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## **Inter-American Model Law to Prevent, Punish and Eradicate the Violent Death of Women (Femicide – Feminicide)**

### **EXPLANATORY MEMORANDUM**

The Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women (Belem do Pará Convention) defines violence against women as follows: “...any gender-based action or conduct that causes the death, injury, or physical, sexual or psychological suffering of a woman in the public or private sphere”<sup>1</sup> and establishes that it constitutes a violation of the human rights of women.

The Belem do Pará Convention is the first international treaty to enshrine the right of women to live a life free from violence, in both the public and private spheres and to be valued and educated free from gender stereotyped behavior and social and cultural practices based on the concept that they are inferior or subordinate to men. Article 7 of the Convention establishes that States, as the protectors and guarantors of human rights, are obligated to act with all due diligence to prevent, investigate, punish and ensure restitution for all forms of violence against women. This responsibility extends, among other things, to enacting whatever necessary criminal, civil and administrative regulations within their national legislation to prevent, punish and eradicate violence against women.

The purpose of this Model Law, when enacted, is to prevent, punish and eradicate the gender-based murder of women, femicide/feminicide, whether committed by a partner or ex-partner, any individual or group of individuals with whom the women had or may have had an interpersonal relationship, or agents of the government. The gender-based

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1 Belém do Pará Convention, Article 1: Available at: <http://www.oas.org/en/mesecevi/docs/BelemDoPara-ENGLISH.pdf>

murder of women constitutes the most lethal and extreme form of violence against women, and carries serious consequences for both the women victims and their social and familiar environment.

Since 2008, the Mechanism to Follow-up on the Implementation of the Belem do Pará Convention (MESECVI/OAS), has repeatedly emphasized to the States Parties<sup>2</sup> the importance of adopting and implementing measures to punish this crime in both the public and private spheres, follow up on legal resolutions, guarantee the effectiveness of the protective measures, and remove the legal obstacles that impede survivors, victims and their families from obtaining justice. The 2008 Declaration on Femicide made the following recommendations:<sup>3</sup>

- a. “Violent emotion” should not be used to mitigate the responsibility of those who commit femicide.
- b. Strengthen protection for the human rights and freedoms of women in existing legislation.
- c. Include the issue of violence against women in policies that address citizens’ security.
- d. Strengthen access to justice by improving the criminal investigation system, forensic analysis, and protective measures.
- e. Punish government officials who fail to act with all due diligence.
- f. Strengthen information technology systems,

The CEVI recognizes femicide as the most extreme and irreversible expression of violence and discrimination against women. It stands in violent opposition to all declared rights and guarantees of human rights established in both national and international legislation. It is a dehumanizing act of hate that, over time, has consolidated the male hegemonic vision over women as an object of transgression and weakness; it is a configuration of the dominating system of patriarchal power<sup>4</sup>.

The violent death of women, femicide or feminicide, is rooted in the structural inequality that exists between men and women, and that finds in gender-based violence, an ongoing mechanism for the oppression of women. The patriarchal system places men in a position of power with respect to women, and the mandate of social, cultural and historical constructs, empowers the view held by men of the position of women as possessions or objects of domination. This relationship is perpetuated through the ideological and cultural systems that legitimize or normalize the various forms of violence against women.

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<sup>2</sup> Second Hemispheric Report on the Implementation of the BELÉM DO PARÁ CONVENTION (OEA/Ser.L/II). Available at: [www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf](http://www.oas.org/en/mesecvi/docs/MESECVI-SegundoInformeHemisferico-EN.pdf)

<sup>3</sup> Declaration on Femicide. Committee of Experts of the Follow-Up Mechanism to the BELÉM DO PARÁ CONVENTION (MESECVI). August 15, 2008. Available at: <https://www.oas.org/en/mesecvi/docs/declaracionfemicidio-en.pdf>

<sup>4</sup> Third Hemispheric Report on the Implementation of the BELÉM DO PARÁ CONVENTION (MESECVI). Paragraph 111, Available at: <http://www.oas.org/en/mesecvi/docs/TercerInformeHemisferico-EN.pdf>

The MESECVI Declaration on Femicide states: “In Latin America and the Caribbean, femicide represents the most serious manifestation of discrimination and violence against women. The high rates of violence, limited or no access to justice, the impunity that prevails in cases of violence against women, and the persistence of discriminatory socio-cultural patterns, among other causes, result in an increase in the number of deaths.”<sup>5</sup>

The Inter-American Court of Human Rights, in a paradigmatic statement on the systematic mass murder of women in Ciudad Juarez, Mexico, from the Gonzalez et al. v. Mexico (Cotton Field) case<sup>6</sup> decision, specifically points out that these murders occurred because the victims were women, that they took place within a “culture of discrimination” and made clear the connection between the dominant socially accepted gender-based stereotypes of women reflected, implicitly or explicitly, in policy and practice, and the justification and language of the authorities of the judicial police, as occurred in this case. The development and adoption of stereotypes is one of the causes and consequences of gender-based violence against women.

Femicide was originally defined by Russell<sup>7</sup> as, “the misogynistic killing of women by men”. She later amended her definition to “the killing of females by males because they are female” to include all forms of sexist killing (because of misogyny, because of a sense of having the right to do so, because of a sense of superiority or the assumption of ownership over women).

In Mexico, Lagarde coined the expression feminicide to refer to “the genocide of women”, which “occurs when the historic conditions generate social practices that permit violent attacks on the integrity, health, freedoms and lives of women and girl children.”<sup>8</sup>, and thus singling out the responsibility of the State, as the guarantor of human rights, to fulfill its duty to investigate and exact punishment. She further points out that silence, omission, negligence and the partial or total collusion of the authorities responsible for the prevention and eradication of these crimes criminally coexist with acts of feminicide<sup>9</sup>.

