16 June 2017.

⁶⁶ 'Take Five: Fighting Femicide In Latin America' (UN Women, 2017) <<http://www.unwomen.org/en/news/stories/2017/2/take-five-adriana-quinones-femicide-in-latin-america>> accessed 17 June 2017.

⁶⁷ Maria del Mar Monroy and others, *Compendio De Recomendaciones Sobre El Femicidio En Ciudad Juárez, Chihuahua* (1st edn, COMISIÓN MEXICANA DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS, AC 2007).

2.2 EU and Femicide

The Council of Europe, the main human rights organisation in Europe, has adopted a series of initiatives to promote the protection of women against violence as early as 1990. It was because of these initiatives that in 2002 the ministerial committee of Member States adopted a recommendation on the protection of women against violence and in 2006 and 2008 there was a campaign in all of Europe to denounce violence against women including domestic violence, but it wasn't until 2011 that the Istanbul Convention was adopted⁶⁸. Even though it was the first European convention that dealt with violence against women and girls, it came 35 years after the first introduction of the concept of femicide in Europe. It took over three decades before the seriousness of this crime was considered a matter that concerned Europe, and even in the present day femicide is not a concept that has been considered by governments of all the Member States, there is still a misbelief that if you address gender violence you have treated all of the symptoms.

This convention is the first treaty that deals with this matter on a European level. It came into force on 2014, three years after its adoption and has only been ratified by less than half of the members of the Council of Europe⁶⁹. Considering that there are at least 3,500 intimate partner violence-related deaths that occur every year in this region⁷⁰, it seems there is a large scale of denial on the gravity of the problem. As Julia Monárrez said, “Si bien el femicidio es una cuestión global, éste tiene diferentes formas de presentarse⁷¹.” Maybe the lack of recognition by European countries of the scope of this phenomenon is what makes them believe that when someone mentions the word femicide they are surely referring to Latin America. As the lawyer Elena Laporta says, “Femicide is not just a phenomenon in third-world countries, Europe owes a debt on this subject.” She belongs to a very vocal group

⁶⁸ Aleida Lujan Pinelo, 'A Theoretical Approach To The Concept Of Femicide/Femicide' (MA, Erasmus Mundus Master's Degree in Women's and Gender Studies 2015).

⁶⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence - CETS No.210

⁷⁰ Claire Laurent, Michael Platzer and Maria Idomir, *Femicide, A Global Issue That Demands Action* (2nd edn, Academic Council on the United Nations System (ACUNS) Vienna Liaison Office 2017).

⁷¹ Although femicide is a matter of global scale, it has different forms to present itself” - Julia Monárrez Frago, *Trama De Una Injusticia* (Colegio de la Frontera Norte 2009).

in Spain, one of the European countries with the highest toll of femicides that has yet to legally codify the term and only considers gender violence in relation to intimate partners or ex partners⁷². In Europe, as is the case in other regions, there are still lagoons regarding the procurement of complete and comparable information on homicides of women because of their gender, which impedes the correct identification of all of the cases in which the crimes committed are gender-based. Classifying gender-related killings into homicides makes them non-existent, negating the access to complete official data on these crimes which then hinders the adoption of adequate policies and preventive measures.

Femicide is occurring daily on European grounds. Italy was the first European country mentioned in the UN regarding femicide and now the use of the term is widespread in the Italian feminist movement. The government also became involved and declared a “Guerra contro Il Femminicidio⁷³” but, as in the case of Spain, the laws adopted only dealt with cases of intimate partner/ex partner violence and feminists have severely criticised it because of the paternalistic terms and the lack of true gender perspective. In 2016 there were 116 femicides reported in Italy⁷⁴, one particular case in Italy showcased a grave flaw on the judicial system after a woman was found dead and investigations showed that she had gone to the police to report abuse from her partner 12 times before⁷⁵, so even when the laws that are passed only deal with intimate femicide, what is the number of denunciations a woman has to make before she is taken seriously? In the UK an average of 2 women are killed per week. Between 2009 and 2015, 936 women were killed by men⁷⁶. In France a woman is killed every 2.5 days, and yet the term, *fémicide*, was not included on their vocabulary until 2014. It wasn't until January 2017 that a law concerning violence against women was passed, and

⁷² Graciela Atencio, *Femicidio* (Los Libros de la Catarata 2015).

⁷³ War Against Femicide

⁷⁴ di LUCA, 'La Strage Delle Donne: 116 Femminicidi Dall'inizio Dell'anno' (Repubblica.it, 2017) <http://www.repubblica.it/cronaca/2016/11/24/news/la_strage_delle_donne_116_femminicidi_dall_inizio_dell_anno_-152674911/> accessed 14 June 2017.

⁷⁵ F. Q., F. Q. and F. Q., 'Messina, Per 12 Volte Denunciò Il Marito Che Poi La Uccise: Condannati I Pm - Il Fatto Quotidiano' (Il Fatto Quotidiano, 2017) <<https://www.ilfattoquotidiano.it/2017/06/13/messina-per-12-volte-denuncio-il-marito-che-poi-la-uccise-condannati-i-pm/3656756/>> accessed 16 June 2017.

⁷⁶ Helen Pidd, 'Men Killed 900 Women In Six Years In England And Wales, Figures Show' (the Guardian, 2017) <<https://www.theguardian.com/society/2016/dec/07/men-killed-900-women-six-years-england-wales-figures-show>> accessed 16 June 2017.

even in this law “The legislature chose not to legally sanction the term feminicide. This is perfectly in line with the French legal context, but neglects the specificity of violence against women.⁷⁷” Even those countries where homicides are relatively rare as in Austria, Norway and Switzerland, the percentage of female homicide victims compared to male victims is higher⁷⁸.

The Council of Europe Convention on preventing and combating violence against women and domestic violence, better known as the Istanbul Convention, is a legally binding instrument that includes specific obligations for Member States in relation to violence against women and girls, constituting a common basis that will allow the adoption of analogous policies and legislations in different countries⁷⁹. It recognises that VAW is a violation of Human Rights and a form of discrimination placing responsibility on the States when they do not respond adequately. Its foundations are:

- I. To prevent violence, protect the victims and commence judicial actions against the perpetrators,
- II. Sensitise and make a call to society, specially males, to change attitude and break with the culture of tolerance and denial of violence that perpetuates gender inequalities and propitiates the causes of this violence,
- III. Highlight the importance of having a coordinated action between the organisms and officials pertinent and the civil society ,
- IV. The collection of statistical data, quantitative and qualitative, and the thorough investigation on all forms of violence against women⁸⁰.

The convention contemplates as a crime all forms of violence against women including but not limited to physical, psychological and sexual violence and urges the States to introduce

⁷⁷ Elisa Leray and Elda Monsalve, 'Un Crime De Féminicide En France ? A Propos De L'Article 171 De La Loi Relative À L'Égalité Et À La Citoyenneté. Droits Des Femmes (Code Pénal)' (Revdh.revues.org, 2017) <<https://revdh.revues.org/2967#tocfrom1n2>> accessed 16 June 2017.

⁷⁸ Geneva Declaration Secretariat., Global Burden Of Armed Violence 2011 (Cambridge Univ Pr 2012).

⁷⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence - CETS No.210

⁸⁰ Ibid

this crimes in their legal systems accordingly. Governments of the signatory countries must also undertake the necessary legal modifications to protect woman against and eliminate all forms of gender violence. This necessary modifications should include the development of data collection and comprehensive policies, creating strategies of prevention through education, awareness and training programs and international cooperations and monitoring mechanisms⁸¹.

The creation of such guidelines and mechanisms could greatly impact the international debates, both in politics and law, because of the great influence Europe has in the international arena. It is up to the European leaders to use this influence and help shape the creation of an international framework for femicide, even if the subject of femicide has not been largely discussed within the European framework, the creation of the Istanbul Convention is a step in the right direction. There is also a need to include an active dialogue with other regions in terms of violence against women and the subject of femicide. In a bi-national dialogue between Latin America and Europe, Europe's duty to theorise and take actions to eradicate the killing of women because of reasons of gender was stated. To this regard the European Parliament has begun to react by approving resolutions and declarations with regularity, expressing its concerns and highlighting the importance of the actions that the European Union takes regarding the femicides in Latin America, specially in Mexico and Central America, for example the resolution on the European Union's role in fighting against this phenomenon "(...) violence against women has not only a regional but also a global dimension and concerns all countries, including those in Europe; (...) this Resolution should be considered as part of a global strategy designed to enable the European Union and its partners to undertake joint actions and make efforts intended to eradicate and prevent violent deaths of women everywhere; whereas it is also necessary to promote dialogue, cooperation and the mutual exchange of good practices between the countries of Latin America and Europe (...)"⁸² Specifically relating to Mexico, the Council of Europe has not only visited exclusively to address femicides, but has issued over 10 recommendation to the Mexican

⁸¹ Ibid

⁸² European Parliament Resolution on the murders of women (femicides) in Mexico and Central America and the European Union's role in combating this phenomenon (2007/2025 (INI)) "G". October 2007

State, which, as is the case with the recommendations emitted by the UN, the Mexican State has accepted and taken into consideration for changes on their own framework and how they react to feminicides in its territory⁸³. And although this actions are necessary and helpful, it is time that the States within the European Parliament and Council also take notice of what is happening on its own region and work together with other nations, not with the ‘saviour hat,’ but as part of a team with a common concern, enemy and goal. We must not forget that despite the advances produced in the last years, according to a report from the UN special rapporteur on violence against women there is an exponential increase in the number of feminicides at a global level⁸⁴ and to be oblivious to the situation on your own region only exacerbates the problem.

The one regional institutions that has taken head on the phenomena of femicide is the Organisation of American States which I will discuss in the following section. The instruments and mechanisms created by this organisation have been pillars in the building of other national and international frameworks and it is the first organisation, regional or international, to condemn a State for crimes against humanity for a femicide case, that State being Mexico, creating a precedent for future cases.

2.3 OAS and Femicide

Like the organisations previously mentioned from the UN and the EU that are aimed specifically at the elimination of violence towards women, the Organisation of American States, or OAS, has a Convention that was the first of its kind and provides the most complete, international mechanisms for prevention and elimination of violence against women. Within the OAS there is an Inter-American Commission of Women that is in charge of overseeing the work of the organisation in its efforts to promote gender equality in the region. In 1990, as a reaction to the growing concern of the international community regarding the escalating situation of gender violence, the commission adopted the declaration

⁸³ Maria del Mar Monroy and others, *Compendio De Recomendaciones Sobre El Femicidio En Ciudad Juárez, Chihuahua* (1st edn, COMISIÓN MEXICANA DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS, AC 2007).

