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Notes on Femicide/Feminicidio and the Limits of Justice

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Abstract:

This paper is part of a longer research project that works towards a critical reading of the role of law in reinscribing and even producing structural and institutional violence. For introducing such a complex multi-sited topic, the present article focuses on the socio-juridical approach to violence against women by unpacking (i) the terminology of "femicide" and "feminicidio"; (ii) the main instruments and decisions from the international human rights system; (iii) the implementation of the international discourses and documents. In a materialistic framework, we examine the Brazilian context, especially regarding the institutional answers on: public information, statistics, police stations, and shelters to women and children experiencing violence. Through this itinerary, the analysis moves from the legal discourse towards questioning what lies at the limits of justice praxis within the framework of femicide.

Keywords:

Critical legal studies, gender-based violence, women's movement, femicide/feminicide, international law and human rights system, discourse of rights.

Resumen:

Este artículo forma parte de un proyecto de investigación más largo que trabaja en pos de una lectura crítica del papel del derecho en la reinscripción e incluso la producción de la violencia estructural e institucional. Para introducir un tema tan complejo y multisituado, el presente artículo se centra en el enfoque socio-jurídico de la violencia contra las mujeres,

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desentrañando (i) la terminología de "femicidio" y "feminicidio"; (ii) los principales instrumentos y decisiones del sistema internacional de derechos humanos; (iii) la aplicación de los discursos y documentos internacionales. En un marco materialista, examinamos el contexto brasileño, especialmente en lo que se refiere a las respuestas institucionales sobre información pública, estadísticas, comisarías y lugares de acogida para mujeres y niños que sufren violencia. A través de este itinerario, el análisis se desplaza desde el discurso jurídico hacia el cuestionamiento de los límites de la praxis de la justicia en el marco del feminicidio.

Palabras clave:

Estudios jurídicos críticos, violencia de género, movimiento de las mujeres, femicidio/feminicidio, derecho internacional y sistema de derechos humanos, discurso de derechos.

> Whatever is unnamed, undepicted in images, whatever is omitted from biography, censored in collections of letters, whatever is misnamed as something else, made difficult-to-come-by, whatever is buried in the memory by the collapse of meaning under an inadequate or lying language – this will become, not merely unspoken, but *unspeakable.*
>
> (Adrienne Rich*, On Lies, Secrets, and Silence*)

1. INTRODUCTION

This article is part of a longer research project concerned with the colonial legacies of structural violence and the ongoing strategies for radical transformation and re-existence. As an introductory gesture, I question here the role of the politics of rights and the limits of justice[1] regarding structural violence against women and, more precisely, femicide. My itinerary involves three main movements. Firstly, I revisit the socio-legal terminologies of femicide and feminicidio. Then, I map the main human rights' discourses, conventions, and decisions. In a third moment, I analyze the on-the-ground implementation of such a discourse of rights.

Materially speaking, the investigation focuses on the Brazilian context, but it speaks on/through/against the politics of violence that overseeds its borders. In short, violence against women is a globalized problem. As the report *Femicide: A Global Issue That Demands Action* points out:

> In Australia, Canada, Israel, South Africa and the United States between forty and seventy percent of female murder victims were killed by their intimate partner. (...) In European countries such as Italy, Spain, Portugal or France, where female homicide rates are fairly low compared to other non-EU countries, the murder of

[1] The expression "limits of justice" was inspired by Denise Ferreira da Silva's conceptual work. As an inspiration, this paper does have the ambition to be a fully materialization of what the scholar radically conceived as thinking at the limits of justice (Ferreira da Silva 2013).

> women by former and current partners accounts for a large proportion of violent deaths among women. (Laurent *et al.* 2013, 6)

When looking back, even just a few decades ago, the dearth of existing domestic violence laws globally becomes glaringly obvious. As stated by Adele Morrison, "the language of the discourse before the 1970s, if there were any words at all about the issue of violence in the home, may have been only whispers between the closest of female friends who changed the subject if the topic came up in public" (Morrison 2006, 1073). Before the 1970s, violence against women was widely unnamed, mainly framed as a private problem and justified as an act to "defend the (male) honor". Only in mid-1970s violence against women started to be addressed as a public issue. From the eighties on, violence against women has been widely debated in the world in terms of "gender-based" violence as an influence of the gender terminology established in the United States within the Women and Feminist Studies scholarship.

As Adrienne Rich mentioned in the paragraph quoted above, this type of gender-based violence was "not merely unspoken, but unspeakable" (Rich 1995, 278). In the research on *Feminists Organising against Gendered Violence,* Lesley McMillan elaborates on how the failure of finding a way to truly convey the experience and the feelings in language, actively performs a crucial role in the process of silencing stories of violence (McMillan 2007, 176-77). That is to say, the establishment of a word to designate the killing of women has been considered as an important step for making the violence not only known but also *speakable* in the public realm.

2. FEMICIDE

The term "femicide" was employed for the first time at the International Tribunal on Crimes against Women held in Brussels in 1976. The co-organizer of the Tribunal, Diana Russell, invoked the term before the Tribunal's members when speaking about misogynist murder of women and girls by men. It is worth quoting her words in length:

> The names of those who I have read out [17 women who had been murdered in the San Francisco Bay] to you today will soon be obliterated. No demonstrations have accompanied them to the grave, no protests rocked the city, no leaflets were passed out, and no committees were formed. But today we have remembered them. And tomorrow we must act to stop *femicide*! (Russell and Radford 1992, xiv)[2]

Femicide is certainly not a new form of violence, but a sociolegal label created to name and make speakable the extreme manifestation of violence against women. It has been employed as a response to the naturalization of the ongoing killing perpetrated against women and as a call for action and by doing so, it has exposed the ethical indifference in which violence against women has historically operated and continues to do so.

