

# Femicide and Criminal Law<sup>\*1</sup>

## *Feminicidio y derecho penal*

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### ABSTRACT

The crime of homicide is said to have an aggravating circumstance when it is committed due to the “fact of being a woman.” In Colombia, only until the 4<sup>th</sup> of March 2015, The Supreme Court of Justice, for the first time, addressed a case in which a penalty with an aggravating circumstance of this nature was imposed, establishing the relevant factors to constitute this type of crime. The present text analyses the crime of femicide within a wider context of violence against women just as the concepts of gender-based violence, violence against women and finally, sexual assault and femicide; these concepts are analyzed with the purpose of showing the different factors involved in this phenomenon.

**KEYWORDS:** Criminal Law, gender-based violence, violence against women, rights of women, femicide, (source: Latinamerican Criminal Politics Thesaurus- ILANUD).

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### RESUMEN

El delito de homicidio tiene una agravante que se configura cuando el delito se comete por “el hecho de ser mujer”. En Colombia, solo hasta el 4 de marzo de 2015 la Corte Suprema de Justicia se ocupó por primera vez de un caso en el cual se daba aplicación a la agravante, y determinó los elementos que son importantes para su configuración. En este texto analizo el concepto de feminicidio dentro de un contexto más amplio de violencia contra la mujer, al igual que los conceptos de violencia de género, violencia contra la mujer y, finalmente, violencia sexual y feminicidio, todo ello con el propósito de mostrar los diferentes elementos que están alrededor de este fenómeno.

**PALABRAS CLAVE:** derecho penal, violencia de género, violencia contra las mujeres, derechos de las mujeres, feminicidio.

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## Introduction

The Inter-American Commission on Human Rights (IACHR) has revealed that women in Colombia face a serious situation of violence, discrimination and high levels of poverty and exclusion. In Colombia, women are not only victims of the conflict but also victims of common forms of violence which affect their safety and prevent them from exercising their rights in full. Between 2002 and 2009, according to the data provided by Sánchez (2010) the number of homicides of women was 2.283 in the year 2002 (8 % of the total homicides) and in 2009 the figure was 1.523 (8.6% of all homicides). These figures only show direct or physical violence, but we do not know anything, about acts of symbolic, economic or structural violence against Colombian women, from these figures.

According to the information provided by the National Police in 2003 homicides against women were 1.852 (out of the 22.518 in total, that is to say, 8.22%), while in 2013 these reached 1.191 (out of the 14.968 in total, that is to say 7.95%). The difference is not so meaningful according to the figures presented by women organizations. But the figures from the National Police let us see another type of data of major importance. Thus, in the last year, more crimes of homicide against women were committed in the cities of Cali (133) and Bogotá (129). The weapon most commonly used has been the firearm (739 homicides), followed by edged weapons (292) and blunt weapon (108). Regarding the modality, in 2013, 24 women were attacked by criminal organizations and 16 by the guerillas (in 2003, 102 women were attacked by the guerillas). More women have died in quarrels (407); contract killings<sup>3</sup> (391); suffocations (44); armed robbery (50) and sticking and bleeding (23). Sunday is the day in which more women have died (222) and Thursday the day of least homicides (149). The main causes were the settling of accounts (219); crimes of passion (187); personal problems (309); and social intolerance (111)<sup>4</sup>.

It is hard to establish how many of these homicides were acts of femicide, but it is possible to determine that in a high percentage, the women were victims of personal injuries and acts of domestic violence which could have been avoided if the State had granted the protection required by the victims.<sup>5</sup>

In one of his conclusions, Sánchez (2010) presents a different analysis which reveals not only the modality but who the main perpetrators are:

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3. Contract Killing is not typified as a crime in Colombia, if it were, it would be regarded as a crime of aggravated homicide.

4. I would like to thank the anonymous copy editors who have provided me with these figures from the Criminal Research Board and Interpol from the National Police of Colombia.

5. On the characterization of femicide in the city of Medellín, see Vélez (2012).

According to the information collected by the INMLCF (National Institute of Legal Medicine and Forensic Science), in the period 2002-2009, 627.610 acts of violence were registered against women. Daily, 245 Colombian women were victims of any source of violence. 101 women were victims of partner violence, 100 were victims of personal injuries, 40 of sexual violence and 4 were killed. To sum up, every minute, 6 women were victims of any type of violence. When analyzing these acts of violence against women according to perpetrator, it has been possible to establish that in the cases of partner violence, the main perpetrators have been the husbands, partners or ex-husbands. In the cases of sexual violence the main aggressors are family members, the couple and close friends. Within the context of the armed conflict the public force is the main possible perpetrator. Likewise, more than 40% of the women slain in the period referred, died in the hands of their family members and in circumstances of interpersonal violence (revenge, settling of accounts, quarrels and sexual crimes). The situation reflected by this group of statistics reveals that their home is one of the most unsafe places to be for women, in it, their integrity and life are jeopardized.

When consolidating the information for the period 2005-2009, the death of 864 women was registered in the hands of the public force, insurgency and paramilitary forces (corresponding to 7,2 % over the total of homicides against women reported for the same period), being the armed forces and the police the main causes, a considerably higher figure than that resulting from the guerrillas and paramilitary organizations (pg.84)

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According to the Institute of Legal Medicine and Forensic Sciences (IMLCF), the figures for the year 2013 are as follows: 14.294 homicides took place equivalent to a rate of 30.33 homicides per every 100 thousand inhabitants, out of which, 1.1.63 were women. Regarding non-fatal injuries, interpersonal violence constituted 158.798 cases for a rate of 337 per every 100 thousand inhabitants. Intra-family violence represented 68.230 cases and a rate of 144.8 per 100 thousand inhabitants and the number of exams due to alleged sexual crimes –which does not mean that in every case the commission of a crime was committed –was 20.739 and a rate of 44.01 per 100 thousand inhabitants. Regarding partner violence in 2013, 44.743 persons were victims of this type of violence, out of which 39.020 were women. The majority of cases took place in the age group of 25 to 29 (9726 cases). The aggressors were mostly the partner (20.126) and the ex-partner (9.223).