⁸⁴ Report by Special Rapporteur Rashida Manjoo A/HRC/20/16/Add. 4

on the eradication of violence against women. This declaration paved the way for the creation of the Inter-American instrument aimed specifically at addressing this violation of human rights, and the first treaty that placed the responsibility on the State citing lack of due diligence. Approved on June 1994 by the OAS General Assembly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, better known as "Convention of Belém do Pará" was adopted. Being the first convention of its kind, it help change the attitude towards violence against women and helped advance the efforts of the international community, including the UN and EU, in their fight to eradicate this problem, proven to be an obstacle for the recognition and full exercise of the fundamental rights and freedoms of women.

The convention consists of 25 articles divided into 5 chapters that establish the definition and scope of this form of violence, the rights protected, the duties of the States, the Inter-American mechanisms of protection and general provisions. The first two articles define the concepts, types and scope of violence experienced by women. The first article 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.⁸⁵” This definition is important because it includes an express reference to the death of women as a consequence of gender violence which reveals a subtle, yet significant, difference in relation to the different international treaties, previously mentioned, where there is no explicit mention of death as a result of the violent practices. Article 2 establishes the possibility of the State as a perpetrator by either executing or tolerating this acts of violence, meaning that article 2 sustains that the State will be held responsible when in its legislation, administrative practices, social policies and any other pertinent areas, gender violence is tolerated or there is failure to sanction it, including those acts committed by the public officials in the exercise of their functions, this article presents its self as an ally for the families of victims in Mexico who suffer because of the actions of the state.

By using a feminist perspective the Convention included a set of human rights to be specially taken care of because, although they exists for everyone regardless of their sex, in

⁸⁵ Convention Of Belem Fo Para' (Cidh.org, 2017) <<http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>>

the case of women, due to the condition of vulnerability, and tolerance of customs, practices and misogynistic behaviours, religious ideas and legal, social and economic systems that constantly undermine their rights, needed to be specifically guaranteed. Articles 4 and 5 of the convention mention this rights to include: a. The right to have her life respected; b. The right to have her physical, mental and moral integrity respected; c. The right to personal liberty and security; d. The right not to be subjected to torture; e. The rights to have the inherent dignity of her person respected and her family protected; f. The right to equal protection before the law and from the law; g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights; h. The right to associate freely; i. The right of freedom to profess her religion and beliefs within the law; and j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making⁸⁶.

On articles 7, 8 and 9, the Convention provides a broad framework of measures to be put into place for the prevention, sanction and eradication of violence against women in any ambit. The measures described on these articles take into consideration the origins of gender violence, the places where this type of violence may occur and they propose specific measures and mechanisms that the State must implement to fight this phenomena which are⁸⁷:

- a. The legal ones, consisting in adopting civil, criminal and administrative laws on their legislations to prevent, punish and eradicate gender-based violence and eliminating or making the adjustments to the pre-existing laws that foster or tolerate violence against women.
- b. The administrative ones, which consists in including the necessary measures, in public and private institutions, with the goal of creating mechanisms of protection for women that have been victims of violence, so they can receive the necessary attention, medical and/or psychological, and can also receive legal advice so that they

⁸⁶ Convention Of Belem Fo Para' (Cidh.org, 2017) <<http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>>

⁸⁷ María Contreras, 'Comentarios A La Convención Interamericana Para Prevenir, Sancionar Y Erradicar La Violencia Contra La Mujer: Convención De Belém Do Pará.' (Revistas.juridicas.unam.mx, 2017) <<https://revistas.juridicas.unam.mx/index.php/derecho-comparado/article/view/3601/4347>> accessed 16 June 2017.

can have access to justice and reparation of damages or any other means of compensation that is fair and efficient.

- c. The educational ones, aimed at modifying the design of formal and non formal educational programmes in all levels of the educational process, with the objective of eliminating all the customary subordination practices or views of inferiority that are origin and encourage violence against women. They also promote the creation of educational programmes for the personnel of the departments of Justice, Police, Health and other public sectors that have contact with or know about the problem and who are responsible of the creation, modification, application, and protection of the policies of prevention, punishment and elimination of gender violence.
- d. The investigation ones, intended in promoting and guaranteeing the gathering of statistics and other pertinent information on the causes, consequences and frequency in actions of violence against women. Allowing the implementation of measures, previously discussed, and creating efficient programmes to prevent and eliminate this phenomena, that could then be discussed and implemented on an international level, where an exchange of ideas and results would lead to a structuring and implementation of effective programs and mechanisms aimed at protecting the woman.

Articles 5 and 9 describe the origins of this form of violence as arising from racial or cultural discrimination, migratory status, social or economic status, age, religious or political ideas, pregnancy, arm conflict, such as the war on drugs, among others. The ways in which violence presents itself can also be related to the breach of Member States to the compromises acquired in regional and universal agreements, as well as international instruments of human rights and protection of women that they have ratified. Articles 10, 11 and 12 relate to the mechanisms of protection by which the State can guarantee the respect of the rights of women so that they can live free of the acts of violence based on their gender. The States must submit a national report to the Inter-American Commission of Women, the organ within the convention in charge of evaluating the advances gained by fulfilling and completing the provisions established by the convention, as set forth in article 10 “In order to

protect the rights of every woman to be free from violence, the States Parties shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women.⁸⁸ From this reports proposals and recommendations to both, Member States as well as the international community in general, and even amendments to the Convention itself, in terms with Article 19, can be presented. The Inter-American Commission of Women can also encourage Member States, base on this reports, to contribute to studies, surveys, analysis, forums and reunions at a national or international level. The Commission also works with reports submitted by NGOs to have a truthful analysis, since it has been the cases on numerous occasions that the numbers reported by the States and those gathered by NGOs differ, a common practice in the case of Mexico's records. In case of a violation the Member State, the Commission, any NGO, group of people or any individual recognised in any of the Member States of the OAS can present a claim to the Inter-American Court of Human Rights⁸⁹, which all of the above did against Mexico, establishing a precedent for all further violations.

As it was established at the beginning of this chapter, and has been recognised by the three organisations mentioned, this form of violence is a world phenomena, one that regional and international organisations have tried to control and eradicate by promoting the adoption of universal instruments aimed at certain aspects of the development of women, like their political rights, their civil rights, and the discrimination they face, to name a few, however, the only conventional instrument, if of a regional character, whose content is specifically directed to eliminate the existence of femicide is the Convention of Belém Do Pará, making it the strongest legal binding instrument of international character in the matter. It has been ratified by 32 out of the 34 members of OAS⁹⁰, making it the Inter-American treaty of Human Rights with the most number of ratifications out of the whole organisation,

⁸⁸ Convention Of Belem Fo Para' (Cidh.org, 2017) <<http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>>

⁸⁹ María Contreras, 'Comentarios A La Convención Interamericana Para Prevenir, Sancionar Y Erradicar La Violencia Contra La Mujer: Convención De Belém Do Pará.' (Revistas.juridicas.unam.mx, 2017) <<https://revistas.juridicas.unam.mx/index.php/derecho-comparado/article/view/3601/4347>> accessed 16 June 2017.

⁹⁰ United States and Canada being the only ones that have neither signed nor ratified it.

expressing the political compromise that States have shown towards the elimination of any kind of violence towards women. It is necessary to reaffirm that the obligations established by the Convention demand the States to design and implement laws that recognise the different spaces and forms in which violence against women is expressed, for example the violence and obstacles that women human rights defenders face, the worrying and widespread impunity in relation to the investigation, prosecution and punishment of state and non-state actors committing acts of violence against women⁹¹. For more than twenty years, in many of the States that are party to this convention, important changes in legislation and in the social conscience have occurred, making aggression against women a visible violation of human rights, and yet a woman is killed every 15 hours in Honduras, between 2000 and 2010 approximately 12 women were murdered per day in Brazil, in Argentina a woman is killed every two days and in Mexico there are six feminicides a day and only 2% of the cases result in a conviction⁹². The OAS has issued over 50 recommendations to Mexico dealing with women's rights with the goal of pressuring the Mexican government to take the necessary and demanded measures to improve the condition of women in Mexico. Among this measures there is the need to revert the increase of feminicides in the national territory, ensure an adequate delivery of justice to the feminicides already committed and an adequate reparation to the victims⁹³.

Despite the over 200 recommendations emitted by these regional and international organisms the violence persists the discrimination based on gender, which is the basis for the generalised violence against women, persist being strengthened and reinforced by the state of helplessness in which they are found, which has been originated and perpetuated by the high rates of impunity that reign in the country⁹⁴. The act of signing and ratifying a convention is clearly not enough, and other measures need to be taken.

⁹¹ 'A 20 Años De La Convención Belém Do Pará: Es Necesario Profundizar Los Compromisos Para Que Las Mujeres Vivamos Sin Violencia | CEJIL' (Cejil.org, 2017) <<https://www.cejil.org/es/20-anos-convencion-belem-do-necesario-profundizar-compromisos-que-mujeres-vivamos-sin-violencia>> accessed 20 June 2017.

⁹² Adriana Ramos de Mello, 'Feminicidio: Un Análisis Criminológico-Jurídico De La Violencia Contra Las Mujeres' (PHD, UNIVERSIT CELONA 2015).

⁹³ Maria del Mar Monroy and others, *Compendio De Recomendaciones Sobre El Feminicidio En Ciudad Juárez, Chihuahua* (1st edn, COMISIÓN MEXICANA DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS, AC 2007).

⁹⁴ Treaty on European Union (Maastricht Treaty) supra note 42

Mexico is one of the States that in general, be it in the international or regional ambit, has signed, ratified, adopted, and circumscribed to respect and guarantee the rights enshrined in the international instruments to which they are party to. By signing and ratifying all of these instruments Mexico has acquired the responsibilities mentioned. As a result, the State is obliged to devote a special section to the issue of violence against women in all reports handed to the United Nations System and the Inter-American System. Through this process, human rights bodies can monitor the situation and rely on data provided by civil society to check government information and generate recommendations and new investigations. This has been the case of disappearances and killings of Women in the municipality of Ciudad Juárez⁹⁵, which led the Inter-American Commission on Human Rights to present a law suit against Mexico in 2009 where the Inter-American Court sentenced the Mexican State for human rights violations. It was the first time an international tribunal acknowledged the term 'femicide' and it made the Mexican State the responsible party in the disappearance of the victims because of the impunity of the crimes and the violation of their rights. Making it clear that it is not that the Mexican State is incapable of changing its framework, but unwilling to respect the laws in place for the protection of women and the due diligence when it comes to femicides.

The alarming increase in femicides committed in Mexico during the last decades perpetuated the automatic relation made between the concept and the country. In the following chapter I will discuss how Mexico has undergone the structural changes in its legal framework, the regulations they provide and the protection mechanisms that are set to be in place to discover why it is still failing as a State to comply with its national and international obligations of protecting, preventing and eradicating violence against women.

⁹⁵ Maria del Mar Monroy and others, *Compendio De Recomendaciones Sobre El Femicidio En Ciudad Juárez, Chihuahua* (1st edn, COMISIÓN MEXICANA DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS, AC 2007).