The MESECVI defines femicide as, “the violent killing of women because of gender, whether it occurs within the family, domestic unit or any interpersonal relationship, within the community, by any individual, or when committed or tolerated by the State or its agents, either by act or omission”<sup>10</sup>.

The former United National Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, refers in her Report to the conceptual evolution of

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5 MESECVI/OAS (2008) Declaration on Femicide, August 13 – 15, 2008, Washington, D.C.OEA/Ser.L/II.7.10MESECVI/CEVI/DEC. 1/0815

6 ORGANIZATION OF AMERICAN STATES (OAS), INTER-AMERICAN COURT OF HUMAN RIGHTS, González et al. v (“Cotton Field”) v. Mexico: Judgment of November 16, 2009, (Preliminary Objection, Merits, Reparations, and Costs) Paragraphs 399 to 401. Available at: [www.corteidh.or.cr/docs/casos/articulos/seriec\\_205\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf)

7 RUSSELL, Diana E(2006) Defining Femicide and Related Concepts. RUSSELL,D, HARMES R( Comp) Femicide in global perspective.

<sup>8</sup> LAGARDE, M.(2008) Antropología, Feminismo y Política: Violencia Femicida y Derechos Humanos de las mujeres. In Spanish at: BULLEN, M y MINTEGUI, C (Coord) Retos Teóricos y Nuevas Prácticas.

<sup>9</sup> Idem

<sup>10</sup> MESECVI/OAS (2008), ob. cit.

the terms and notes that the term femicide has been used since the beginning of the 19th century to describe the homicide of women as an alternative to the term “homicide,” which is gender neutral and does not reflect the reality of the systematic inequality, oppression and violence suffered by women<sup>11</sup>.

The Committee on the Elimination of Discrimination against Women, states that violence against women constitutes a form of gender discrimination (General Recommendation 19)<sup>12</sup> and is “one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated” and “... the violence adopts many forms, such as: acts or omissions intended to cause or that could cause or provoke death”. The Committee also recognizes that gender-based killing of women is also known as “femicide” or feminicide” and as attempted murder of women. (General Recommendation No. 35)<sup>13</sup>.

The Committee of the CEDAW makes the following recommendation: “Ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual, or psychological integrity, are criminalized and introduce, without delay, or strengthen legal sanctions commensurate with the gravity of the offence as well as civil remedies”<sup>14</sup>. It additionally recommends the following: adoption of legislative measures of prevention that address the underlying causes of gender-based violence against women, and its most extreme expression, femicide/feminicide; the approval and implementation of effective preventative measures; guaranteed access to justice for victims and their family members; the fair, impartial, timely and rapid use of criminal justice for the prosecution of those responsible; and the granting of effective reparations to the victim and survivors, while encouraging the autonomy of women and their full participation, while taking into account the specific situation of the women impacted by the interrelated forms of discrimination.<sup>15</sup>

Consequently, the bodies comprising the Inter-American System for the Protection of Human Rights of the Organization of American States (OAS) as well as the human rights bodies of the United Nations, recommend States amend their regulatory framework to

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<sup>11</sup> United Nations General Assembly, Human Rights Council, 20<sup>th</sup> session.

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, May 23<sup>rd</sup> 2012.

Document A/HRC/20/16. Available at: [https://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16\\_En.pdf](https://www.ohchr.org/Documents/Issues/Women/A.HRC.20.16_En.pdf)

<sup>12</sup> Committee on the Elimination of all Forms of Discrimination against Women (CEDAW, General Recommendation No.19. Violence against women, 1992.

<sup>13</sup> Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW, General Recommendation No .35 on gender-based violence against women, updating General Recommendation No. 19. 2017) In reference to violence that causes the death of women, the Committee provides this example among other: ‘gender-based killings include intentional homicides, “honor” killings, and forced suicide.” See the report on the investigation on Mexico; the report on the investigation on Canada (CEDAW/C/OP.8/CAN/1); as well as the final observations of the Committee on the periodic reports submitted by the following States Parties: Chile (CEDAW/C/CHL/CO/5-6 y Corr.1); Finland (CEDAW/C/FIN/CO/7); Guatemala (CEDAW/C/GUA/CO/7); Honduras (CEDAW/C/HND/Q/7- 8); Iraq (CEDAW/C/IRQ/CO/4-6); Mexico (CEDAW/C/MEX/CO/7-8); Namibia (CEDAW/C/NAM/Q/4-5); Pakistan (CEDAW/C/PAK/CO/4); South Africa (CEDAW/C/ZAF/CO/4); Turkey (CEDAW/C/TUR/CO/7); and the United Republic of Tanzania (CEDAW/C/TZA/CO/7-8), among others

<sup>14</sup> Committee on the Elimination of all Forms of Discrimination against Women (CEDAW, General Recommendation No .35 on gender-based violence against women, updating General Recommendation No. 19. 2017), Paragraph 29. Available at: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared Documents/1\\_Global/CEDAW\\_C\\_GC\\_35\\_8267\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf)

<sup>15</sup> Idem, par 34.-35, 30, 44, 46, 41.

appropriately address the violent deaths of women, femicide/feminicide and its corresponding punishment.

From a political and legal perspective, classification of the violent deaths of women as femicide/feminicide grants visibility into the ultimate expression of gender-based violence and places it within a hierarchy that allows its consideration as an issue to be addressed. In addition, the conceptualization of gender-based violence facilitates raising awareness of the consequences of the unequal power relationships between men and women in society, and allows the recording and comparative and statistical analysis of the issue.