The term "homicide" has been considered as a neutral legal term used to address the ultimate violence against a person, that is, the physical murder. However, the etymological

[2] According to Russell, she had first heard the term femicide with an acquaintance in 1974 when mentioning that American writer Carol Orlock was preparing an anthology on femicide.

root of homicide derives from the Latin term *homo/homin* which literally means the murder of a man. Therefore, the term reinscribes the problematic tradition in which the figure of the (white) man has been generalized as universal and neutral. In reaction to that, some feminist scholars and activists have started adopting other terms, such as "murder", instead of "homicide" (Campbell 1992, Vásquez 2009, 24).

Later, Russell stated the necessity to create a specific term to address the misogynist murder of women in order to facilitate the organization and the struggle against it, and as Djamila Ribeiro said, "we cannot fight what we cannot name" (Ribeiro 2018, 19). In Russell's words: "I believed that inventing a new term for sexist/misogynist killings of females was necessary for feminists to start organizing to combat these heretofore neglected lethal forms of violence against women and girls" (Russell 2011).

In the 1990s, Russell further conceptualized the notion in two main works. Firstly, at the paper *Femicide: Sexist Terrorism against Women*, written together with Jane Caputi, they defined femicide as the violent female murder inserted within a continuum of violence (Russell and Caputi 1992). Secondly, in the same year, Russell and Jill Radford co-edited the book *Femicide: The Politics of Woman Killing*, where they defined femicide as the misogynist killing of women by men (Russell and Radford 1992).

The concept of femicide was only on a few occasions extended beyond the definition of direct murder to also include indirect forms of murder resulting from misogynous attitudes or social practices. Moreover, in some passages, the definition included not only the white and heteronormative way of experiencing gender-based violence, but also encompassed "racist femicide, homophobic femicide, lesbicide" (Radford 1992, 7). To this quote, I would also bring attention both to the unmentioned violence that has perpetrated against transgender and *travesti* women, as well as to other types of gender-based violence entangled with ableism, class, and religious matters.

Since the 1990s, the research on femicide has consolidated a trend in criminology and feminist studies especially in Latin America, the United States and Australia, with a more recent development occurring in Europe. Latin America is the region where the term has been adopted the most, and where it has been re-conceptualized as "feminicidio" (feminicide) by Marcela Lagarde.[3]

2.1. FEMINICIDIO

Building on the conceptualization of Russell, the Mexican anthropologist Marcela Lagarde proposed the word "feminicidio" (feminicide) in 1992. According to Lagarde, feminicidio is the most extreme form of gender-based violence, which includes a set of misogynistic aggressions. Additionally, the notion of feminicidio also brings attention to the articulation of gender with respect to race, class, sexuality, and religion (Lagarde 2008).

Feminicidio is situated at the last stage of the spectrum of violence, also named as the "cycle of violence" or the "continuum of violence" (*ibidem*). Thus, the terms "continuum" and

[3] Women activists from Latin America have been battling against the unnamed systematic gender-based violence. More than half of the 25 countries in the world with the highest rates of femicide are located in the region (Laurent *et al.* 2013, 50).

"cycle" acknowledge how violence is a continual process and not an event. The continuum of violence ranges from the initial menace, emotional manipulations and abusive behavior, physical and psychological aggression, and can culminate in the most extreme result of feminicide.

More precisely, Lagarde argues that feminicide is the murder of women in the social context of silence, omission, negligence, or even connivance of the state's authorities. It therefore constitutes an avoidable crime for which a state is responsible due to inability to enact measures of accountability, protection, reparation, and prevention.[4] As we will see, this vocabulary deeply resonates with the legal language employed by the Inter-American Human Rights system (IAHRS).

3. SURFACE: "WOMEN'S RIGHTS AS HUMAN RIGHTS"

In examining the act of naming violence, the discourse of human rights has been transnationally considered as the "common language of humanity" through which all pressing problems can be verbalized (Santos 2009, Barreto 2014, MacLaren 2017, 149). As the legal scholar Balakrishnan Rajagopal noted, "no other discourse, except perhaps anticolonial nationalism, has had such a stranglehold on both the imagination of progressive intellectuals as well as mass mobilization in the Third World" (Rajagopal 2003, 171–72).

Upon its emergence, international law focused exclusively on inter-state conflicts in the framework of war and peace. Following this, the human rights' system was initially focused on the role of protecting individuals from state-sanctioned violence and abuse. Such a role can be surely read as relevant but it is still very narrow. It leaves aside, for instance, the violence committed in the private sphere where most violations against women take place.

Only later, especially after the Second World War, did the discourse of human rights become a central part of the international law agenda. This change was followed by an opening up of the definition of violence from that of war to other types of interpersonal violations (Segato 2016). On this account, feminist activists mobilized the discourse of human rights as a promising strategy for transnational advocacy based on the notion of "women's rights as human rights" (Sellers 2009). Thus, the classification of human rights, or the "speaking" of human rights, has come to be more than just a semantics issue since it carries the potentiality and the hope to impact and transform the reality of women regarding the violence that they were faced with on a daily basis (Bunch 1990, 492).

International conferences played an important role in the transnational debates on violence against women. For instance, in 1975, the first World Conference on Women took place in Mexico City and resulted in the World Plan of Action and the United Nations Decade for Women (1975–1985). In the 1980s, another international conference on women was

[4] Despite the permission of translating the term, Russell disagrees with the definition proposed by Lagarde based on four main reasons: i) it is based on the notion of impunity, which implies that in cases in which the perpetrators are arrested, the crime would no longer be classified as feminicide; ii) impunity is not always the case with femicides, therefore this should not be considered a key feature for its global definition; iii) the term feminicide would resemble, for Russell, the "oppressive concept femininity"; iv) conflicts between those who adopted the term feminicide and those who have adopted the term femicide, divide a movement that should be working together to combat the same misogynist murders of females in Latin America (Russell 2011).

held in Copenhagen, followed by the Third World Conference on Women held in Nairobi (1985). These three world conferences are examples of women's activism around the world, fostering, in this way, avenues for the international conferences on women's rights that followed in the 1990s, namely, the Human Rights Conference in Vienna (1993); the International Conference on Population and Development in Cairo (1994); and the Fourth World Conference on Women in Beijing (1995). The latter has inspired a pre-conference in Mar del Plata, in which black women from 16 countries from Latin America and the Caribbean convened together.[5]

3.1. SPEAKING THE LANGUAGE OF HUMAN RIGHTS

Taking seriously the importance given to the discourse of human rights, this section speaks the language of human rights and maps the main mechanisms, declarations, conventions, comments, and decisions on gender-based violence within the international human rights system, considering the Latin American context in particular.