Chapter 3

Why has the Mexican State failed on the face of femicide? More than 20 thousand women have been murdered in Mexico since 2012 and less than 20% have been judged as femicides⁹⁶. Part of the conceptual discussion on femicide and femicide, reviewed in the first chapter, finds in impunity the element that defines femicide as a serious crime of the State and evolves it into femicide. Mexico was the first country to propose the typification of the term and it's the country in which more initiatives have been presented in this matter, both at the national level and in the federative entities⁹⁷. Still femicides are on the rise and the victims are denied the access to justice. In the following chapter by analysing the history of femicide in Mexico from the discovery of the bodies to the present, the influence of the Cartels and a study of the Mexican legislation, the hypothesis will attempt to be proven.

3.1 Ciudad Juarez, 20 years later

Ciudad Juarez is a city in the state of Chihuahua, a state of desert climate located on the boarder between Mexico and El Paso, TX. In 1993 as a result of the extreme cruelty and the impunity of the crimes against the women in this region the term femicide is now intrinsically related to this city, but as it will be discussed further on this chapter, it is not even the city in Mexico with the highest rate of femicides now, nor has it been for a decade. Be that as it may, this city carries a significant importance when discussing femicides as a result of its history and because it was the first city to 'popularise' the term in an international scenario. In other words, this city placed violence against women in Mexico on the map for national and international organisations. Its geographic location on the border provides specific characteristics that might be hard to find in other cities of the country that propitiate this form of violence, Ciudad Juarez is the known headquarters of El Cartel de Juarez, one of

⁹⁶ 'Las Muertas Que No Se Ven' (Contralacorrupcion.mx, 2017) <<http://contralacorrupcion.mx/web/femimicidiosocultos/index.html>> accessed 26 June 2017.

⁹⁷ Instituto Belisario Domínguez (IBD), 'Asesinatos De Mujeres En México' (2015).

the most violent cartels in Mexico and whilst both men and women die under violent circumstances, the death of women are intimately related to gender oppression, inequality, misogynist attitudes, patriarchal hegemony, and the most important feature of them all, impunity. Julia Monarrez produced an analysis from 1993 to 2004 in which she was able to confirm the brutality of the murders, classifying the crimes as systemic sexual feminicides, from the cases she analysed she discovered that for 89 cases four arrests were made, mainly of gang members, but only one was sentence to prison, later discovering that the body discovered did not correspond to the victim it was thought to belong to⁹⁸. In the 90's with the adoption of the North America Trade Agreement an aggressive change in policy aimed to attract big foreign industries to open 'maquilas' in Ciudad Juarez. This 'maquilas' started using feminine workforce which was described as cheap and docile, inciting a readjustment of the traditional gender roles. This had a direct impact in the upsurge of unemployed men and a growing participation of women, specially the young women, that stoped fulfilling their roles as housewives and mothers to enter the labour market, gaining a relative financial autonomy altering the 'status quo' of society and gender relations.

The first disappearances of women and girls followed a similar pattern in which they were often employees of the maquiladoras of foreign-owned factories, attracted to the city by these 'aggressive' policy changes in the tax-free imports and exports of materials. However, the attraction of this factories to Ciudad Juarez was not followed by an investment for the development of the city, the area remains poorly developed. Women from all over Mexico migrated internally to Juarez due to the secure job opportunity which also contributed to the change in social structure, as did the 'race to the bottom,' that caused wages to decrease, women getting jobs over men, who had lower levels of education and were vulnerable against the exploitation in the maquiladoras⁹⁹. Added to this were the law enforcers and other government officials that took bribes to cover this exploitations, that then turned into the officials not investigating the murders, that was usually followed by getting involved with the

⁹⁸ Julia Monarrez, "Las Diversas Representaciones Del Femicidio Y Los Asesinatos De Mujeres En Ciudad Juárez, 1993- 2005", 'Violencia contra las mujeres e inseguridad ciudadana en Ciudad Juárez, Vol. II, Violencia infligida contra la pareja y feminicidio, México (El Colegio de la Frontera Norte y Miguel Porrúa 2010).

⁹⁹ Elvia Arriola, 'Accountability For Murder In The Mquiladoras: Linking Corporate Indifference To Gender Violence At The U.S. Mexico Border' (2007) 5 Seattle Journal for Social Justice <<http://digitalcommons.law.seattleu.edu/sjsj/vol5/iss2/29>> accessed 14 July 2017.

cartels. Juarez is now the image of the fail promises of the free trade agreement and of extreme violence against women where you can get away with it. Ever since femicide in this city became of international concern, academics of different backgrounds have been doing studies of how the gender issues are intertwined with the effects of the trade agreement, coming to a conclusion that NAFTA has aided in the disruption of the social fabric of Mexican Society¹⁰⁰.

The lack of interest from the State in the early discovery of female bodies and reports of disappearances was followed by victim blaming. This discourse reflected the entrenched gender discrimination within the system; in more than one occasion the women themselves were made responsible for the violence suffered because of the clothes they wore, or the fact they were walking alone or they worked at night at local bars, even having Chihuahua's state's Attorney General declared "*Hay lamentablemente mujeres que por sus condiciones de vida, los lugares donde realizan sus actividades, tienen vida nocturna, salen a altas horas de la noche y entran en contacto con bebedores, están en riesgo; porque sería muy difícil que alguien que saliera a la calle cuando está lloviendo no se mojará.*"¹⁰¹¹⁰² The feminist rhetoric would argue this sexist view and question why this lousy excuse was not given for the bodies of the men that were found in this city. Nevertheless the brutality in nature of the murders became hard to ignore for the rest of the public and journalists. The murders were described as sexual and degrading in nature, with the bodies showing signs of rape, sexual assault, mutilation, strangulation, and torture, reporting bodies were the cause of death had been heart-attack due to the amount of pain they are subjected to¹⁰³.

This type of crime became more and more frequent, and it was faced by the inefficiency of the police investigations, the lack of arrests made. One of this bodies was of Gladys Janeth Fierro, 12 years old, abducted in may 1993, her body found months later

¹⁰⁰ Katherine Pantaleo, 'Gendered Violence: An Analysis Of The Maquiladora Murders' (2010) 20 International Criminal Justice Review.

¹⁰¹ "Unfortunately there are women that, due to their living conditions, and the places where they perform their activities, go out late at night and are in contact with drinkers are at risk; because it would be very difficult for someone to go out to the street when it is raining and not get wet." - Translation by author

¹⁰² Julia Monarrez, 'Feminicidio Sexual Serial En Ciudad Juárez: 1993–2001' (2002) 25 Debate Feminista <http://www.womenontheborder.org/Articles/feminicidio_sexual_SP.pdf> accessed 30 May 2017.

¹⁰³ Diana Washington Valdez, *Cosecha De Mujeres* (Ed Oceano 2005).

thrown in a vacant lot, showing signs of rape and strangulation being the cause of death. The families of victims, like her, got together and organised, with the help of their neighbours and local NGOs, search parties to look for the women and girls that were still missing, and in doing this, without specialised equipments and lacking the training, they followed the leads until finding the bodies. Some of the bodies found by mere coincidence of someone passing by or animals following the smell of the decomposition¹⁰⁴. As years passed and more bodies were discovered and more women disappeared, the pressure and constant protests by the families and NGOs, to have the crimes clarified got the attention of the national and international media. Five years after the first cases of femicide were reported the first international visit was scheduled. From the UN, Ciudad Juarez received the Special Rapporteur on extrajudicial executions in 1999 being the first one to visit and issue recommendations to the Mexican State, followed by the Special Rapporteur on the independence of judges and lawyers in 2002, the International Experts Committee on Drugs and Crime visited in 2003, the CEDAW committee visited in 2005 and the Special Rapporteur on Violences Against Women, its causes and consequences visited in 2006. From the OAS with the Inter-America Commission of Human Rights the Special Rapporteur on Women's Rights visited on 2003, from the Council of Europe the Rapporteur on Equal Opportunity Committee for Women and Men visited in 2005, as well as several other international NGO visits who all together have issued over 200 recommendations to the Mexican State, solely regarding the killing of women in Juarez¹⁰⁵. Recommendations that the officials of Ciudad Juarez and the federal government have agreed to and vowed to take into consideration, claiming that they are already setting them in place. Faced by the international organisations and their recommendations, Mexican authorities promised to make this epidemic their priority, however the records show that arrests are scarcely done, mass graves

¹⁰⁴ Ivone Ortuño, 'Maquiladores De La Ley. Los Operadores Jurídicos Del Sistema De Justicia Penal Y La Violencia Contra Las Mujeres En Ciudad Juárez, México.' (PHD, Università Degli Studi di Milano 2011).

¹⁰⁵ Maria del Mar Monroy and others, *Compendio De Recomendaciones Sobre El Femicidio En Ciudad Juárez, Chihuahua* (1st edn, COMISIÓN MEXICANA DE DEFENSA Y PROMOCIÓN DE LOS DERECHOS HUMANOS, AC 2007).

are frequent to be discovered and forensic teams claim they are not even sure how many women have been buried and discovered in this way anymore¹⁰⁶.

Twenty years after the first bodies appeared in Ciudad Juarez, official numbers, showed a total of 100 cases being registered from 1993-2017¹⁰⁷, however journalist, activists and NOGs have registered the number of cases surpassing 700, not to mention the over a thousand women still missing just in this city¹⁰⁸. The biggest allies of this crimes are the exacerbated misogyny in the society and judicial system and the lack of justice the victims and their families are faced with, characteristics of a failed state. The impunity of the crimes in Ciudad Juarez can be linked with the lack of an integral strategy by the authorities in charged that can be observed in 5 concrete levels: 1. The denial of access to the files of the women killed in order to corroborate the exact number of victims and if their killers have really been convicted, 2. The foreign and local criminologists that can't agree on the profile of the murderers, 3. A Special Prosecutors office for the Investigation of Murders against women which head of office has been change four times in three years, 4. The authority morally disqualifying the victims 5. The questioning of the veracity of the detainees the authorities attribute the crimes to¹⁰⁹. In addition, the corruption in the system and the liaison with the organised crime perpetuates the existence of femicide, as evidence by the case of Adrian Sarmiento Enriquez, she was 15 years old and was kidnapped on January 2008, her mother Ernestina and the Spanish Journalist Javier Juárez looked for her for three years. Authorities reported she had been taken by a sex trafficking band and was probably in another state, so they looked for her in 5 states. However by the end of 2011 a parallel investigation from another journalist discovered not only the body of the girl, but that her body had been in the local morgue since 16 days after she went missing. The lid in the corruption of this case was blown out, so much so that the authorities tried to get rid of

¹⁰⁶ Damien Cave, 'Wave Of Violence Swallows More Women In Juárez, Mexico' (Nytimes.com, 2017) <<http://www.nytimes.com/2012/06/24/world/americas/wave-of-violence-swallows-more-women-in-juarez-mexico.html>> accessed 28 June 2017.