The classification of femicide/feminicide as a crime should be accompanied by the implementation of measures to ensure access to justice for women, appropriate investigation of the facts of the case, the immediate protection of survivors and family members and appropriate handling of the case in administrative and legal processes. Both the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (The Court) have explored in depth the concept of governmental due diligence with respect to the guarantee of the human rights of women, emphasizing the importance of ensuring the respectful treatment of the victims and their families; the elimination of obstacles to accessing justice; specialized, high-quality, timely investigation; comprehensive reparations and the systematization of data<sup>16</sup>.

The victim and her family have the right to be treated with respect and to have their dignity protected; and they should be treated appropriately as their circumstances require. A crime has been committed against the woman and the retelling of the victim's story or that of her family members in the search for information should in no way be influenced by a gender bias<sup>17</sup> that justifies the violence suffered by the victim.

The Court notes that preventative strategies must be comprehensive, in other words, they must prevent the risk factors and, at the same time, strengthen the institutions to allow effective response to cases of violence against women.

Similarly, States must adopt preventive measures in individual cases where it is clear that certain women and girl children could become the victims of violence<sup>18</sup>. Furthermore, a murder investigation becomes bigger than itself when the woman victim is killed, abused or deprived of her freedom within the context of a generalized environment of violence against women, requiring the application of the principle of strict due diligence on the part of the States: "...it is essential that the police, prosecutor and legal authorities move

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<sup>16</sup> Inter-American Commission on Human Rights (2007). Access to Justice for Women Victims of Violence in Mesoamerica, OEA/Ser.L/V/II.

<sup>17</sup> Gender bias is defined as, "the erroneous concept of equality or differences between men and women, based on their nature, behaviour or thinking which can result in unequal treatment in health services, including the investigation, as discriminatory conduct by one sex against the other." Ariño, M.D., Tomás, C., Eguiluz, M., Samitier, M.L., Oliveros, T., Yago, T. ... & Magallón, R. (2011). In Spanish, Se puede evaluar perspectiva de género en los proyectos de investigación? *Gaceta Sanitaria*, 25, 146-150.

<sup>18</sup> ob.cit. Paragraph 258

immediately to issue the necessary orders to locate the victims or the location where they could be held in captivity<sup>19</sup>.

The Court also ruled on reparations, finding that they must be comprehensive and “be designed to change the situation, so that their effect is not only of restitution but also of rectification.” And, “in this regard, the reestablishment of the same structural context of violence and discrimination is not acceptable”<sup>20</sup>.

In the international arena, important legislative reforms are being implemented to align the internal regulations of the States with the principles and norms of the treaties and conventions they have ratified. In Latin America, the majority of countries have introduced the concept of femicide/feminicide into their national legislation, following the recommendations of the CEVI, to enact laws or approve reforms to criminal codes that classify the killing of a woman, because she is a woman, as a crime. Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Venezuela and Uruguay have all used the term femicide or feminicide when classifying it as a separate crime, or have designated it as an aggravating factor in homicide.

For the Committee, it is clear that, Caribbean countries have approved laws for the prevention and punishment for violence in a domestic context and in some cases, have also criminalized certain acts of violence against women, particularly ones with a sexual component. The concept of femicide/feminicide, however, has not yet been classified as a crime independent from homicide.

The term “femicide” has not yet been commonly adopted in the Caribbean, even though it has been used anecdotally in the print media. This highlights the fact that in Caribbean countries, the murder of women is more frequently associated with physical violence occurring in intimate and domestic relationships, as are the rapes committed in public spaces by third parties that clearly can be identified as femicides.

The challenges associated with the application of the concept remain for those countries where the concept has been included in internal regulation, and where there remain serious obstacles that impede women from effective access to justice, truth and reparations.

International human rights monitoring bodies point out the persistence of gaps between formally declared rights and the effective Access to justice for women throughout the region, which is clearly demonstrated by the incessantly increasing number of cases and multiple examples of impunity.

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19 Idem. Paragraph 283

20 Ob.cit. paragraph 450. See Footnote 7

The purpose of the proposed model law is to provide a blueprint of the highest possible standards of protection of women for those countries that intend to classify, if they have not already done so, the violent deaths of women as a crime, and for those that have, but have not realized the intended results in terms of access to justice. A more detailed and broad understanding of the phenomenon of femicide itself and of the factors that underlie the gender-based violent deaths of women, in different contexts, is necessary. This information is frequently lost within the general data on homicides, which impedes the development of adequate preventive measures against femicide and contributes to the perpetuation of the historic discrimination against women.

This law seeks to incorporate the principles, content, and objectives of the Belem do Pará Convention into national legislation, adapting them to the needs of each State regardless of their legal tradition. The law establishes specific provisions that compel compliance with the States' duty to act with strict diligence, arming them with more effective measures for the prevention, investigation, and punishment of femicide/feminicide, as well as achieving effective access to justice for the victims, survivors, and family members, and providing protection from femicidal violence and reparation for damages suffered.

## **CONTENTS OF THE MODEL LAW**

CHAPTER I. General Provisions

CHAPTER II. Offences and Penalties

CHAPTER III. Investigation, Prosecution and Penalties

CHAPTER IV. Rights of Victims

CHAPTER V. Reparation

CHAPTER VI. Public Policy Measures of Prevention

CHAPTER VII. Final Provisions

**CHAPTER I** includes the objectives, guiding principles, and the scope of the application of the law, in addition to definitions of certain key terms. To this effect, international standards were particularly applied with respect to intersectionality and non-discrimination; the duty to act with strict, comprehensive and effective due diligence; the centrality of the rights of the victim and family members; the best interests of the children and adolescents; autonomy of the women; *pro persona* principle and progressivity of rights.