1. Established in 1928, the Inter-American Commission of Women (CIM) was the first inter-governmental agency committed to full citizenship for women worldwide and was situated within the Organization of American States (OAS).[6]

2. A year after the creation of the United Nations (UN), the Commission on the Status of Women (CSW) was established in 1946. Based on the Economic and Social Council's (ECOSOC) resolution 11(II), the CSW consists of a global body dedicated to promoting "gender equality and the empowerment of women" (UN Women). The CSW became also responsible for monitoring and reviewing the implementation of the Beijing Declaration and the Platform for Action (1995), as well as for advocating a gender perspective in the UN activities.

3. In 1967, the UN issued the Declaration on the Elimination of Discrimination against Women. In this declaration, discrimination against women is considered as an offence against human dignity, while the UN outlines the responsibility of states to "abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women" (UNGA 1967). Yet, the declaration does not refer in any moment to the issue of violence.

4. Still addressing only the subject-matter of discrimination, the UN adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, which came into force in 1981. The CEDAW has been considered

[5] More, see Platforms for Action and commitments emerging from the United Nations Conferences, including the following: the UN Conference on Environment and Development (ECO-92 – Rio de Janeiro, 1992), the Second UN Conference on Human Settlements (Habitat II – Istanbul, 1996), the Worldwide Declaration on Women in Local Government (1998) of the International Union of Local Authorities (IULA), the Declaration of the Founding Congress of United Cities and Local Governments (Paris, 2004), the International Charter for Women's Right to the City, developed by the Women and Habitat Network of Latin America, and other instruments such as the European Charter for Women in the City (1995) and the Montreal Declaration on Women's Safety (2002).

[6] The Organization of American States is a continental organization created in 1948 and has the purpose of creating bonds among the fellow states "to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence" (the Charter of the OAS, Chapter 1, Art 1, 1967).

responsible for inaugurating a new area of international human rights' law focused on women. Initially, the international debates were mainly concerned with the topic of discrimination against women (article 1, CEDAW) toward which the CEDAW Convention contributed to the expansion of the notion so as to include both public and private acts, perpetrated by any person, organization or enterprise (article 2, e) (CEDAW, 1979).

5. Based on article 17 of CEDAW, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) was formed in 1981. The Committee holds the mandate, in parallel to the mandate of the other treaty bodies for their respective HR treaty stating three main tasks: i) to receive individual or group cases violations; ii) to produce reports on systematic or grave violations of women's rights; and iii) to formulate general recommendations. Regarding the latter attribution, the Committee has so far produced two General Recommendations (12 and 19) exclusively focused on violence against women, an issue that was conspicuously absent from the original treaty.

6. The General Recommendation n. 12 stresses the obligation of the member state to include in its periodic reports information on: (i) legislation to protect women against incidences of any kind of violence in everyday life; (ii) measures and services adopted to eradicate violence against women; and (iii) statistical data on the issue (1989) (Committee CEDAW 1989).

7. In 1992, the General Recommendation n. 19 points out that the reports produced by the state parties have failed to recognize the connection between discrimination against women, gender-based violence,[7] and violations of human rights. In this way, the CEDAW Committee suggests the introduction of "gender-based violence" into the definition of discrimination against women. It highlights "family violence" as one of the most insidious forms of violence against women, prevalent in all societies, connecting in this way economic dependence with violent relationships (par. 23).

Since 1992, the CEDAW Committee maintains that, in cases of violation of women's rights, states can be internationally responsible for the acts of individuals "if they did not adopt measures with due diligence to prevent the violation of rights or to investigate and punish acts of violence and compensate the victims". This new concept of due diligence influenced the subsequent declarations and conventions.[8] Since the CEDAW recommendations, violence has finally been addressed as an international legal problem, while the UN sustained this position in the subsequent resolutions and reports regarding violence against women.[9]

[7] Defined at the General Comment as "violence that is directed against a woman because she is a woman or that affects women disproportionately" (par. 6).

[8] For example, the United Nations Declaration on the Elimination of Violence against Women (1993), the Beijing Platform for Action (1994), the Belém do Pará Convention (1994) and the Istanbul Convention (2011).

[9] Between 2013 and 2019, the UN General Assembly produced a sum of 811 documents concerned with violence against women, in which 259 were reports and 193 resolutions and decisions, and 1,667 documents presented gender violence, with 522 reports and 316 resolutions and decisions. Regarding the UN's Human Rights Bodies, they have published a total of 1,396 documents focused on violence against women and 2,025 on gender violence. See at UN Digital Library, (https://digitallibrary.un.org/search) (Accessed on 9 December 2019). Considering specifically the UN Women, the organ published four intergovernmental resolutions, three intergovernmental opinions, three papers, two cases studies, two manuals, as well as papers, brochures

8. In 1985, the Nairobi Forward-looking Strategies for the Advancement of Women (FLS) was adopted at the Third World Conference on Women, as part of the Decade for Women: Equality, Development and Peace (1985). The extensive document including strategies on how to combat violence against women, has been adopted with consensus among all governments.