¹⁰⁷ Instituto Nacional de Estadísticas y Geografía, "ESTADÍSTICAS A PROPÓSITO DEL DÍA INTERNACIONAL DE LA MUJER" DATOS NACIONALES' (INEGI 2017).

¹⁰⁸ 'Las Muertas Que No Se Ven' (Contralacorrupcion.mx, 2017) <<http://contralacorrupcion.mx/web/femimicidiosocultos/index.html>> accessed 26 June 2017.

¹⁰⁹ Julia Monarrez, 'Femicidio Sexual Serial En Ciudad Juárez: 1993–2001' (2002) 25 Debate Feminista <http://www.womenontheborder.org/Articles/femicidio_sexual_SP.pdf> accessed 30 May 2017.

Adriana's body to lie about her whereabouts, but because of the work of her mother, the journalists and the NGO 'Nuestras Hijas de Regreso a Casa' another injustice in this case was avoided, however, no arrests were made, the crime was not able to go to trial, and this case rests in impunity along with other over 700 cases like this in Ciudad Juárez¹¹⁰. There are speculations on who or why the crimes are committed that come from different disciplines, highlighting the relevance of using a multidisciplinary approach when studying this phenomena for example, the criminalist advisors that have as their main hypothesis that the perpetrators are serial killers, psychiatrists that perceive the aggressors as mentally ill, psychotic and plain out of their minds, psychoanalysts that ponder the crimes and the criminals as part of a system of communication and power amongst 'tribes' and a way to achieve total control of bodies and territories¹¹¹. There are also psychological and anthropologist analysis of the crimes in the frame of the location of the city in the border, that also consider the economic situation, the social class and the power structure, from the women victims as well as the perpetrators in the zone, as well as the impact the NAFTA and the maquilas have in the unorganised society growth, followed by poverty and marginalisation¹¹².

Moreover despite this problem coming to light in Mexico because of the homicides and disappearances of women in Ciudad Juárez, this phenomena has spread across the country with no specific profile of the victims, just one thing in common, their gender. The cases now include women of all ages, classes, ethnicities and races. Yes, Ciudad Juárez to this day is a symbol of violence against women, but it is also the representation of disinterest from our institutions in security and respect for women and human rights. The Government's actions have been proven to be weak and insufficient in protecting the female population, and since the international intervention and the adoption of new regulations to combat this extreme form of violence, femicides have increased from 4 to 6 per day, a statistic covering all of Mexico. Juárez is not the only place in the present day where being a woman in Mexico

¹¹⁰ Javier Juárez and Marisela Ortiz, *Desaparecidas En Ciudad Juárez* (Amargord 2012).

¹¹¹ Rita Laura Segato, *La Escritura En El Cuerpo De Las Mujeres Asesinadas En Ciudad Juárez* (Universidad del Claustro de Sor Juana 2006).

¹¹² Teresa Incháustegui Romero, 'Sociología Y Política Del Femicidio; Algunas Claves Interpretativas A Partir De Caso Mexicano' (2014) 29 *Sociedade e Estado*.

can be deathly, nor does it present the highest rates of femicide¹¹³. The State of Mexico, a state in the south-centre, has been placed above the worst years ever documented in Ciudad Juarez in over a decade, from 1993 to 2005, when 374 femicides were registered in this time, according to the National Citizen's Observatory of Femicides in Mexico, last year alone there were 263 murders of women in this State, the official records show a lot less, 61 to be exact, because the rest of the homicides were not classified as femicide¹¹⁴. This Observatory published data showing that between 2011 and 2012 over 4 thousand women died or disappeared in Mexico¹¹⁵. The data shows that the states where this problem is concentrated are the State of Mexico, Jalisco, Tamaulipas, Sinaloa, Morelos and Chihuahua, and in some municipalities in the country the rates are higher than in the countries of the so called north triangle of Central America (Honduras, El Salvador and Guatemala), classified by Small Arms Survey as belonging to the 12 most dangerous countries to be a woman. In Iguala, the municipality where in 2014 the kidnapping of 43 students took place¹¹⁶, there is a woman killed per every 7 thousand people, while in Honduras the rate is one per every 13 thousand, in Guatemala it is one per every 20 thousand and in El Salvador it is one in every 20 thousand¹¹⁷.

The Observatory also presented the lack of interest shown by the authorities to solve these crimes and their complicity in trying to present false numbers, the coordinator María de la Luz Estrada said, "The disparity in the numbers presented by the government and the ones presented by the civil society proves the lassitude of the State in making visible the actual magnitude of the problematic. With this attitude of unwillingness to recognise the importance

¹¹³ M. P. Castaneda Salgado, 'Femicide In Mexico: An Approach Through Academic, Activist And Artistic Work' (2016) 64 *Current Sociology*.

¹¹⁴ Jacobo García, 'Estado De México, Capital Del Femicidio' (EL PAÍS, 2017) <https://internacional.elpais.com/internacional/2017/05/15/mexico/1494869255_010650.html> accessed 29 June 2017.

¹¹⁵ Observatorio Ciudadano Nacional del Femicidio (OCNF), 'Femicidio E Impunidad En México: Un Contexto De Violencia Estructural Y Generalizada' (CMDPDH) 2012) <<http://observatoriofemicidiomexico.org.mx/>> accessed 1 July 2017.

¹¹⁶ Crime that is still unsolved, although independent investigations point out the blame to the local government.

¹¹⁷ 'Small Arms Survey - Highlight: RN14' (Smallarmssurvey.org, 2017) <<http://www.smallarmssurvey.org/about-us/highlights/highlight-rn14.html>> accessed 29 June 2017.

of the phenomena they try to make it invisible.¹¹⁸ According to the General Prosecutor's office in Mexico City at least 203 women were killed between January 2009 and December 2010, in this city alone. From these cases, 149 were motivated by gender violence. 53% of the aggressions were done to women between 21 and 40 years old, 57% of the bodies were found in the public roads and 60% had serious violent marks. But this doesn't come close to the numbers presented by other entities¹¹⁹. Twenty years after Ciudad Juárez became synonymous with femicide, the State of Mexico occupies the number one place of death of women registering 406 femicides in 2015, followed by Guerrero with 220, Jalisco registered 147 and Chihuahua 142, these are numbers obtained by the National Institute of Statistics and Geography which are not always trusted by the civil society since their reports include the numbers provided by the local governments, which, as I have mentioned previously, regularly digress from the cases documented by the civil society¹²⁰. To this date the official number of femicides in the country is an abyss.

In 2007, fourteen years after the first accusations in Ciudad Juárez, thanks to the social pressure the federal government approved a Law that would guarantee the general access to a life free of violence for women, but it wasn't until 2012, twenty years after 'Las Muertas de Juárez' that Mexico classified femicide as a federal crime. This law, called Ley General de Acceso de las Mujeres a una Vida Libre de Violencia (LGAMVLV), has as an objective to establish a coordination between the Federal government and the federal entities and municipalities to prevent, sanction and eradicate violence against women, as well as coordinate the principles and modalities guarantee the access to a violence free life¹²¹, however since the law was approved and the term was included in the criminal code an average of 19 convictions are issued annually, contrasting the 300 reports submitted per

¹¹⁸ Observatorio Ciudadano Nacional del Femicidio (OCNF), 'Femicidio E Impunidad En México: Un Contexto De Violencia Estructural Y Generalizada' (CMDPDH) 2012) <<http://observatoriofemicidiomexico.org.mx/>> accessed 1 July 2017.

¹¹⁹ Instituto Belisario Domínguez (IBD), 'Asesinatos De Mujeres En México' (2015).

¹²⁰ Instituto Nacional de Estadísticas y Geografía, "ESTADÍSTICAS A PROPÓSITO DEL DÍA INTERNACIONAL DE LA MUJER" DATOS NACIONALES' (INEGI 2017).

¹²¹ Comisión Nacional para Prevenir y Erradicar la Violencia Contra las Mujeres, 'Ley General De Acceso De Las Mujeres A Una Vida Libre De Violencia' (2017).

year¹²². Just from January to March 2017, 369 female bodies were discovered, at least that we know of¹²³. The only constant there is regarding feminicides in Mexico, is their persistent escalations and subsequent impunity.

3.2 Cartels and Femicide

One of the most accepted hypothesis surrounding feminicides is the one that links killings with the activities of other criminal groups, for example the use of their bodies as codes encrypted between powerful men, rich businessman or criminals and their bands¹²⁴. Feminicides, narco-culture, organised crime and structural violence are all closely related in México. It is true that organised crime, drug trafficking and political violence have worsen the conditions of women's lives, but they weren't the initiators¹²⁵. The largest number of feminicides registered in the city were recorded after the 'war on drugs' was declared by the then president of the republic, Felipe Calderon in 2010¹²⁶. There were 304 homicides of women register, and the arrival of the military and federal police made rendered gender violence and feminicides invisible, everything became linked or related to the war on drugs and any feminicides were attributed to the women being involved in some way to the Cartels¹²⁷. In a report from Open Society in 2016 regarding human rights the number of deaths registered in Mexico since the beginning of the war on drugs raised to 150,000¹²⁸, as a consequences violence against women is made invisible within the statistics of crime because

¹²² 'Las Muertas Que No Se Ven' (Contralacorrupcion.mx, 2017) <<http://contralacorrupcion.mx/web/femimicidioscultos/index.html>> accessed 26 June 2017.

¹²³ (2017) <<https://femimicidiosmx.crowdmap.com/main>> accessed 30 June 2017.

¹²⁴ Santiago Gallur Santorum, 'El Papel Del Narcotráfico En Los Femicidios De Ciudad Juárez' (Universidade de Santiago de Compostela, Centro Interdisciplinario de Estudios Americanistas Gumersindo Busto, 2010).

¹²⁵ M. P. Castaneda Salgado, 'Femicide In Mexico: An Approach Through Academic, Activist And Artistic Work' (2016) 64 *Current Sociology*.

¹²⁶ Instituto Belisario Domínguez (IBD), 'Asesinatos De Mujeres En México' (2015).

¹²⁷ Santiago Gallur Santorum, 'El Papel Del Narcotráfico En Los Femicidios De Ciudad Juárez' (Universidade de Santiago de Compostela, Centro Interdisciplinario de Estudios Americanistas Gumersindo Busto, 2010).

¹²⁸ Open Society Foundations, 'Undeniable Atrocities: Confronting Crimes Against Humanity In Mexico' (Open Society Foundations 2016) <<https://www.opensocietyfoundations.org/sites/default/files/undenialble-atrocities-2nd-edition-20160808.pdf>> accessed 5 July 2017.

violence is attributed solely to this war on drugs. For a long time, all we heard was that in the war on drugs men were the direct victims, but within this war there is a second one, in which women are the target, this dispossession of women bodies that get lost in the numbers because there are no gender considerations to their investigations.