In accordance with the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 by the United Nations General Assembly, “discrimination against women” is defined as “any distinction, exclusion or restriction

made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

It should be understood that, throughout the text of the Law, when we express the desire to guarantee the rights of women, we are also referring to adolescents, girls, and older adult women, with the intention of providing them a life free from violence and stereotyped behavior patterns, in conformance with international human rights obligations. Through the criminal classification and punishment of femicide/feminicide, the Law intends to strengthen the multisectoral acts of prevention, protection, treatment, investigation, prosecution, judgment, effective punishment, compliance with the law and comprehensive reparation to the women, adolescents and girl children victims of violence and their family members.

This chapter also addresses the principles related to the best interests and evolutive capacities of children and adolescents, including those children who may have been indirect victims of femicide, and which refers to their ability to receive information about violence and its consequences and their rights, their ability to make informed decisions and participate autonomously as their age and stage of development allow.

In addition, the Law recognizes that in many cases, other circumstances which could contribute to social and economic inequalities are related to gender, and can disproportionately increase the risk of violence among women and girl children, present additional obstacles not only to preventive and care services, but also to justice and reparation. We should also pay attention to the structural changes to gender that are having an impact on the inequality between men and women and that could result in their possible victimization by men or other persons.

In any case, this chapter will attempt to ensure that among the principles that guide this law, the means to ensure effective and full compliance with the obligations undertaken by the State are implemented within a reasonable timeframe and that in no case, shall the full enjoyment of rights be diminished to any degree, or any rights obtained, reduced.

**CHAPTER II** incorporates femicide/feminicide as a crime (leaving the use of the term femicide or feminicide for the criminal classification to the discretion of each country) as well as other concepts related or associated with the violent killing of women, including:



omission of therapeutic abortion<sup>21</sup>, femicide suicide by induction or aid, obstruction of access to justice, and other aggravating factors when committed against women.

The motives and circumstances that constitute femicide/feminicide reflect the different forms of gender-based violence that occur in the region that result in the violent deaths of women.

What characterizes feminicide and differentiates it from the homicide of a woman is that the victim is deprived of her life because of her gender. The gender-based murder of a woman can take place in both the public and private spheres.

Since determining the subjective factors that comprise the intent of the attacker poses a complicated challenge for agents of the criminal justice system in terms of standards of proof, the Committee has undertaken to establish the objective acts that should be considered to determine the existence of gender-based motives, from an intersectional perspective, as well as the social context, the community of the victim and the perpetrator, including their cultural and religious beliefs, and thereby eliminate the need to determine the state of mind or any individual motive (*mens rea*) on the part of the attacker.

Equally important in Chapter II are the descriptions of the aggravating factors. Among others, we point out the frequent tendency of the femicidal attacker to inflict humiliating or scornful injuries on the corpse of the woman, in an attempt to “dishonor” her, or to attack the physical characteristics that a woman should have as defined by the patriarchal social construct.

Accessory penalties for the aforementioned crime have also been introduced, including the temporary suspension of custody of any children under the suspect’s responsibility during the investigation of the crime of femicide, with temporary guardianship to be awarded according to the best interests of the minor child.

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<sup>21</sup> In conformance with: United Nations General Assembly, 20<sup>th</sup> regular session of the Human Rights Council, 2012. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, document A/HRC/20/16, paragraph 16. The killings can be active or direct, with defined perpetrators, but they can also be passive or indirect ... The indirect category includes: deaths due to poorly conducted or clandestine abortions; maternal mortality; deaths from harmful practices; deaths linked to human trafficking, drug dealing, organized crime and gang-related activities; the death of girls or women from simple neglect, through starvation or ill-treatment; and deliberate acts or omissions by the State.

Committee on the Elimination of Discrimination against Women, Recommendation No. 35, paragraph 14. “Gender-based violence affects women throughout their life cycle and accordingly references to women in this document include girls. This violence takes multiple forms, including acts or omissions intended or likely to cause or result in death.” Paragraph 18. “Violations of women’s sexual and reproductive health and rights, such as forced sterilizations, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”

**CHAPTER III** includes provisions to ensure the obligation to include a gender perspective required by International Human Rights Law and the principles of equality and non-discrimination against women are applied during justice proceedings. To this end, guiding principles for the investigation of the crime are established, as well as a prohibition against the various forms of mediation. Given the gravity of the crime, and the enormous disparity that exists between the parties with regard to how mediation defines unequal power, other alternative methods of conflict resolution that provide flexibility in sentencing, or would allow the suspension of the proceedings have also been expressly excluded.

Similarly, among the responsibilities of the investigating body that have been provided in detail, including ensuring the immediate launch of an exhaustive search and investigation of missing women, the investigation of all violent deaths of women as possible femicides, the context and prior incidents of violence committed against the woman or women must be considered.

All persons involved in the investigation and trial of a femicide/feminicide must be aware of how the differences in power between men and women determine how they act, as well as what kind of access to resources they have – including access to services provided by the State, and in particular those services within the criminal justice system. All personnel must be qualified and professional, trained to identify the signs of gender-based violence, collect scientific evidence, respect the chain of custody, follow the correct procedures and make effective use of all available resources.

Agents of the criminal justice system must act with complete independence, resolving issues with impartiality, based on the facts of the case and within the law, with no undue, direct or indirect, restrictions or outside influence, incentives, pressure, threats or interventions from any sector or for any reason. Silence, a lack of resistance, or the victim's sexual history prior to or post the event, must not be interpreted as acceptance or consent for any behavior. The principle of evidentiary amplitude will be applied, providing credibility to the victim's or family member's statement and/or testimony.