9. In the context of the World Conference of Human Rights and the Vienna Declaration and Programme of Action, the General Assembly proclaimed in the 85th plenary meeting the Declaration on the Elimination of Violence against Women (DEVAW) from 1993, which has been the first international declaration concerning women's rights to exclusively address the issue of violence. The DEVAW has the legal status of soft law, which means that it has a non-binding nature and therefore States cannot be held responsible for its violation. Still, the declaration resonated internationally by conceptualizing violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (article 1) (UN 1993).

10. One year after the DEVAW, the Inter-American Human Rights System (IAHRS), part of the OAS, published the first international convention on violence, the Convention on the Prevention, Punishment and Eradication of Violence against Women (CPPEVW or Belém do Pará Convention) in 1994. Different to the previous UN system's non-binding declarations and general recommendations, the Belém do Pará Convention is a legally binding instrument in which member States can be internationally responsible for human rights' violations (1994).

11. Regarding the African System of Human Rights, the special Protocol on the Rights of Women in Africa (Maputo Protocol) was established in 2013 in addition to the general prohibition on sexist discrimination established by the African (Banjul) Charter on Human and Peoples Rights (1981). Inspired by existing international human rights' standards,[10] the Maputo Protocol addresses the challenges faced by women and girls in the African context. After its establishment, several African countries have transformed laws, policies, and other institutional mechanisms at a national level in respect to women's human rights.[11]

In distinction to the CEDAW Committee and the IACHR, who possess the mandate for monitoring, making comments, reports and for deciding cases with a friendly agreement, the international courts such as the European Court of Human Rights (ECHR) and the Inter-American Commission on Human Rights (IACHR) have the judicial mandate to declare the international responsibility of a member state concerning human rights'

and statistics focused on the topic "Ending violence against women and girls"; and on "domestic violence", the organ published two research papers, two cases studies, one intergovernmental report, one manual and one assessment.

[10] For example, CEDAW, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights (UDHR), Belém do Pará Convention.

[11] For more information, see the African Charter on Human and Peoples Rights (1981), the Maputo Protocol, (2003), WGDD 2016, Omondi *et al.* 2018.

violations.[12] Facing the intensive proliferation of violence against women, Latin America and the Caribbean have been considered to be the vanguard in the elaboration of legal, judicial and political responses to such violence (Laurent *et al.* 2013).

In what follows the analysis focuses on two leading cases of the IAHRS: the *Maria da Penha Case v. Brazil*, case n° 12.051 decided by IACHR in 2001; and the *González et al. ("Cotton Field") v. Mexico*, issued by the IACtHR in 2009.

12. The landmark case *Maria da Penha Case v. Brazil* (2001) was the first case to apply the Belém do Pará Convention in the context of domestic violence. The case refers to the continual cycle of violence that Maria da Penha endured from her husband for a period of fifteen years. Despite several denounces to the state officials, Brazil did not adopt any adequate measures to prevent, investigate, process, or punish the violence that has taken place. As a result, Da Penha suffered two murder attempts by her husband, one when she was shot in the back while asleep, and a second when she was posteriorly electrocuted in the bath. Da Penha survived and has been left with irreversible paraplegia, among other serious health injuries. After 15 years that the respective crimes have taken place, no final decision has been made by the national courts. The IACHR recognized the international responsibility of Brazil for acting with negligence and omission of gender-based violence (IACHR 2001, par. 60).[13] The IACHR highlighted that:

> The State has adopted a number of measures intended to reduce the scope of domestic violence and tolerance by the State thereof, although these measures have not yet had a significant impact on the pattern of State tolerance of violence against women, in particular as a result of ineffective police and judicial action in Brazil. (IACHR 2001, par. 60.3)

13. The second leading case became famously known as the *Campo Algodonero* (Cotton Field), the *González et al. v. México* (2009), which has been decided by the Inter-American Court. The disappearance and extermination of women has been a repeated and systematic practice in the bordertown of Ciudad Juárez, México. After the disappearance, rape, and killing of three women, Claudia Ivette González, Laura Berenice Ramos Monárrez, Esmeralda Herrera Monreal, two workers and one student respectively, their families, represented by human rights' organizations, submitted the case to the Court.

The context of violence in Juárez was characterized by two main features: stereotypes of gender and the incorporation of women into the workforce. The preference for hiring women at the maquila industries enabled women to become financially independent and therefore impacted sexist social roles. In other words, the becoming of women as the main family provider has challenged the basis of the Mexican patriarchal society and the model

[12] For more information, see the Statute of the Inter-American Court of Human Rights (1979); American Convention on Human Rights (1969) at article 64; Statute of the Inter-American Commission on Human Rights (1979); European Convention on Human Rights (1950) at Section II; CEDAW (1989) at Part V, article 17.

[13] Violation of the rights and obligations established at the article 7 of Belém do Pará Convention, in connection with the articles 1.1, 8 and 25 of the ACHR.

of male control over property and women's and children's bodies.[14] In its judgment, the Court summarized the facts of the case as follows:

> The report of the IACHR Rapporteur underscores that, although Ciudad Juárez has been characterized by a significant increase in crimes against women and men (supra para. 108), several aspects of the increase are "anomalous" with regard to women because: (i) murders of women increased significantly in 1993; (ii) the coefficients for murders of women doubled compared to those for men, and (iii) the homicide rate for women in Ciudad Juárez is disproportionately higher than that for other border cities with similar characteristics. (IACtHR 2009, par. 117)
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> Diverse reports establish the following common factors in several of the murders: the women were abducted and kept in captivity, their next of kin reported their disappearance and, after days or months, their bodies were found on empty lots with signs of violence, including rape and other types of sexual abuse, torture and mutilation. (IACtHR 2009, par. 125)

Despite the structural violence against women, the mothers of the three women testified to how the authorities suggested to them to say that each one of their daughters was "out with her boyfriend," and "that, if anything happened to her, it was because she was looking for it, because a good girl, a good woman, stays at home" (IACtHR 2009, par. 154). In other words, the reasoning reinforced the structures of state violence by putting the blame on women for the violence inflicted upon them.