If we are to assume that the victims bodies carry a message from the Cartels, which is yet to be confirmed, the crimes that are orchestrated have a clear style, the scene in which this violent acts are committed are incorporated to a language able to communicate, even to those not actively participating in the Cartels¹²⁹. The authors of the crime value greed and territorial control, they want to make clear that the city, be it Ciudad Juarez, with the Cartel de Juarez, Sinaloa with el Chapo, Tamaulipas with los Zetas, or Sonora with Cartel del Golfo, have owners and that they can kill a woman just to show they can get away with it. In the case of Ciudad Juarez, which we have talked about in the first section, for more than 15 years the authorities denied categorically that the murders and disappearances of women had anything to do with the Cartels. Nevertheless, despite the efforts of the authorities to hide the relevant evidence, the families of the victims, with the help of activists and NGOs, have brought to light the negligence, corruption and impunity in the investigations that pointer to the real connections between the authorities, politicians, businessmen and narcotraficantes¹³⁰. The leader of the Cartel de Juarez known as “El Señor de los Cielos” Amado Carrillo Fuentes had bought policeman, army soldiers and politicians of all levels. When investigators from the federal government where sent to Juarez it was, for some people, perplexing that they couldn’t find any culprits for the crimes, though some affirm that they did, and what they discover was a huge line of corruption with many of the crimes being perpetuated by the policeman themselves. It is true that the majority of the victims of this general form of violence linked with drug trafficking are men, however, the homicides of women in the context of high rates of violence linked with organised crime have particularities, with their increase and the cruelty in which they are done, between 2007 and 2012, the violence against

¹²⁹ InPEC Contributor, 'Feminicidio Y Narcotráfico | Inpec Magazine' (Inpecmagazine.com, 2017) <<https://inpecmagazine.com/category/interviews/feminicidio-y-narcotrafico/>> accessed 1 July 2017.

¹³⁰ Santiago Gallur Santorum, 'El Papel Del Narcotráfico En Los Feminicidios De Ciudad Juárez' (Universidade de Santiago de Compostela, Centro Interdisciplinario de Estudios Americanistas Gumersindo Busto, 2010).

women and girls in all of Mexico increased by around 155%¹³¹. Many times, this homicides are used as a threat towards their male partners or are parts of an initiating ritual, like with the ‘maras’ in Central America. This are still feminicide cases, women are being killed because of gender reasons, because they are “someone’s property¹³²”. Regarding the crimes in Juarez a silence pact able to guarantee the unbreakable loyalty to the cartels that operate across the border and the inertia of justice and privilege of certain powerful groups leads to impunity, the same assertions can be made for the rest of Mexico.

The Cartel de Juarez is the organisation with the most economic power in this border town and consequently the one with the most influence and political corruptive¹³³, which means that any action that could hurt this organisation, be it in any context this action could present itself, will be avoid and eliminated by an extensive network of powerful people that are inside the economic and politic arena of the city, the state and even the country. In 1993 when the first killings and disappearances of women were registered, ‘El Señor de los Cielos’, Carrillo, had become the head of the organisation making it a billion dollar network, keeping in mind that this ‘accomplishments’ were done in the span of four years, since official records claim that Carrillo died in 1997¹³⁴.

In 2004 the authorities in Chihuahua decided to implement aleatory drug test to their agents, and in one year 200 agents tested positive for drug use, which meant a fourth of the police force. This aleatory drug tested revealed that two of the investigators responsible for ‘Las Muertas de Juarez’ case where involved with the cartels. One of them not only tested positive in the drug test but FBI investigations revealed that he had been paid 100 thousand dollars worth of bribery from el Cartel. The other one was in fact working for el Cartel and was in charge of distributing bribery payments in the Prosecutors office¹³⁵.

¹³¹ Instituto Belisario Domínguez (IBD), 'Asesinatos De Mujeres En México' (2015).

¹³² InPEC Contributor, 'Feminicidio Y Narcotráfico | Inpec Magazine' (Inpecmagazine.com, 2017) <<https://inpecmagazine.com/category/interviews/feminicidio-y-narcotrafico/>> accessed 1 July 2017.

¹³³ Santiago Gallur Santorum, 'El Papel Del Narcotráfico En Los Feminicidios De Ciudad Juárez' (Universidade de Santiago de Compostela, Centro Interdisciplinario de Estudios Americanistas Gumersindo Busto, 2010).

¹³⁴ Ibid

¹³⁵ Diana Washington Valdez, Cosecha De Mujeres (Ed Oceano 2005).

If we add the corruption, negligence, the policemen involved with the Cartels, the prostitution networks, the influence of powerful people, and the Cartel and its power in the city, the result is what this thesis argues is the biggest fault in the feminicides, and that is the impunity with which they are accompanied. I would say that one of the biggest consequences that the Cartels have had related to femicide is not only the surge in numbers that the general state of violence created but the corruption that like fire spread through the system. The presence of the organised crime makes it impossible to achieve justice, be it because of threats, or pay offs, where there is a strong Cartel presence, it is followed by a corruptive system. The fear they instigated by the disappearances of journalist, activist, and any other person that is asking the right questions at the wrong time has not stop the locals who, tired of this violence and level of manipulation, look in other international and national organisations for help. Neither has the failure of the justice, legal and political system of Ciudad Juarez, Estado de Mexico, Tamaulipas, Guerrero, Jalisco and practically all other federal entities leading to the federal government itself. Femicide is no longer a matter concerning just one city, or one social class, thanks to the involvement of activists, civil organisations, academics, the pressure of the population and the involvement of international agents, a change in the legal system and criminal codes were accomplished and yet, it is still not enough. Femicide in Mexico has reached epidemic levels, and after the war against drugs was declared, not only the clear defined drug cartel territories were affected, feminicides increased by 40%, in the State of Mexico, the number of homicides against women is 15 times higher than the world average¹³⁶.

3.3 El Caso Algodonero

Laura Berenice Ramos, Student, 17 years old, disappeared the 22 of September 2001. Claudia Ivette Gonzáles, maquila worker, 20 years old, disappeared the 10 of October 2001. Esmeralda Herrera Monreal, housekeeper, 15 years old, disappeared the 29 of October 2001. Their families went to the authorities to report them as missing, but no immediate action was

¹³⁶ Instituto Belisario Domínguez (IBD), 'Asesinatos De Mujeres En México' (2015).

taken by the authorities¹³⁷. Their bodies were discovered on a cotton field the 6 of November 2001 presenting signs of sexual violence, the authorities concluded that they were kept in captivity previous to their deaths but refuse to provide any further information, forcing the families to buy newspapers to learn about the progress of the case. A day after discovering the bodies, five other women with the same signs of violence were discovered on the same field. After exhausting local instances the case was taken to the Inter-American Court of Human Rights by the Inter-American Commission of Human Rights. It was discovered that the investigations of the cases were full of irregularities and contradictions, the search was not initiated immediately after the disappearances¹³⁸, there was no notification once they found the first bodies, and the body of Esmeralda, after 8 days of being missing had no face nor hair, the judicial authorities reported that the animals, the wind and the dirt had been the culprits in the decay, but the rest of her body was naked and intact. There was no autopsy document provided to the family and they were not allowed to be present when they placed the body in the coffin. No DNA results were presented, even though they had previously taken samples of blood and hair from Esmeralda's parents, and in the end the authorities tried to convince them that the responsible for the crime had been arrested. The suspected murderers claimed that their confession had been obtain using torture, and when the body was finally delivered to the family the case was closed and the families of the victims were bullied and intimidated by the authorities to stop the questioning of their work¹³⁹.

The Commission denounced to the Court the international responsibility of the Mexican State on this case because of the absence of protective measure for the victims, the lack of prevention of these crimes, whilst knowing that a pattern of gender violence existed on the area, the disinterest of the authorities at the time of the disappearances, the lack of due diligence in the investigation of the murders, the denial of justice and the absence of proper reparations for the families of the victims, all mentioned as right under the Belem do Pará

¹³⁷ González y otras ("Campo Algodonero") Vs México [2009] Inter-American Court of Human Rights (Inter-American Court of Human Rights).

¹³⁸ Antonia Aguilar, 'Análisis De La Sentencia "Campo Algodonero" De La CIDH' (Amparoyderechoshumanos.blogspot.it, 2017) <<http://amparoyderechoshumanos.blogspot.it/2013/04/analisis-de-la-sentencia-campo.html>> accessed 30 June 2017.

¹³⁹ González y otras ("Campo Algodonero") Vs México [2009] Inter-American Court of Human Rights (Inter-American Court of Human Rights).

Convention. The Commission also requested that the Court established the responsibility of the Mexican State of the breach of art. 7 of this Convention, as well as the breach to the right to life, to personal integrity, to judicial guarantees, to the rights of children (because of the two minors), and to judicial protection related to its obligations to respect, guarantee and not to discriminate of human rights. After assessing the facts the Court, taking into consideration the American Convention of Human Rights, The Belem do Pará Convention, and CEDAW, all instruments that complement the international human rights law, determined that the violence inflicted to the victims constituted VAW. It also noted that the State was responsible of not acting or taking any urgent precaution measures to prevent the crimes even though they had knowledge of the emergency of the situation, evidenced by a report issued in 1998 by the Nacional Commission of Human Rights in which they notified the State of the gender violence pattern emerging from Ciudad Juarez¹⁴⁰.

On 2009 the court published its sentence, for the first time an international organisation the term femicide was recognised as a systematic violation of the right to life of women because of their gender. The Court placed the responsibility on the Mexican State for the disappearance of the women and the impunity of the possible perpetrators, also finding the State responsible for the violations of the rights previously mentioned. It also presented the State with a set of reparations to be followed:

- I. The State shall conduct effectively the criminal proceedings,
- II. It shall include a gender perspective in the investigation,
- III. The investigative and judicial bodies have the necessary human resources,
- IV. The results of the processes shall be published so the Mexican Society the facts, that are the object of the present case,
- V. Implement educational and training programs for public officials on human rights,
- VI. Provide medical, psychological and psychiatric attention, immediately, adequate, effective and gratuitously,
- VII. Investigate the officials accused of irregularities and apply sanctions accordingly,

¹⁴⁰ Antonia Aguilar, 'Análisis De La Sentencia "Campo Algodonero" De La CIDH' (Amparoyderechoshumanos.blogspot.it, 2017) <<http://amparoyderechoshumanos.blogspot.it/2013/04/analisis-de-la-sentencia-campo.html>> accessed 30 June 2017.