All actions related to the investigation and prosecution must be conducted with all due diligence; ex officio, in a timely manner, exhaustively, within a reasonable timeframe, without delay and with guaranteed effectiveness, in accordance with human rights standards. The duty to investigate is undertaken by those persons responsible for the investigative processes and the administration of justice as a legal obligation and not just a simple formality, predetermined as futile from the outset. Investigations will be conducted using all available legal resources and will exhaustively pursue all possible lines of inquiry; as such, those responsible must focus on the determination of the stated and legal truth. This obligation must include the investigation and sanction of anyone

obstructing the investigation either by action, omission or negligence, as identified in Article 11 of the previous chapter as “obstruction of access to justice”.

Access to justice for victims and family members occurs when the investigation is conducted free from stereotypes and prejudices based on inferiority or subjugation associated with gender roles or the behavior or sexual conduct of women. In particular, the intersectional forms of discrimination that can aggravate the negative aspects of women’s lives must be especially considered. The investigation must be conducted with an intersectional and differentiated perspective, and the authorities must acknowledge and respond to the various ways gender intersects with other factors, contributing to discrimination and the creation of the unique conditions and experiences that make up oppression and privilege.<sup>22</sup>

The intervention of the criminal justice system should never cause an increase in the harm suffered by both the victim and her family members. Rather, the system should provide prioritized treatment for the physical and psychological health of the indirect victims, safeguard the confidentiality of their identity, particular with respect to children and adolescents, and guarantee their safety for the duration of the investigation and criminal trial.

**CHAPTER IV** establishes the rights of victims, emphasizing the right of access to information, free defense and legal counsel, translation services to their native language, international protection for femicide survivors, and for migrant women, the establishment of measures to prevent deportation and access to residency permits, among others. Similarly, it also establishes the right to universal accessibility to ensure access to justice for disabled women.

From the moment the crime is committed, survivors and their family members have the right to emergency medical and psychological treatment, as well as legal assistance provided by a qualified attorney, free of charge.

The Chapter also establishes other measures of protection for survivors and family members. The State is obligated to provide physical or psychological protection upon request of the victim or when the crime requires it, using all applicable protective and precautionary measures. They also have the right to the truth, justice and comprehensive reparations through accessible, appropriate, adequate, rapid and effective resources and procedures. They have the right to be informed of their rights under national legislation, of the progress of the investigation and the criminal trial. They have the right to avail themselves of the necessary legal remedies against decisions that negatively impact their

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<sup>22</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, Disabled Women, CEDAW/C/GC/28, December 2019, paragraph 18

interests, not only during the investigation, but also during the criminal trial, including filing objections pro se or via their representative, against omissions or negligence committed by personnel of the criminal justice system in the performance of their investigative duties, as defined in the national legislation of the State Party.

To facilitate access to justice in cases of femicide/feminicide, institutions for the defense of human rights and the rights of women are empowered to act on behalf of the women, survivors and family members in criminal, protective and reparations proceedings. The intention is always that the legislation adopted defends women's interests at every stage of the process, up and through the final stage, with the goal of guaranteeing comprehensive reparation for all damage incurred.

**CHAPTER V**, in accordance with Article 7 of the Belem do Pará Convention, incorporates the basic rules for the comprehensive reparation of the victims, survivors and family members. Reparation includes the restoration of rights, a guarantee of non-reoccurrence and compensation, and establishes that the amount of the remedy and costs will be determined by the court concomitantly with the criminal penalty, so that survivors and family members are not dependent on lengthy proceedings for the awarding of reparations.

Similarly, this Law introduces the creation of a "Reparations Fund" to cover the most urgent reparations for damages to the victims and family members such as healthcare costs, housing, and food, among other things, independent of the results of the criminal proceedings and establishes the responsibility of the State to ensure the care of the victim's dependents, regardless of the parental relationship between the perpetrator and the dependents.

**CHAPTER VI** covers general preventative measures, as follow:

- a) Information: Creation of two databases (one with quantitative and qualitative data on femicides and the other with the genetic information related to missing women) and an observatory of legal resolutions.

The databases should be continually maintained and updated. The information should be categorized in accordance with the International Classification of Crimes for Statistical Purposes, as follows: criminal act, victim, perpetrator, and situational context of the intentional homicide, relationship between the victim and perpetrator and method of killing.

The observatory will only review public versions of the legal decisions, which do not include personal data that could be used for the purposes of

identification. This will provide protection, safeguard the anonymity of the information and avoid the identification of the persons involved.

- b) Training: training to provide the tools to conduct high-quality investigations based on gender equity should be provided to all state operators and in particular to officials in the Public Prosecutor's office as well as any other government officials, who are directly or indirectly involved in the investigation.
- c) Educate the general public to prevent violence against women and femicides/feminicides, its causes and consequences, with an emphasis on changing stereotyped behavior patterns and developing communication free from discrimination and denigrating stereotypes. It is also important that the media operate according to a code of ethics in those cases where gender perspective must be adjusted.
- d) Firearms control (general regulation of the acquisition, possession, use and registration of firearms and specific measures in cases of gender-based violence against women).
- e) Alerts: creation of a gender alert system, in coordination with the Executive Branch, to implement government emergency plans to take emergency action in areas of the country with high rates of crimes of violence against women.
- f) Submission of annual reports on the progress of the implementation of this law by the authority responsible for gender policy to the Parliament and the Legal Observatory.

**CHAPTER VII** refers to the validity and corresponding derogations, a direct consequence of the approval of a new regulatory framework.