In this case, the Court established an important precedent regarding the responsibility to prevent violence against women. Accordingly, there are two important aspects for analyzing this obligation: i) one, prior to the disappearance of the victims; and ii) another, before the discovery of their bodies. Concerning the first moment, the failure to prevent violence does not automatically result in the State's international responsibility. Despite the general situation that posits a risk for women, the Court considered that the State's acknowledgement of the real and imminent danger for the victims needs to be demonstrated. In the second moment, in which the families report the disappearances to the authorities, the State necessarily becomes aware of the "real and imminent risk" of the specific cases. In this case, the State is in charge of the "obligation of strict due diligence" concerning the obligations to conduct rigorous and exhaustive search operations during the first hours and days after the disappearance. The Court stressed the importance that "police authorities, prosecutors and judicial officials take prompt immediate action" (IACtHR 2009, par. 281-83).

Moreover, the Court consolidated its jurisdiction to not only interpret but also to recognize the international state's responsibility for violating the provisions of the Belém do Pará

[14] Cf. IACtHR 2009 at 129, 34. More, see UN Report on Mexico (CEDAW/C/2005/OP.8/MEXICO, 27 January 2005) (case file of attachments to the application, volume VII, attachment 3b, folio 1921). IACHR 2003 (OEA/Ser.L/V/II.117, Doc. 44), supra note 64, folio 1766 (citing the letter of the Secretary of Government of Chihuahua to the Special Rapporteur of February 11, 2002).

Convention.[15] Even though, the decision became a milestone on violence against women, it still presented constrains in the use of the term feminicide within the Inter-American Human Rights system context.

Despite this series of events, namely the adoption of the terminology of feminicide by the IACHR in 2007, the release of the Declaration on Femicide by the CIM in 2008; the expert's comment presented by Lagarde in the case; the statement made by the victim's representatives; and the use of the term by the State of Mexico, the Court still decided to use in is reasoning the terminology "gender-based murders of women" (IACtHR 2009, par. 138).

14. Yet, the above-mentioned Declaration on Femicide (2008) recognizes femicide as the most serious form of discrimination and violence against women in Latin America and the Caribbean. Based on that, the States are recommended to promulgate laws and to strengthen the existing legislation for the empowerment of women, their rights and freedom, as well as the improvement of the criminal investigation system and the protection of women affected by violence (CEVI 2008, IACtHR 2009).

15. In 2011, the Council of Europe adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention. Its scope concerns all forms of violence against women, "including domestic violence, which affects women disproportionately". In this respect, the Convention defines: i) violence against women as "a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"; ii) domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim"; iii) gender-based violence against women as "violence that is directed against a woman because she is a woman or that affects women disproportionately" (article 3).

16. Moreover, the category of woman, necessarily resonates with several other identity classifications, such as race, gender, sexuality, class, ableism, etc. With respect to the articulation of gender with race, the Committee on the Elimination of Racial Discrimination (CERD), in its General Recommendation n. 25 (2000), addressed gender-related dimensions of racial discrimination stating that:

[15] Even though the IACtHR had already considered its jurisdiction over the Belém do Pará Convention on a previous case – *Miguel Castro Castro Prison v. Peru* (2006) –, the *Campo Algodonero*'s sentence presented a large and crucial discussion on the issue, since the article 12 of the Convention only mentioned the competence of the IACHR to analyze the violation of the international obligations prescribed at the article 7. Through a teleological interpretation of the procedures established by the IAHRS in which the Court can only analyze cases submitted by the Commission, the Court consolidated its competence *rationae materiae* over the Convention. See Part 1 – "Contentious jurisdiction of the Court concerning Article 7 of the Convention of Belém do Pará" of the Sentence. In this respect, the IACtHR considered that the State violated the mentioned Convention, article 7 (b and c), in relation to the rights to life, personal integrity and personal liberty of the American Convention (articles 4(1), 5(1), 5(2) and 7(1) combined with 1.1).

> racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life. (CERD 2000)

17. In a complementary manner, the CEDAW Committee, in its General Recommendation n. 25 from 2004, emphasized that a state party should address multiple discrimination against women by adopting temporary special measures. More specifically, the Convention on Indigenous and Tribal Peoples' Rights (Convention 169) stipulates that the established rights should be applied "without discrimination to male and female members of theses peoples" (ILO 1989, art. 3.1). In recent years, reports on the specificities of human rights for indigenous women and black women have been produced (IACHR 2017, ECLAC 2018).

18. Concerning the articulation of sexual orientation and gender identity, a group of experts from dozens of countries independently released the Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006). These principles were complemented in 2017 regarding State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics Principles.[16] This was the first relevant international document on the theme that has not been produced by any official human rights institution, a fact which demonstrates the level of reluctance manifested in international law in engaging with the LGBTQIA+ agenda.

19. Pressed by social mobilizations, human rights have been slowly contemplating the issue. In 2011, the UN released the first resolution on LGBT rights as well as the first study documenting violations of human rights against LGBT people worldwide; and in 2015 and 2018 the IAHRS published regional reports on violence and the challenges for the recognition of the rights of LGBTQIA+ persons in the Americas (IACHR 2015, 2018).

20. After a long period of hesitation, the International Labor Organization (ILO) tackled the historical issue of domestic work in 2010 and 2011. Following the International Labor Conference, the ILO established as a result of this, the Convention 189 on Domestic Workers (2011). In this respect, the ILO finally emphasized the major impact that domestic work has on women and girls, while it stressed the continual undervaluation and invisibility within the society of such labor (ILO 2011).