VIII. Investigate and sanction the people responsible for the harassment that the families of the victims suffered,

IX. To execute an education program aimed at the citizens of Chihuahua, in order to overcome the stereotypes on the role of women in society,

X. Publish specific paragraphs of the judgment on the Official Journal of the Federation, and two journals of ample circulation,

XI. Perform a public act acknowledging the international responsibility of the State¹⁴¹.

One of the ad-hoc judges on the case considered that the only thing needed to comply with the reparations was the political will of the State because, to their opinion, no new laws had to be created to comply with them. This opinion was not shared by civil servants of the time, who suggested the creation of a law to indicate how the sentences of International courts should be applied, but argued the lack of resources to create it¹⁴². By 2013 only half of the reparations had been followed and the impunity of the cases continues to present day¹⁴³.

Although Mexico has failed to comply with all the reparations the significance of this judgement is not lost. This sentence set a precedent and created a jurisprudence for the understanding and interpretation of crimes committed against women. Specifically in the context of VAW and impunity and in the bad practices and obstruction of officials enchanted of the administration of justice¹⁴⁴. It also caused a strong reaction from the international and local society who placed a lot more pressure on the Mexican State to take the proper actions to end this phenomena. After this sentence, and impulsed by the feminist and then Federal Deputy, Marcela Lagarde, the codification of femicide to the criminal code started. On the following section I will study the laws on the Mexican Legal system that deal exclusively with femicide, observe if the recommendations issued by international organisations were

¹⁴¹ González y otras (“Campo Algodonero”) Vs México [2009] Inter-American Court of Human Rights (Inter-American Court of Human Rights).

¹⁴² Guadalupe Cruz Jaimes, 'Sólo Hace Falta Voluntad Del Estado Para Acatar Sentencia De Coidh | Címac Noticias' (Címacnoticias.com.mx, 2010) <<http://www.címacnoticias.com.mx/?q=node/41201>> accessed 30 June 2017.

¹⁴³ CONAVIM, 'Informe Sobre El Estado Que Guarda El Cumplimiento De La Sentencia Emitida Por La Corte Interamericana De Derechos Humanos En El Caso Gonzalez Y Otras (Campo Algodonero Vs. Mexico)' (Gobierno de Mexico 2013).

¹⁴⁴ Ana Isabel Garita Vilchez, *La Regulación Del Delito De Femicidio/Feminicidio En America Latina Y El Caribe* (Secretariado de la Campaña del Secretario General de las Naciones Unidas ÚNETE para poner fin a la violencia contra las mujeres 2016).

followed, and try to understand where the flaw in the system is that can explain why has the Mexican State failed to protect failed in the face of femicide.

3.4 Mexico's Legal System and Femicide

According to UN reports, in Mexico 6 women are killed per day and 95% of these murders are left in impunity¹⁴⁵. The sentence issued by the Inter-American Court established the State's failure to investigate these crimes in judicial proceedings. That sentence was issued over 5 years ago, and although changes in the legal and criminal system have occurred, what has really changed? The poor effectiveness of the Mexican legislation has been described as a form of gender violence, that springs from a rationality that tends to devalue women and alienate her as a subject from the law, factors that determine the extreme violence against women in the country¹⁴⁶. In the report 'Mexico: Intolerable Killings: 10 years of abductions and murder of women in Ciudad Juarez and Chihuahua,' Amnesty International exposes the lassitude of the State regarding the feminicides, evidenced by their lack of effective response in addressing this crimes, a fact that is, according to the report, one of the most noticeable demonstrations of discrimination against women. Hence, they recommended that in order to effectively fight this type of violence there was a need to adopt public policies based on a gender perspective, meaning a perspective sensible to the ways in which the discrimination in the perpetuity of these crimes is manifested¹⁴⁷. In the decade following the discovery of the crimes in Ciudad Juarez, Mexico received close to two hundred international recommendations from international and regional organisations, like the ones mentioned on Chapter 2, plus many different other human rights organisations, like Amnesty International. All of the recommendations, no matter who they came from, included the demand to clarify the cases and facilitate the access to justice to the families of the

¹⁴⁵ Ana Isabel Garita Vilchez, *La Regulación Del Delito De Femicidio/Feminicidio En America Latina Y El Caribe* (Secretariado de la Campaña del Secretario General de las Naciones Unidas ÚNETE para poner fin a la violencia contra las mujeres 2016).

¹⁴⁶ Adriana Ramos de Mello, 'Feminicidio: Un Análisis Criminológico-Jurídico De La Violencia Contra Las Mujeres' (PHD, UNIVERSIT CELONA 2015).

¹⁴⁷ Amnesty International, 'Intolerable Killings : 10 Years Of Abductions And Murders Of Women In Ciudad Juarez And Chihuahua' (AMR 41/026/2003)' (Amnesty International 2003).

victims. The recommendations instigated the creation and implementation of public policies using a gender perspective to confront these crimes and their causes, whilst looking to eradicate violence against women and fight impunity, and while Mexico complied and changes were performed on the legislation and criminal code, the recommendations by organisations are still being issued on the same topics, because what has been done has not been sufficient nor effective¹⁴⁸.

Before getting into the specificity of the Law, created to fight violence against women, I need to mention that in Mexico the competence to legislate the treatment of violence belongs to the states. However, the competence regarding the guarantee and protection of these rights belongs to the federal government, who is responsible of the breach of international commitments adopted in the subject matter.

3.4.1 Law for General Access of Women to a Life Free from Violence

On a federal level in 2007 Mexico formally established a legal framework on women's rights, drafted from a feminist and human rights theoretical framework, it was elaborated to guarantee the right to a life free of violence and discrimination. The approval of the Law for General Access of Women to a Life Free from Violence¹⁴⁹, or LGAMVLV for its Spanish initials, not only represented a great achievement for feminist and human rights advocates and academics, it was also a significant advance in the legislation on violence against women. As explained on the government's website, the LGAMVLV contains the guiding principles for the access of all women to a life free of violence which are: the legal equality between women and men, respect for the human dignity of women, no discrimination and freedom of women. It defines fundamental concepts like violence against women, human rights of women, gender perspective, the empowerment of women and misogyny. The adoption of this law was indeed a great advance for women's rights as the legislative system defined for the first time the different forms of violence, making it clear that violence isn't only related to physical harm. It also established that violence is not

¹⁴⁸ Marcela Lagarde, *Mujeres Y Sistema Penal. Violencia Doméstica* (1st edn, IBDEF 2008).

¹⁴⁹ Ley General de Acceso de las Mujeres a una Vida Libre De Violencia 2007.

something experienced only in the private life and presented the different spaces where women can experience violence by separating them into different modalities¹⁵⁰.

The LGAMVLV consists of 60 articles, with only four directly related to femicide and none that provide a clear definition. First the law defines violence against women, established in Art. 5 as: “Any action or omission, based on gender, that causes harm or psychological, physical, patrimony, economic, or sexual damage, including death in the private or public ambit,¹⁵¹” it acknowledges that death can be a consequence of violence against women, but does not mention femicide. Art. 6 establishes the types of violence against women and describes the areas or modalities where violence can occur dividing them as follows: 1) Family violence, 2) Violence in work and education, 3) Violence in the community, 4) Institutional Violence, and 5) Any other analogous practices that harm or are susceptible to damaging the dignity, integrity or freedom of women¹⁵². This article is important because it recognises that violence can happen in any ambit of the women’s life, implying that the perpetrator doesn’t have to be someone close to the victim. It is not until Article 21 that femicide is mentioned, although it is not specified to be a form of crime in itself, it was the gateway to the addition of the term in the criminal code years later, which I will discuss further in the chapter. The definition provided is:

“Femicide Violence: The extreme gender violence against women, result of the violation of their human rights, in the private or public ambit, composed by the set of conducts that can cause social impunity and other forms of violent death of women.”

One of the most important contributions of this Law is the creation of the Alert for Gender Violence Against Women¹⁵³, or AVGM for its Spanish name. This is a protection mechanism specified on Article 22 defined as the set of “governmental emergency actions to

¹⁵⁰ Ibid

¹⁵¹ Ibid

¹⁵² Ibid

¹⁵³ Alerta de Violencia de Genero contra las Mujeres

confront and eradicate the femicide violence on a determined territory, be it exercised by individuals or their own community¹⁵⁴.” Art. 23 establishes that the fundamental goal of the Alert is to ensure the security of women and cease of violence against them and to eliminate the inequalities produced by a legislation that injures their human rights, it also provides a list of requirements that the states have to implement in order to guarantee these goals, which are:

- I. To establish an inter-institutional and multidisciplinary group with gender perspective that can provide the corresponding followup
- II. Implement preventive actions of security and justice, to affront and demolish femicide violence
- III. Elaborate special reports about the zone and behaviour of indicators of violence against women
- IV. Allocate the necessary budgetary resources to address the contingency of Violence Against Women
- V. Make of public knowledge the reasons the Gender Alert is activated and the area it covers, as well as the measures to be implemented¹⁵⁵

Article 26 deals exclusively with the previously defined femicide violence and establishes that the Mexican State must compensate the damage according to the parameters established in International Human Rights Law and consider as reparation:

- I. The right to prompt, expeditious and impartial justice: Violations to the rights of women should be investigated, and the culprits should be punished.
- II. The rehabilitation: The provision of specialised and free legal, medical and psychological services for the recovery of direct or indirect victims must be guaranteed.
- III. The satisfaction: The measures that look for a reparation aimed at the prevention of violations. Among the adopted measures there are:

¹⁵⁴ Ibid n. 133

¹⁵⁵ Ibid

- a. The acceptance of the State of its responsibility in the harm caused and its compromise to repair it.
- b. The investigation and sanction of the actions of authorities omissive or negligent that caused the violation to the human rights of the victims to rest in impunity
- c. The design and implementation of public policies that avoid the perpetuation of crimes against women
- d. The verification of the facts and the publication of the truth¹⁵⁶

The creation of this Law aimed to provide the three levels of government a way to coordinate their actions to prevent, respond, sanction and eradicate violence against women. It compelled the different levels of government to add to their criminal code all forms of violence against women and to act with due diligence in the prevention, sanction and judgement of the perpetrators, as well as providing adequate reparation to victims in accordance with international treaties ratified by Mexico. Additionally, it establishes the duty of the State to guarantee the safety and integrity of victims by granting protection orders and immediate police and judicial intervention in cases of family violence and/or rape¹⁵⁷.

After the adoption of this law on a federal level the international community congratulated Mexico for its advance and action to fight violence against women, I can see why. On paper, this law followed all previously emitted recommendations, took the gender perspective and applied it on all steps of its creation, provided instruments and mechanisms of protection and set the guidelines for its adoption on all other federal entities. However, 10 years after the LGAMVLV was adopted, the implementation of this law and the activation of its protection mechanisms don't guarantee the protection of life or integrity of Women in Mexico. Far from combating the causes that originate the femicide violence, in the last years, the rates of feminicides have increased alarmingly and little has been done from the State to ensure this crimes are not committed and ensure that due diligence in investigations

¹⁵⁶ Ibid

¹⁵⁷ Comisión Nacional para Prevenir y Erradicar la Violencia Contra las Mujeres, 'Ley General De Acceso De Las Mujeres A Una Vida Libre De Violencia' (2017).

and sanctions is implemented¹⁵⁸. This was noted 4 years after the adoption of the law in a shadow report from Mexican NGOs and activists submitted to the CEDAW committee to contrast the report presented by the Mexican State where, in addressing feminicides, it only mentioned that per the recommendations of these committee and other international institutions it had included the concepts in the law, but failed to mention the increase of this form of violence and the institutional failure in the face of the protection of women¹⁵⁹.