# **Inter-American Model Law to Prevent, Punish and Eradicate the Violent Death of Women (Femicide – Feminicide)”**

## **CHAPTER I. GENERAL PROVISIONS**

### **Article 1. Object of this law**

The purpose of this law is to criminalize and penalize femicide/feminicide, as well as strengthening the actions for effective prevention, protection, care, investigation, prosecution, punishment and comprehensive reparation to guarantee the right of women and girls to a life free from violence and stereotyped patterns of behavior in accordance with due diligence and other international human rights obligations.

### **Article 2. Guiding principles**

The guiding principles of this law are:

- a. Equality and non-discrimination against women on the basis of gender, age, socio-economic and cultural status, racial or ethnic origin, sexual orientation, gender identity, political opinion, national origin, or other such categories according to article 9 of the Belem do Para Convention;
- b. Due diligence of the State in the process of prevention, investigation, protection, punishment and reparation;
- c. Centrality of victims' rights: all the actions according to this law will prioritize the protection of the human rights of victims and their families;
- d. Best interest of the child: In cases where there is potential conflict of interest, their best interests should be given the recognition and respect of the rights inherent in their status as human beings;
- e. Autonomy of women: Decisions adopted should respect and promote the autonomy of women and strengthen their rights;
- f. Principle pro persona: Norms that enshrine human rights will be enacted and interpreted extensively, while those that restrict or limit these rights will be mitigated, taking into account the social context for the effective protection of all women;

g. Progressivity of human rights and prohibition of regression: Policies, norms and actions for the recognition and protection of women's human rights should be oriented towards effectively fulfilling the obligations assumed by the State.

### **Article 3. Definitions**

For the purposes of this law, the following shall be considered:

- a. **Gender-based violence against women:** Any action or conduct, based on gender, that causes women death, physical, sexual or psychological harm or suffering, both in the public and private spheres that is motivated by or sustains the historically unequal power relations between men and women and places women in situations of subordination, that constitutes a violation of their human rights that it totally or partially limits the recognition, enjoyment and exercise of such rights;
- b. **Gender stereotypes:** gender stereotyping is considered to be an opinion or a general prejudice on the attributes or characteristics that women and men have or should have or on the social functions that either perform or should perform. A gender stereotype is harmful when it denies a right, imposes a burden, limits women's autonomy, decision-making over their lives and their life projects or their personal and professional growth;
- c. **Victim:** A victim is any woman or group of women who suffer or have suffered damage, or are in imminent danger of suffering damage, whether physical, psychological, emotional, economic, patrimonial or substantial impairment of their fundamental rights, as a result of femicidal actions or omissions. The term "victim" will also include the immediate family, dependents of the direct victim and persons who have suffered damage when intervening to provide assistance to victims in danger or to prevent victimization. A person will be considered a victim regardless of whether the aggressor has been identified, apprehended, tried or convicted and with no regard for the family relationship that may exist between the aggressor and the victim;
- d. **Aggressor:** any man who commits the crime of femicide/feminicide or any other crime or act of gender-based violence due to the fact that they are women.

- e. **Woman:** Any person who identifies as a woman;
- f. **Crimes of genocide, crimes against humanity and war crimes:** those classified as such under the Rome Statute and the Elements of Crime of the International Criminal Court;
- g. **Action with Due Diligence:** Involves the effective application of this law and international human rights instruments, including prevention policies and actions, comprehensive reparation, reinforced state protection, investigations, effective judicial processes and guarantees of non-repetition to ensure the integrity and the life of girls and women.

#### **Article 4. Scope of application**

This law is applicable to femicides/feminicides consummated or attempted whether that takes place or not:

- a. Within the family or domestic unit or within any other interpersonal relationship, whether or not the aggressor shares or has shared the same residence with the woman;
- b. In any place or area of the community and committed by any men known or unknown to the victim;
- c. In the public sphere, including the behavior perpetrated or condoned by the state or its agents regardless of where it occurs.

## **CHAPTER II: OFFENCES AND PENALTIES**

#### **Article 5. Femicide / Feminicide**

Any man who kills or participates in the killing of a woman under any of the following circumstances or with any of the objectives or reasons mentioned below, will be criminally liable for the offence of femicide/feminicide if:

- a. Has or has had a relationship with the woman, with or without cohabitation, or has tried to establish or reestablish an interpersonal relationship with her;
- b. The act occurs within immediate or extended family relationships, whether or not the aggressor shares or has shared the same residence;



- c. Has previously exercised one or more acts of violence including any form of sexual violence even if they have not been reported previously in public or private sphere;
- d. Reasons of honor, family reputation or religious beliefs are alleged as justification for a real or alleged sexual transgression of the victim, or as a cover for sexual violence against her;
- e. It is part of the activity of an organized criminal group or within the framework of a group ritual or ceremony;
- f. It is executed as a means of impeding or interfering with the political rights of the victim or that of other women;
- g. It is because the woman is pregnant;
- h. While the woman is in prostitution, sexual exploitation or is victim of sexual trafficking or exercising some stigmatized occupation or profession;
- i. The woman is in situations of conflict or war, to whom it is considered an enemy, as revenge, retaliation or using the victim as war booty, as well as prize and weapon of war;
- j. The woman victim is located in the line of fire of a man when trying to kill another woman;
- k. It is in any other type of situation in which the circumstances of subordination arise due to unequal power relations between the aggressor and the victim, or any form of discrimination against the woman regardless of whether an interpersonal relationship exists or has existed.

#### **Article 6. Penalties**

This offence will be punishable by imprisonment or such other penalty that, in any event, cannot be for a term less than the penalty stipulated in the national legislation for qualified homicide or murder.

Whoever prevents an abortion from being performed in case of risk of life of the mother, and this causes her death, will be punished with the penalty provided for the crime of femicide/feminicide.