4. ON-THE-GROUND: FROM DISCOURSE TO PRACTICE

Women's struggle has been the indispensable fuel to transform the way in which gender-based violence has been addressed by national and international law. More than forty years of political activist organizing has been responsible for gradually inserting the issue of violence against women into the international agenda of human rights leading, in this way,

[16] Cf. Yogyakarta Principles (2006), Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (2017).

to the legal recognition of the so-called domestic violence as an actual public and political problem (Lagarde and Roberts 2010, xxiii–xxiv; Campos and Gianezini 2019, 256).

The recognition of gender-based violence as a human right violation symbolizes a major disruption in the long-standing binary way of thinking in which traditional liberal theory has been grounded – that opposes private to public and domestic to political. Such a recognition enabled the profound transformation of the conceptual underpinning of human rights theory by including violations: committed in the private sphere by individuals; and endorsed by cultural and social norms. Still, the resistance of the Inter-American Court to incorporate the term of femicide or feminicide, as well as the international resistance to *queer* the human rights' agenda (Serra 2013) are examples of the ongoing disputes of the meanings regarding international justice and law.

Furthermore, the mainstream scholarship on human rights often dismisses the ineluctable contribution of civil society and social movements to the making of modern international and domestic law. As Balakrishnan Rajagopal exposes, the functionalist explanation of international institutions has been mainly based on the idea that international institutions emerged by a top-down decision, "as a result of a pragmatic necessity to serve concrete functions relating, for example, to trade, postal services, or regulation of rivers" (Rajagopal 2003, 41-42).

Like the changes observed in the international frame of human rights, the transformation of the comprehension of violence against women also took place at a local level. In Brazil, for example, this dislocation from private to public issue was followed by the creation of several public organizations such as the Women's Police Station (Delegacia Especializada de Atendimento à Mulher or DEAM) and the creation of institutional shelters for the assistance of women living in situations of violence (Carneiro 2003, 117).

In the last few years, several countries in Latin America have incorporated the notion of feminicide into the national juridical language by legislating it as a crime. In Brazil, the Feminicide Law n. 13.104/2015 was a result of the report on violence against women produced by the Joint Parliamentary Committee of Inquiry (Comissão Parlamentar Mista de Inquérito or CPMI) during the years 2012 and 2013. However, in the final version of the Law, the Brazilian National Congress erased the word "gender" replacing it with "female sex" (Oliveira Silva *et al.* 2019, 127). Not surprisingly, the legal text encompassed a very narrow reading of what gender-based violence and violence against women could possibly entail by exclusively defining its meaning on the basis of the biological organs of a given person.

The legislation on feminicide presents at least two main purposes. The first is to change the discourse of violence against women that has been historically based on sexist juridical notions, such as it being a "crime of passion" or a "legitimate defence of honour" committed because of "strong emotions", "love" and "jealousy". These motivations and circumstances were considered as ways to attenuate the criminal penalty of intentional murder against women. Additionally, the law would also give visibility to the dimension and the context in which gender-based violence takes place. This means that the classification of feminicide would have the potentiality to enable the production of specific data and therefore to empirically demonstrate the need of public policies to address it.

Based on official databases and human rights' reports, and also on research papers and fieldwork conversations, I now analyze how the juridical discourse and legal provisions for combating violence against women have been actually implemented regarding: (i) public information, (ii) statistics, (iii) police stations, and (iv) shelters to women and children experiencing violence and abuse.

4.1. PUBLIC INFORMATION

For addressing public information, it is important to make an initial differentiation between the notions of "language of rights" and "legal language". Language of rights refers to the popular use on the terminologies and imaginaries of rights that has been often used by social movements in protests, manifestos, gatherings with the purpose of calling for social transformation. Differently, legal language is the technical vocabulary employed in legal texts and judicial decisions – the legal jargons –, which is mostly used by and is accessible to legally trained professionals, such as lawyers, judges, academics, and other practitioners.

As emphasized by many women engaged in grassroots movements that I have spoken with, legal institutions and discourses have been inaccessible to most of peripheric, poor, marginalized persons. Beyond the obvious obstacles imposed by the ultra-technical legal language for accessing and securing rights, several of them manifested the everyday obliteration of violent events. For example, at the beginning of a safe space meeting, which I have attended, several women would not acknowledge to have suffered violence. Only by the end of the meetings, after debating and exposing dimensions and definitions of gender-based violence, they would actually recognize to have suffered not only one but various types of violence. This same situation was described to me over and over by activists from different locations in Brazil – Niteroi, Rio de Janeiro, Manaus, and Salvador. The important point to be emphasized here is that, by being inaccessible and mostly unknown, the legal language actively shapes and even reinscribes the context in which structural and institutional violence has been experienced daily by marginalized women.

Moreover, the mainstream legal scholarship on gender-based violence has been mostly centered on the figure of the victim. The figure of the "victim" has been conceived for a woman around the characteristics of piety, purity, domesticity, and submissiveness related to lifestyle, tone of voice and dressing codes, for instance. "Which clothes did you wear/ did you have on you?" – this is a question that has been asked over and over again to the survivors of violence. It is important to highlight that, until today, a large part of the population in Brazil still blames the woman for the violence that she has suffered (Pasinato 2017, 68). The practices of blaming and shaming – "it is your own fault", "you ask for it", "you deserve it" – create a division line between the woman, who could be considered as a potential "victim" and the ones who would not. That is to say, the legal cult of "true victimhood" (Morrison 2006, 1083-4) ignores the actual event and the context of violence for legitimazing and naturalizing the misogynist and sexist culture we all live in. Therefore, instead of victims, we refer to them here as survivors.

4.2. STATISTICS ON VIOLENCE

Despite the international and national legislations, femicide has been continuously increasing all over the world. According to the report *Atlas da Violência* dating back to

2019, the feminicide rate in Brazil continues to rise each year. From 2007 to 2017, the cases of violent deaths of women increased by 30,7% (IPEA and FBSP 2019).