The shadow report also severely criticised the gender alert mechanism due to its excessive bureaucratic procedure for activation, according to the Alert's regulation, to declare a gender alert firstly a request by a human rights organism on a local or national level, a civil society organism, or international organisations, shall be submitted to the according authorities, which vary depending on the state you are located and shall include a number of specific requirements. On this regulations it is established that the processing of the applications will only take place when the totality of the requirements are fulfilled and it is clearly demonstrated that the violence against women in this location is systematic, the crimes committed are a threat to the women's legal security and fundamental human rights, and that there is a context of impunity or social permissibility or a comparative offence that originates from a set of misogynistic behaviours¹⁶⁰. The procedure to apply for an issuance of the Alert has more requirements than the ones the authorities have to follow once it has been activated. The set of regulations also broaden the scope and participation to other judicial powers not contemplated by the original article, making this mechanism of protection ineffective because of the way it complicates the operability to the point that it is rendered inoperative, and ends up protecting the authorities responsible of the violence and impunity¹⁶¹. Since this law was adopted it took 6 years for the first gender alert to be issued, now a total of 11 gender alerts have been declared to the State of Mexico, Morelos, Michoacan, Chiapas, Nuevo León, Veracruz, Sinaloa, Colima, San Luis Potosí, Guerrero,

¹⁵⁸ Observatorio Ciudadano Nacional del Femicidio (OCNF), 'Femicidio E Impunidad En México: Un Contexto De Violencia Estructural Y Generalizada' (CMDPDH) 2012 <<http://observatoriofemicidiomexico.org.mx/>> accessed 1 July 2017.

¹⁵⁹ Ibid

¹⁶⁰ Ibid

¹⁶¹ Ibid

Quintana Roo, with the State of Mexico being on the lead for having the Gender Alert activated for 11 municipalities. All of these Alerts took at least a year and a half from the time they were request to when they were activated, and three of the requests so far have been rejected because it was considered that the State was already taking all of the necessary requirements¹⁶². Going back to the description of this protection mechanism on the law, it clearly mentions it as an emergency response, but how urgent is it really when the government, because of bureaucracy, and image protection takes over a year to decide to implement. As the leader of the National Citizen's Observatory of Femicides in Mexico declared, the authorities need to realise that the Gender Alert is a system of collective protection, it is not a punishment or bad PR, but a tool so that the competent authorities can coordinate and focalise the problem effectively containing it, which has not been possible so far¹⁶³.

3.4.2 Criminal Code, Art. 325

After the adoption of this law, five years passed before a reform to the federal criminal code was introduce and the crime of femicide was finally typified. The correct classification of femicide could have represented an advance that would allow the visualisation of this problem, and facilitated the development of mechanisms of prevention and sanction, however there is a lack of uniformity on the term once adopted on the different criminal codes of the states. On a federal level, as with the LGAMVLV, the recommendations of different international and national instruments were consider for the reform of the criminal code and inclusion of Art. 325 which congress passed on 2012, with the mission to prohibit and sanction the death of a women under circumstances that revealed she was subjected to physical, psychological, or sexually by the aggressor. This article contemplates sentences that go from 40 to 60 years in prison to the ones responsible, as well as sanctions to the public officials who delay, or obstruct the investigation or enforcement of justice. The

¹⁶² '¿Sabes Qué Es La Alerta De Violencia De Género Contra Las Mujeres?' (gob.mx, 2017) <<https://www.gob.mx/conavim/articulos/sabes-que-es-la-alerta-de-violencia-de-genero-contra-las-mujeres?idiom=es>> accessed 8 July 2017.

¹⁶³ 'Los Femicidios Del Estado De México' (YouTube, 2017) <<https://www.youtube.com/watch?v=MIq2hJuNKC0>> accessed 30 June 2017.

crime of femicide covers the violence exercised against women in the private or public ambit. Art. 325 of the Mexican federal criminal provides the following: The crime of femicide is committed by a person who deprives a woman of life for reasons of gender. It is considered that there are gender reasons when any of the following circumstances exist:

- I. The victim presents signs of sexual violence of any kind;
- II. The victim has suffered injuries, degrading mutilations, before or after the deprivation of life or acts of necrophilia;
- III. There is a history of any type of violence in the family, work or school space, from the active against the victim;
- IV. A relationship between the active and the victim has existed of a sentimental, affective, or trusting nature;
- V. There is data that establishes threats were made related to the criminal act, harassment, or injuries from the active subject against the victim;
- VI. The victim was isolated with no way to communicate, regardless of how long for, before the deprivation of life;
- VII. The body of the victim was exposed or displayed in a public area.

Besides the 40-60 years in prison there will be a fine of five hundred to a thousand minimum wages days. This code stipulates that in the event the crime is found not to be a femicide the rules of homicide will apply. To the public servant that delays or obstructs the administration of justice, a sentence of 3-8 years in prison will be issued and a fine of five hundred to fifteen hundred minimum wage days, they will also be unable to perform another job or position in the public service for a period of 3-10 years¹⁶⁴. As with the LGAMVLV, this typification followed, on paper at least, the recommendations that were issued to the Mexican State urging it to typify this crime¹⁶⁵, but when transferred to the criminal codes of the different entities, a lot was lost in the way. So much so that CEDAW manifested its

¹⁶⁴ Código Penal Federal, (DOF)18-07-2016. Art. 325

¹⁶⁵ To find out more on the recommendations see: Comité de Derechos Humanos, 2010 (párr. 8b); Comité CEDAW, 2006 (párr. 15); Relatora Especial de las Naciones Unidas sobre la Violencia contra la Mujer sus Causas y Consecuencias, 2006 (párr. 65)

concerns because of the deficiencies and differences that exist in the typification of this crime in the criminal codes of the federal entities and has urged the Mexican State to adopt the appropriate measures to ensure that this typification is sustained by objective elements that allow for its proper classification on the criminal codes of its federal entities¹⁶⁶.

3.4.3 Observations

I don't intend to minimise the success that typifying femicide on the federal criminal code and subsequently, the code of the different entities represented for the rights of women, however, by analysing the data that came after the typification was adopted it is clear that this action is not enough. From 2012 to 2016 only 9 federal entities reported sentences on this crime, in this same period of time 9 thousand 581 women were killed and only 1,887 of the homicides were classified as femicide, that is the 19% of them. From that 1,887 recognised femicides only 169 sentences were issued, that is in 4 years from the introduction of this crime only 1 out of 5 women killings have been judged as femicide¹⁶⁷. Animal Politico and the NGO Mexicans Against Corruption and Impunity, conducted a study on May 2017 of the criminal codes of the 32 federal entities, five years after the reform that added femicide to the criminal code was adopted, and with the exception of Chihuahua and Nayarit, all have classified femicide on their criminal codes and recognised this crime as, the homicide of a woman because of her gender. However, there are 12 entities that do not include, as one of the elements to classify the crime as a femicide, the relationship between victim and victimiser, there are also 12 entities that do not establish as a circumstance of femicide the existence of a previous history of violence, and the instance where the victim is isolated with no way of communication is not recognised as an element of femicide by 6 entities. There are 7 entities that do not include the previous existence of threats as an element of femicide and there are 8 states that don't recognise as a cause to classify the homicide as femicide the display of the body in a public area. The study showed that whilst

¹⁶⁶ Concluding observations of the Committee on the Elimination of Discrimination against Women. Mexico. Committee on the Elimination of Discrimination against Women Fifty-second session, 27 July 2012, English, CEDAW/C/MEX/CO/7-8, parr. 17 y 19

¹⁶⁷ 'Las Muertas Que No Se Ven' (Contralacorrupcion.mx, 2017) <<http://contralacorrupcion.mx/web/femimicidiosocultos/index.html>> accessed 26 June 2017.

the federal criminal code was indeed created per the instructions of binding international instruments and their recommendations, the adoption of this regulations by the different entities is more of a 'take what is convenient and won't cause too much of a hassle to quiet the civil society'. It is almost crazy to think that in Chihuahua the crime has never even been classified as a femicide, its criminal code does provide an article that stipulates that when there is a homicide and the victim is female or underage the sentence to prison will be elevated to up to 60 years, but nowhere does it mention femicide and the State's responsibility on the perpetration of these crimes and, as mentioned in the first section of this chapter, reports place the number of cases left in impunity is close to 700. The second State that has yet to typify femicide is Nayarit, where the disinterest on VAW of the local government is such that the typification of femicide was approved on September 2016 and 180 days were given for it to come into force and when the time was up, on March 2017, it was not added to the criminal code because there was no initiative in the local congress to do so¹⁶⁸.

The lack of harmonisation on the legal frameworks of the federal entities and their unwillingness to cooperate with individual investigations, renders it practically impossible to gather information to compare, register, and follow VAW at a federal level¹⁶⁹. The lack of unification on the legislation also causes legal lagoons that have allowed for less than 20% of the violent killings against women to be recognised as femicides. These lagoons also cause those responsible for killing women in a violent manner to not always be processed before the law, for example whoever kills a woman by punches or stabs could get a conviction of less than 20 years if they can prove that at the moment of the murder, they were suffering a 'violent emotion' like jealousy or uncontrollable anger¹⁷⁰. The lagoons then create black holes in the justice system, which are also supported by inadequate protocols when dealing with crime scenes, erroneous ministerial investigations and a sentencing of the crimes with minor penalties. According to the human rights lawyer Michael Salas, the lack of femicide sentences on 23 out of 32 states is testimony to the inoperability and unwillingness to proceed

¹⁶⁸ Arturo Angel, 'En 12 Estados No Se Investiga Como Femicidio El Asesinato De Una Mujer A Manos De Su Pareja' (Animal Político, 2017) <<http://www.animalpolitico.com/2017/05/femicidio-delito-tipificado-estados/>> accessed 4 July 2017.