### **Article 7. Aggravating circumstances**

Are aggravating circumstances, when they do not constitute elements of the offence, the following circumstances or conditions:

- a. That the aggressor is an agent of the State, or has authorization, support or acquiescence from one or more agents of the State;
- b. That it was committed against a woman who for any reason is imprisoned;
- c. That it was committed against a girl or against an elderly woman;
- d. That women are in a situation of vulnerability because of their race, ethnic condition, descendant of the native peoples, either they are indigenous, migrant, refugees, or displaced forcibly, if they are pregnant, with disabilities, in disadvantageous socio-economic situations; or are affected by situations of armed conflict, political violence, human trafficking or trafficking of migrants, labor exploitation, sexual exploitation or natural disasters;
- e. That the aggressor has taken advantage of any of the relationships of trust, kinship, authority or other unequal power relationships with the victim;
- f. That the offence is committed in the presence of older and/or younger relatives of the victim or any person under eighteen years old;
- g. That the woman deprived of life present signs of violence such as hanging, strangulation, suffocation, drowning and immersion and/or injuries caused by sharp objects, substances and fires, or blunt objects;
- h. That the act occurs following any form of sexual violence against the woman, such as inflicting injuries and/or mutilation on the genital or breast organs or any physical signs, some form of humiliation or contempt of the woman's body, the incineration of the body or the dismemberment of the woman's body, or when the woman's body is deposited or thrown in latrines, septic tanks, garbage dumps, clandestine graves, or similar places.

### **Article 8. Femicide suicide by induction or aid**

Any man who induces or compels a woman to commit suicide or assists her to do so, will be subject to the penalty enacted for the inducement or collaboration to commit

femicide/feminicide increased by one third to one half, in any of the following circumstances:

- a. That suicide is preceded by any form of gender violence by the aggressor against the victim;
- b. That the aggressor has taken advantage of a pre-existing or existing relationship with the victim.

#### **Article 9. Accessory penalties**

The conviction for the preceding offenses (articles 5, 8 and 9), consummated or attempted, entails:

- a. the loss ipso jure of all inheritance rights that the offender may have in respect of the victim's property;
- b. the loss of parental rights of the children, whether or not they are children of the victim.

#### **Article 10. Suspension of parental rights, guardianship and custody**

Any father subject to criminal proceedings for the crimes of femicide/feminicide, induction to suicide, consummated or attempted, will be suspended the exercise of custody of children, whether or not children of the victim, until a final decision is determined in the criminal process. The custodial rights will be temporarily exercised by the appropriate person according to the best interests of the children.

#### **Article 11. Obstruction of access to justice**

Any person who obstructs or hinders the measures of protection, investigation, prosecution or punishment of gender-based violence crimes and as a consequence results in a femicide/feminicide, will be punished with the penalty for this crime.

Any person who obstructs or hinders the investigation, prosecution or punishment of a femicide/feminicide, will be punished with the penalty for offences of obstruction of justice.

When the person who obstructs or hinders the investigation or prosecution or punishment of femicide/feminicide is a public official in the execution of his/her duty, will be punished with the penalty for offences of obstruction of justice as well as ineligibility to serve in office.

**Article 12. Attempt, preparatory acts, proposition and conspiracy**

An attempt to commit the offences described in previous articles shall be punished by half to two thirds of the penalty which applies to the consummated offence, as appropriate and consistent with the severity of the offence.

All preparatory acts and any conspiracy to commit the above offences will be punishable by a penalty of one third to one half of the penalty which applies to the offence or such other penalty.

**Article 13. Elimination of extenuating or mitigating circumstances**

Extenuating or mitigating circumstances which promote and justify violence against women, such as violent emotion, anger, victim provocation, honour, jealousy, cultural beliefs, customs against human rights, intense pain, or other analogous, do not constitute a defense or mitigation for the offence of femicide/feminicide.

**CHAPTER III: INVESTIGATION, PROSECUTION AND PENALTIES**

**Article 14. Guiding principles of the investigation and prosecution<sup>23</sup>**

The investigation and prosecution of crimes foreseen in this Law should be guided by the following principles:

- a. Independence, impartiality of the Courts;
- b. Nondiscrimination;
- c. Due diligence;
- d. Human dignity;

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<sup>23</sup> For the investigation and prosecution of crimes foreseen in this Law, The Committee of Experts recommends implementing the Model Protocol for the investigation of gender-related killings of women in Latin America (femicide/feminicide) from the UN Human Rights Office. Available at: <https://www.ohchr.org/Documents/Issues/Women/WRGS/ProtocoloLatinoamericanoDeInvestigacion.pdf>

- e. No Revictimization;
- f. Gender Perspective;
- g. Qualification of personnel;
- h. Evidentiary standards free of gender stereotypes and prejudices;
- i. Due process;
- j. Cultural relevance;
- k. Treatment of personal data.

#### **Article 15. Statutory limitations**

The offence of femicide/feminicide and the criminal action are shall not be subject to a period of limitation.

#### **Article 16. Procedural restrictions**

In the investigation and prosecution of femicide/feminicide, consummated or attempted, and or any other offence provided for in this law, it is prohibited:

- a. The use of all types of conciliation, mediation or pre-agreement and other alternatives to the resolution of the criminal dispute;
- b. The suspension of the trial to the test ("probation");
- c. The application of the opportunity criterion or the faculty of withdrawal of the criminal action;
- d. The commutation of the sentence or the application of any procedural formula that reduces it.