During the same period, from 2003 to 2013, the murders of white women decreased by almost 10%, while the femicide rate against black women rose almost by 55 percent. Following a similar racist pattern, between 2007 to 2017, the murder rate against white women increased almost by 2%, while that of black women increased more than 60% (IPEA and FBSP 2019, 37-38). Based on this information, it is possible to argue that the legislation regarding feminicide has failed to present an intersectional approach to gender-based violence, which takes seriously into consideration the entanglement of gender, race, and class.

Moreover, the entanglement of race, class, gender identity, and sexual orientation is not perceived as a relevant feature for the woman survivor, by most Brazilian national databases, since these databases do not directly identify them in a predominant manner (Artigo19 2018; IPEA and FBSP 2019). As result, the notion of gender-based violence has often been mostly reduced to violence against cisgender, heterosexual, able, middle-class, white women. This narrow reading of gender-based violence reinforces the reluctance of official authorities (from legislators to police officers) to address gender in its actual meaning that includes social roles (masculinity and femininity), gender identity (cisgender, transgender, travesti, intersex, nonbinary) and sexual orientation.

4.3. Police Stations

Despite the hope created by the legislation on Women's Police Station (DEAM), after more than thirty years of "implementing" relevant policies, the results are still very different from what the outlined provisions have made provision for. In a country with more than 200 million inhabitants and an area of more than 8.5 million square kilometers, less than 10% of the municipalities have a Women's Police Station. For instance, only the state of Roraima alone, which has 605.761 habitants, and where the murder rate of women is proportionally higher than the national average, there is only one specialized police station. Moreover, as shared by many activists, the necessity to cross the city for accessing the DEAM is not only time-consuming, and physically and emotionally exhausting, but it is also costly. That is to say, it is all too common that women survivors barely have enough money to afford the bus, while many times it so happens that the money is not enough for both of them (the survivor woman and the activist) in order for both of them to go to the police station. When they succeed in making it to a DEAM, they face an abandoned, scrapped, and neglected police station. This last remark is made not only from the perspective of the lack of material resources and impoverished infrastructure that women survivors and activists are faced with, but it is also made at the level of human resources, namely concerning the number of employees and the qualification that these employees lack so as to effectively and sensitively cope with such cases of violence (Comissão Parlamentar Mista de Inquérito 2013, 48-49). Even at the Women's Police Station, women employees continue to hold predominantly administrative positions, instead of implementing much needed operational tasks (IBGE 2018).

4.4. SHELTERS

In Brazil, there are two institutionalized forms of women's shelter: the "casa da mulher brasileira" (Brazilian woman's house) and the "casa abrigo" (shelter). The first one is intended to provide specialized services concerning gender-based violence, such as: reception and sorting; psychosocial support; police station; judicial service; public ministry, public defender's office; promotion of economic autonomy; child-care; "alojamento de passagem" (transit-accommodation) and transport center. The second one is supposed to offer a safe shelter as well as a multidisciplinary assistance to women facing the risk of imminent murder due to pre-existing context of domestic violence. In theory, this type of shelter is a temporary and confidential space where women can receive protection and have the necessary time to the material conditions to disrupt the cycle of violence and re-organize their lives.

In practice, however, only few shelters have been established in the large geographical area of Brazil. For instance, not more than 2.5% of the cities have a shelter for women in situations of violence. The states of Acre and Roraima, which compared to other states have proportionally the highest rate of female homicides in Brazil, do not even have a single shelter. From the 3.852 towns with up to 20.000 inhabitants, 16 shelters scarcely operate. This adds up to approximately one shelter for every 240 cities (Campos 2017, 31–32). As if the situation was not dramatic enough, the conditions of the institutional sheltering spaces have become even more inadequate and deteriorated in recent years. During that time, several shelters have continued closing down, leading in this way in that only 74 shelters have been left operating, a number that only as derisory could be characterized, especially if one considers that Brazil has a population of 103 million women (IBGE 2018).

The Portuguese word "acolher" has been invoked by several women, who have been engaged in grassroots movements when addressing their struggle against gender-based violence and the need to receive shelter. The term has no suitable translation into English, since it refers to a multiplicity of actions related to the physical, emotional, psychological, economic, and social care of women – such as listening, trusting, counting on, supporting, welcoming, hosting, feeding, empowering. Therefore, much more than offering a shelter, acolher embraces the act of creating a sensitive and safe territory for caring and helping each other.

5. UNDERGROUND: FEMICIDE AS POLITICAL VIOLENCE

Gender-based violence should not be merely framed as an exceptional, individual and isolated episode of violence against women. As this paper has been trying to demonstrate, gender-based violence refers to a broader and complex structure in which modern society has been built, based on an ultra-masculinized ontology of politics manifested in terms of monopoly, conquest, invasion, domination, ownership, competitivity, aggressivity and possession. As Denise Ferreira da Silva explains:

> In the modern political scene, the patriarch-form remains while its authority rests not on a divine right but on necessity derived from nature conceived as an effect of universal reason's productive power. This position of authority remains in the "citizen," which is but a self-determined, juridico-economic patriarch (in

> Hobbes's, Locke's, and other founding modern political texts) who sacrificed his *natural* (divine) right to liberty in exchange for protection of the law and the state. (Ferreira da Silva 2018, 23)

The political murder of the black feminist politician and activist, Marielle de Franco (2017) preceded by the political coup of the former president Dilma Rousseff (2016) materializes and symbolizes the manifestations of femicide as political violence.[17] After 2018, when the election the far-right wing candidate Jair Bolsonaro took place – a figure who derides gender-based violence while dismantling human rights' policies – the alarming rate of feminicide in Brazil has further escalated.