¹⁶⁹ Violencia feminicida en Mexico

¹⁷⁰ 'Las Muertas Que No Se Ven' (Contralacorrupcion.mx, 2017) <<http://contralacorrupcion.mx/web/femimicidiosocultos/index.html>> accessed 26 June 2017.

with investigations on femicide. Salas also explained that in some criminal codes the victims carry a degree of responsibility, even now, because it is not that the male wanted to kill them, rather he couldn't cope with the 'infidelity,' 'dishonour,' 'anger,' that the women generated and he simply couldn't control himself, so he kills her¹⁷¹. This excuse is still valid in some federal courts, even after the recognition of femicide on the criminal framework, in Guerrero, for example, an article in the criminal code justifies a 'crime of passion' when it is committed against the one who provoked it. It should not be surprising then that this is one of the states with the highest cases of femicides, from 2012 to 2016, 936 women were killed in Guerrero but only 50 of these cases were classified as femicides¹⁷². Another example is Tamaulipas, land of the Zetas cartel, were on the same period of time 50 mutilated female bodies were found and not one was judged as a femicide. For the authorities it was not evidence enough that all of them were found decapitated and dismembered, they also didn't consider that six of the cases had evidence of sexual violence. The bodies found mutilated were not the only female deaths, in these period of time, just on Tamaulipas, a total of 441 women suffered a violent death and only one was classified as femicide¹⁷³.

Each of the loopholes and blackholes in the judicial systems, accompanied by the lack of implementations of general protocols and alerts of attention, the denial of the authorities to acknowledge the crimes as femicides, in accordance with their own criminal codes, and the sexist attitudes from the authorities have been key pieces in the perpetuity of the impunity that goes hand in hand with VAW in Mexico. Based on her work on the subject of femicide violence, Salas has concluded that if in Mexico the gravity of femicide is not recognised is because the Federal Government maintains a constant denial in the face of gender-based violence; She declared that whilst the typification of femicide was a step on the right direction, it has been proven to not be enough, evidenced by the 169 femicide sentences issued on the whole country, in five years, against statistics from international organisations

¹⁷¹ Arturo Angel, 'En 12 Estados No Se Investiga Como Femicidio El Asesinato De Una Mujer A Manos De Su Pareja' (Animal Político, 2017) <<http://www.animalpolitico.com/2017/05/femicidio-delito-tipificado-estados/>> accessed 4 July 2017.

¹⁷² 'Las Muertas Que No Se Ven' (Contralacorrupcion.mx, 2017) <<http://contralacorrupcion.mx/web/femimicidiosocultos/index.html>> accessed 26 June 2017.

¹⁷³ Ibid

that report 6 feminicides occur per day. Impunity continues being the “general rule in the actions of the Mexican State.¹⁷⁴”

According to UN Women, impunity is a key element in perpetuating violence and discriminations against women, “If men can treat women as badly as they choose with little or no consequence, it negates all efforts to build a world that is safe for women and girls and in which they can flourish.¹⁷⁵”. The Special Rapporteur on VAW Rashida Manjoo declared, “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 Mexican justice system¹⁷⁶.” Feminicides in Mexico have at its core impunity, and this too should be recognised as a form of violence as explained by Marcela Lagarde “Injustice in the criminal cases against women caused by the botched investigations and police work, poorly integrated inquiries, public ministries that are malicious, machista and neglect the claims of the victims, misogynist judges for whom women’s lives becomes secondary or show a clear bias that disqualifies and blames the victims, legislators insensible to their normative function and for whom the representation of the needs and interests of the citizenship are disregarded and for whom VAW is not a priority problem and governments implicated and covering the violence” are the nourishment of feminicide.

Corruption in all government levels, specially the justice system, together with misogyny are the determinants of impunity¹⁷⁷ that prove the complicity of the government when it comes to feminicides. Because of time constraints I am not able to mention all of the cases read and consulted while writing this thesis, but if I can resume one common aspect in

¹⁷⁴ Arturo Angel, 'En 12 Estados No Se Investiga Como Feminicidio El Asesinato De Una Mujer A Manos De Su Pareja' (Animal Político, 2017) <<http://www.animalpolitico.com/2017/05/feminicidio-delito-tipificado-estados/>> accessed 4 July 2017.

¹⁷⁵ 'Killing Women Means Society Pays The Ultimate Price' (UN Women, 2016) <<http://www.unwomen.org/en/news/stories/2016/10/statement-by-the-executive-director-on-femicide>> accessed 4 July 2017.

¹⁷⁶ Report by Special Rapporteur Rashida Manjoo A/HRC/20/16/Add. 4

¹⁷⁷ Observatorio Ciudadano Nacional de Feminicidio, 'ESTUDIO DE LA IMPLEMENTACIÓN DEL TIPO PENAL DE FEMINICIDIO EN MEXICO: CAUSAS Y CONSECUENCIAS 2012-2013.' (Observatorio Ciudadano Nacional de Feminicidio 2014) <<http://observatoriofemicidiomexico.org.mx/wp-content/uploads/2015/01/17-NOV-Estudio-Feminicidio-en-Mexico-Version-web-1.pdf>> accessed 5 July 2017.

all of them was the lack of interests by the authorities¹⁷⁸, the immediate assumption that the victim was to blame for her own death¹⁷⁹, and the level of corruption that is shown on each case, be it because of the officials involvement with drug trafficking, be it because the government is trying to cover the crimes as a favour, or just because to proceed with the investigations of a case they requested money to families that just wanted to find out were their daughters, sisters, mothers where and if they were still alive.

This complicity of the State with femicide goes from the local police, to the public officials receiving the missing persons report, to the detectives that don't use due diligence when investigating a possible femicide, to the soldiers, to whoever is President of the Republic. It implies a level of impunity that would correspond to a dictatorship, a country in war in which all the authority powers collude and the absence of Rule of Law prevails. The Mexican feminist Marcela Lagarde argues that femicide involves a partial rupture on the Rule of Law, because of the State's incapability in a) guaranteeing the life of women, b) respecting their human rights, c) acting with legality and respect, d) looking and providing justice, e) preventing and eradicating the violence, concluding that femicide is a State crime¹⁸⁰. I agree with her conclusion, femicide is a State crime, but not because of the incapability of the State, but because of its complicity. As presented on this chapter the State has the means, instruments, and mechanisms, to protect women and guarantee their rights. They are actively choosing not to. The Mexican State committed to follow the recommendations issued by regional and international organisations, and has succeeded if you focus on the legislations and reforms on the subject matter, but while having a gender perspective law may grant a congratulations on a political level, there is no implementations of it. The corruption that runs deep in all levels of government paralyzes any advance towards a safer country. The State is actively and knowingly failing women.

¹⁷⁸ Case of Cecilia, for more Jacobo García, 'Why Are So Many Women Being Murdered In Mexico State?' (EL PAÍS, 2017) <https://elpais.com/elpais/2017/05/16/inenglish/1494927048_572750.html> accessed 5 July 2017.

¹⁷⁹ Case of Lesby Berlin, for more Georgina Rannard, 'Outrage After Prosecutor Blames A Woman For Her Death - BBC News' (BBC News, 2017) <<http://www.bbc.com/news/blogs-trending-39817650>> accessed 5 July 2017.

¹⁸⁰ Marcela Lagarde, *Mujeres Y Sistema Penal. Violencia Doméstica* (1st edn, IBDEF 2008).

Conclusion

“Disculpen las molestias, nos están matando¹⁸¹,” the title of this research comes from a movement that exists because of the families of victims decided not to accept the responses of the government when asking for justice for their loved ones. It comes from a feeling of frustration and impotence whenever we learn about the discovery of another women or girl’s body, it comes from the impunity of these crimes, it comes from a feeling of unsafety that made women come together and stand up to this fear.

Why has the Mexican State failed to protect women in the face of femicide? By first defining the concepts, the importance of recognising the difference from femicide from femicide was established as well as the need to include a gender perspective into all areas of not just the government but society. Violence against women should not be tolerated as a fact of life, there needs to be more political will and societal rejection to fights against it and end it. This is reflected in the slow but progressive recognition that femicide is a global problem that is being address by international institutions, by the creation of instruments within the most prominent international and regional organisations that at the same time have provided mechanisms and regulations to prevent and eradicate this form of violence, but also by making it clear that these violations of women’s rights will not be permitted. The signing on the international instruments is a commitment undertaken by the signatories to make the necessary adjustments on the legal frameworks to guarantee this protection of women, Mexico has signed and ratified all of them, adjusting its own legislation and criminal code to confront the pandemic that followed the feminicides in Ciudad Juarez, the effect organised crime had on femicide and the changes in legislation Mexico has taken.

The Mexican State is not failing women because it doesn’t have resources, or the instruments, or the mechanisms to protect women. After conducting the research looking for an answer to this question I’ve found that it is failing for a number of connected reasons, that exist because they feed of each other. The lust for money and power, the gender discrimination that considers women as second class citizens, the corruption that is like a cancer in all branches of the government that goes hand in hand with the best ally of

¹⁸¹ Sorry for the inconvenience, we are being killed

femicide, impunity. It is not that the Mexican State is incapable of protecting women, as I have shown it has all of the instruments, mechanisms and resources to do so. It is that it chooses not to. Not to say that the State is actively colluding to kill women, but that by its inactions and disengagement it is being complicit on this epidemic.

I believe that there is something to be done. Typifying the name is not enough, but by using international tools like the Latin American Model Protocol for the investigations of gender-related killings of women (femicide/femicide) we compel the authorities to investigate all women's deaths from a gender perspective, first. The cooperation with other States and institutions is key to have an independent analysis of the situation and a share of best-practice that have been proven to be working. Uruguay, for example, has implemented successful pilot projects with courts, the police and the women's ministry that involves a judge ordain that demands the abuser wear an electronic band connected to a device the woman carries that would alert the police automatically if he comes close to her. So far, not a single woman on this programme has been killed. Colombia passed a legislation in 2015 that engages the education sector by introducing a gender perspective into teaching since pre-school. In Peru, the public ministry developed a femicide registry that allows the proper and easier recording of a women's death in cases of femicide and has been successful in obtaining official numbers¹⁸². The importance of the women's movements, civil society and human rights organisations can't be left unmentioned. It was because of them that the problem was brought to light and it is because of them that we continue to hear about these crimes. They confront the government, and I believe that by using these organisations the State could start fixing the problems from within.

One of the most important recommendations I came across while writing this thesis was education. There needs to be an adjustment in education on all levels. The OAS proposed some educational policies directed at public officials but also support programs in the private sector aimed at the society, to help them wake up and be aware of the problems of violence against women and its social, judicial, economic and political consequences. It also proposed capacitation programs to women, that would allow them to participate fully in the public,

¹⁸² 'Fighting Femicide In Latin America' (HuffPost, 2017) <http://www.huffingtonpost.com/entry/take-five-fighting-femicide-in-latin-america_us_58af52cbe4b02f3f81e44556> accessed 12 July 2017.

social and private life. Incorporate, as Colombia is doing so successfully, gender classes, but not only for students, for teachers as well. For violence to stop, it is not enough that we demand the government to take action, the change needs to come from within the society as well.

Femicide is influenced by a culture of discrimination against women, one where misogyny and machismo are regarded as a normality and violence is seen every day. The indifference by the authorities must change. The current attitude of the State is what makes violence against women prevail and consequently feed on the impunity they carry. Their inaction when dealing with violence against women can be interpreted as a subliminal message to society that it is tolerated...

Why do men continue to kill women in Mexico? Because they can.

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