#### **Article 17. Preventive, detention and other precautionary measures**

Initiated the process by consummated or tentative femicide, at the request of the Public Prosecutor, the acting Court may order the preventive detention or other precautionary measures to ensure the accused person, if there were sufficient evidence of their participation in the crime as well as of his intention to escape, obstruct in any way the investigation or the process, or if it were necessary for the safety and protection of women, their families or society.

### **Article 18. Responsibilities of the investigating entity**

In order to ensure adequate prevention and investigation of the offence of femicide/feminicide, and other offences foreseen in this Law, as well as the protection of victims, the investigating agency shall:

- a. Ensure the immediate and exhaustive search and identification of the victim or their remains in cases of disappearance;
- b. Investigate all violent deaths of women, whatever their age, as a probable femicide/feminicide;
- c. Inquire about the background of violence of the aggressor, even if there were no previous complaints;
- d. Assess the context in which the offence was committed and the extent to which the offence could be regarded as gender-based and therefore a femicide/feminicide;
- e. Adopt measures to eliminate the de facto and de jure obstacles that produce impunity in cases of femicide/femicide;
- f. Adopt the other measures provided in the Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide).

## **Chapter IV: RIGHTS OF VICTIMS**

### **Article 19. Protection**

Women victims of gender-based violence and their families have the right to an early assessment of the risk of femicide/femicide by a multidisciplinary and specialized team; to immediate access to justice and to the maximum measures of prevention and protection against violence, including the use of electronic devices that allow the monitoring and control of the offender, for as long as it is deemed necessary; as well as the preservation of their own patrimonial assets and family members.

### **Article 20. Rights In administrative and judicial proceedings**

The rights of victims must be guaranteed to:

- a. Universal access to justice, including free and specialized legal aid, throughout the territory of the country, urban or rural, which can be provided directly or through agreements with specialized private institutions, when requested;
- b. Have reasonable adjustments to allow an effective access to justice for victims in situation of disability;
- c. Be informed of their rights; have their opinions, needs, interests and concerns heard by the Court and to collaborate and participate fully in all instances;
- d. That victims and relatives who need a translator and/or interpreter be so provided according to their nationality, language, or type of disability;
- e. That foreign women and migrants and their dependents, are not deported as a result of making the complaint even if they were in an irregular migration situation.

#### **Article 21. Procedural legitimacy**

The institutions of defense of women's rights, public and private, should have legal standing to act as a party in favour of the victim and their relatives, in criminal proceedings, protection and reparation before the femicide/feminicide and other crimes foreseen in this Law.

### **CHAPTER V. REPARATION**

#### **Article 22. Comprehensive reparation**

Reparation must be provided, and must be transformative, adequate, effective, rapid and proportional to the damage suffered. It should include the restitution of rights, goods and freedoms, satisfaction through acts for the benefit of victims, guarantees of non-repetition and compensation for moral, material and immaterial damage and whenever possible, physical, psychological and social rehabilitation.

#### **Article 23. Responsibility of the offender in reparation**

The amount of compensation and costs of rehabilitation by the offender must be established concomitantly with the penalty.

#### **Article 24. Reparations Fund**

Establishment of the Reparation Fund for victims and their families of femicide/feminicide and other offences foreseen in this Law, with State and international and national cooperation funds and relevant national entities, which will be administered by the national machinery for women's advancement. This fund will pay for the most urgent measures to repair the damage to victims and their families, such as health services, housing, food, among other benefits, regardless of the outcome of the criminal case.

#### **Article 25. Support of dependents, people with disabilities or elderly**

Without prejudice to the responsibility of the offender, the State must ensure the sustenance of the dependents of the victim of femicide/feminicide and of those who assume the care of them, including persons with disabilities, or seniors. It must include comprehensive care, which guarantees psycho-social services and a monthly benefit or monetary subsidy that ensures housing, food, education and health.

### **CHAPTER VI: PUBLIC POLICY MEASURES OF PREVENTION**

#### **Article 26. Public policy measures of prevention**

States must:

- a. Maintain accessible records of femicides/feminicides that include the socio-demographic characteristics of victims and aggressors;
- b. Establish a national database of all the information on missing girls and women;
- c. Establish a confidential DNA bank of consenting relatives of missing girls and women; of any unidentified dead body of women or girl, and containing the personal information of people convicted of crimes of femicide/feminicide, rape, sexual abuse and very serious injuries;
- d. Institute the necessary measures to regulate the possession and use of firearms in order to prevent the commission of offences listed in this Act;



- e. To establish a Judicial Observatory to gather accessible and disaggregated information on the crimes, judgements<sup>24</sup> and sanctions applied in all cases of killings of women;
- f. To carry out mandatory training in Human Rights from a gender perspective for prosecutors and other officials who intervene directly or indirectly in the investigation of femicides/feminicides as well as develop protocols in keeping with international standards, particularly for the investigation of femicides/feminicides and the search for missing women and girls;
- g. Develop awareness and information campaigns to prevent violence against women and femicides/feminicides, its causes and consequences, emphasizing the modification of traditional social-cultural patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination of women and the promotion of women's Human Rights in private and public spheres;
- h. Establish a National Gender Alert System coordinated by the National Executive Branch to execute obligatory emergency governmental actions to control and eradicate femicide/feminicide;
- i. Delegate to the National Women's Mechanism to monitor the compliance with this law on femicide/feminicide and present annual reports to the legislative body which also integrates systemized information from the Judicial Observatory on femicide/feminicide.

## **CHAPTER VII: Final Provisions**

### **Article 27. Validity**

This Act will become effective as of its promulgation.

### **Article 28. Derogations**

The provisions contrary to this Act are repealed.

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<sup>24</sup> The Committee of experts of the MESECVI excludes the death penalty from its provisions.