According to the Secretary of Public Security for São Paulo, which is the largest city in Latin America, the murder of women skyrocketed by 220%, during the first semester of 2019, while the cases registered as femicide, increased by 44% in comparison with the same period in 2018 (Acayaba and Arcoverde 2019, Adorno 2019a, 2019b).[18] Regarding the discrepancy between the increase of murder against women and the specific numbers of femicide, it is relevant to explain that, since the adoption of the Feminicide Law, the police has often kept their old practice of registering a murder of a woman under the general category of homicide, despite the evidence of gender-based violence. By doing so, however, it is only at a later stage of the prosecution that there is a chance that the Public Prosecutor might change the classification from the general category of "homicide" to femicide. Therefore, the increase of femicide can be actually much higher than the one initially registered, considering the dramatic growth of the intentional murder of women.

The boom of total violence against women has not been exclusive to the city of São Paulo, though. The *Monitor da Violência* (Monitoring of Violence) presented unreleased data provided by the Brazilian Ministry of Women, Family and Human Rights that indicates an almost 60% increase in the number of phone calls to the Center for Assistance to Women in Situations of Violence (Calling Service 180) in the country, regarding the years of 2018 and 2019 (Ministério da Mulher, da Família e dos Direitos Humanos 2018, Velasco *et al.* 2019). Moreover, according to public surveys from 2019, the high majority of the population believes that violence against women has increased recently (Oliva 2019, Vilela 2019, Agência Senado 2019).

From the end of 2018, and before the globalization of the COVID-19 pandemics, Brazilian newspapers and local media stated that the country was facing a "pandemic" of femicide. Situating the previous definitions of femicide proposed by Russell and Lagarde, femicide

[17] The impeachment of the former president Dilma Rousseff and the political murder of Marielle Franco are considered two crucial events in Brazilian recent politics. Dilma Rousseff was the first woman to become president in Brazil at the election of 2010 and was again re-elected in 2014. Marielle Franco was a black feminist, sociologist and activist, who has been engaged with anti-racist and LGBT agendas. In 2016, she was the fifth most voted candidate for the city council of Rio de Janeiro (2017-2020). She presented 116 proposals and 16 bills, among them one that guarantees abortion in legal cases, to open care centers day and night, to create campaign against sexual harassment on public transportation, for instance. Coming from the margins, Marielle Franco challenged the solidified structures of democracy from the inside. On March 14th 2018, while she was returning from a public talk on *Jovens Negras Movendo as Estruturas* (Black Female Youth Moving the Structures), Marielle was murdered inside her car together with her driver, Anderson Pedro Gomes (Pasinato 2017, 64, Franco 2018, 119, Biroli 2018, 176).

[18] It is important to state that the growth of violence against women was not a result of the general increase of urban violence. According to the numbers regarding the same period, intentional murder against men actually decreased in the city of São Paulo.

is here understood as the result of "the political economy of violence in that universe that is usually referred to as 'domestic' in order to isolate systematic practices of abuse as individual problems and criminalize those who resist them", in Draper's words (Draper 2018, 685).

The growth of feminicide can be read as a reaction to the collapse of the colonial masculinity model of the modern nation state. To further reflect on that, this examination addresses three additional factors brought up by the mapping process at hand. In *The Will to Change. Men, Masculinity, and Love* (2004), bell hooks states:

> Male violence in general has intensified not because feminist gains offer women greater freedom but rather because men who endorse patriarchy discovered along the way that the patriarchal promise of power and dominion is not easy to fulfill, and in those rare cases where it is fulfilled, men find themselves emotionally bereft. The patriarchal manhood that was supposed to satisfy does not. And by the time this awareness emerges, most patriarchal men are isolated and alienated; they cannot go back and reclaim a past happiness or joy, nor can they go forward. To go forward they would need to repudiate the patriarchal thinking that their identity has been based on. Rage is the easy way back to a realm of feeling. It can serve as the perfect cover, masking feelings of fear and failure (Hooks 2004, 113-114).

The *macho* feelings of possession, jealousy, non-acceptance of break-up, suspicions of cheating, or sexual refusal have been explicitly mentioned in several media reports of femicide. In almost 10% of them, there was a record of previous attempts by the woman victim to receive legal protective measures or to report the violence to the official authorities.

Regarding the critique on the quantitative analysis of violence, named by Katherine McKittrick as the "mathematics of the unliving",[19] I join Veronica Gágo in explaining that "pluralizing [the notion of feminicide] is not just a quantification, a list of violence. It is something much denser: it is a way of mapping its simultaneity and its interrelationship" (Candido *et al.* 2019, 76). That is to say, the politics of naming violence against women as femicide should neither be reduced to the domains of domestic violence nor to violence against cisgender-white-heteronormative women. Differently, it alludes to a broader dimension of political violence that has historically structured the colonial and modern constitution of the nation state within the domains of law, politics and the economy.

6. FINAL NOTES

By going through, beyond and below the traditional analysis of gender-based violence, the present analysis tried to expose the problematic core of modern juridical thinking. Legal scholarship has been shaping the terms and forms of women's struggles, constricting the understanding of "measurements of success" to the numbers of orders of protection issued and to the arrests made. The legal rhetoric on safety has many times distorted the demands made by social movements in terms of the individualization of punishment taking aside the

[19] Katherine McKittrick uses this term for addressing the breathless numbers from the brutalities of transatlantic slavery, which is a different but still entangled framework. See McKittrick 2014, 17.

broader societal aspect of femicide. To recognize and emphasize this problem, it does not mean to dismiss the symbolic and political importance of the discourse of rights nor to devalue the strategic claim for rights (Williams 1987, 416-417).

Instead of denying the relevance of rights, this paper examined the practice and some of the limitations presented by the existing legal framework in the context of Brazil and with a broader outlook on how these limitations resonate with gender-based violence at a global scale. By moving from below them, regarding the on-the-grounds and the undergrounds, this article attempted both to bring attention to the urgency of reconnecting the legal analysis with the social, political, and economic discussions, as well as to deepen the investigation on gender-based violence towards a more radical, anticolonial, antiracist, queer and feminist reading and praxis.

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