Though these figures show certain facts, official statistics do not reveal anything about the nature of the fact itself, they just tell that a crime has been committed against a woman, but there's no way to establish, based on that information, that the offence was committed due to the fact of being a woman, as provided for by the art. 104 of the Leg. Decree n° 599/2000 (Colombian Criminal Law Code). Besides, these figures evidence certain confusion among genre violence, violence against women and sexual violence. It is frequently observed that all forms of violence are mistaken as sexual violence.

The present text aims to respond to the following questions: What is violence against women? How has the Colombian State reacted before the acts of violence against women? How does a femicide act become an act of violence against women? How can femicide be distinguished from an act of homicide in which the victim is a woman? All these questions arise from the basis that violence against women is a complex act and that femicide is just the most extreme type of violence but not the only form of violence found against women.

### Genre violence and violence against women

Studies about public safety have shown that women are more jeopardized in their homes than in the streets. The sexist bias of statistics about public safety tends to focus more frequently on measuring street crime, leaving other types of insecurity hidden such as violence against women (United Nations Development Programme [UNDP], 2010). As Naredo (2009) shows, in the production of official information the genre perspective is left out and four aspects are mistakenly assumed. These four aspects are called myths by the female author: the confusion of needs of the landowner and those of the regular citizen; the assumption that the public spaces are unsafe while the private ones are safe, leading exclusively to the prosecution of street crime; the identification between social exclusion and danger, thus, attention is focused on the most vulnerable sectors which are finally defined as criminals and outright trustworthiness in official communications which determine the public policy, in spite of its limitations. This does not mean, however that policy is stated without data support, but quite on the contrary, it forces us to own better information systems in order to have a better public policy.

There are many ways in which the safety of women can be affected. Physical violence against women is one of the most extreme cases, but the scope of violence is reflected in acts such as sexual harassment, harassment at work, domestic violence, trafficking in women, forced prostitution and



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femicide. All these acts have in common the practice of violence and the setting of a relation of subordination and domination. Genre violence is a key factor in the preservation and reproduction of masculine privileges and the subordination of women. In this sense domestic violence is a problem of genre not only due to the victims but to its contribution to that structure of domination

For Rico (1996, pg. 7), genre violence is closely linked to the unequal distribution of power and the asymmetrical relations established between males and females in our society. This type of violence carries on the depreciation of the feminine and its subordination to the masculine. The issue of vulnerability is central in order to understand this type of violence and to be able to distinguish it from other types of aggressions.

The most extreme form of genre violence is femicide or femicide. The term was publicly introduced by Diane Russell in her testimony over the slaughter of women before the International Tribunal on Crimes against Women, which sessioned in Brussels in 1976. Later on, Radford & Russell (1992) defined it as “the misogynistic assassination of women perpetrated by men” and it was considered by them as a form of sexual violence. In 2001 Russell defined it as the murder of women by men just for the fact of being women, but it was pointed out that it was committed in contexts of unequal relations between men and women (Russell, 2001, pg. 22).

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According to Caputi & Russell (1992:15), femicide lies in the extreme edge of a continual series of horror against women which includes a wide variety of verbal and physical abuse, such as raping, torture, sexual slavery (within prostitution particularly), incestuous and non-family child abuse, physical and psychological aggression, sexual harassment (on the telephone, in the streets, at the workplace and in the classroom), genital mutilation (clitoridectomy, excision, infibulation), unnecessary gynecological surgeries (free hysterectomies), forced heterosexuality, forced maternity (the penalization of contraception and abortion), refusal to provide food intake for women in some cultures, cosmetic surgery and other mutilations in the name of beauty. Whenever these forms of terrorism may cause death, they become femicide.<sup>6</sup>

Femicide, as stated so far, is an extreme form of violence against women. The question is what we understand by violence against women. In order to understand its meaning we may resort to the

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6. Forms of femicide presented by the literature of the field are: Intimate Femicide: those murders committed by men whom with the victim has or had an intimate relationship like a familial or familial coexistence one or any other type related to them; Non-Intimate Femicide: those murders committed by men whom with the victim had no intimate relationships like a familial or familial coexistence one or any other type related. Commonly, this type of Femicide involves a previous sexual attack; and Femicide by connection: this refers to the women who were murdered “in the firing line” of a man trying to kill a woman. It is the case of women, girls and female family members who took part to avoid the fact or who simply, were trapped in the middle of the act of the female killer (Barcaglioni & Cisneros, 2007).

Interamerican Convention on the Prevention, Punishment and Eradication of Violence against Women of 1994, also known as Convention of Belem do Para (henceforth, the Convention) incorporated into the Colombian legislation by Act 348 of 1995.

The Convention assumes that violence against women constitutes a violation of human rights and that it restricts women totally or partially in the observance, enjoyment and exercise of her rights. It considers violence to be a violation against human dignity and a demonstration of unequal relations of power between men and women. Art 1° of the Convention defines the concept as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere”.

And later on in Ar. 2° it states that:

Violence against women shall be understood to include physical, sexual and psychological abuse:

- a) that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b) that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c) that is perpetrated or condoned by the state or its agents regardless of where it occurs.

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Since 1993 figures regarding extreme violence against women have been revealed from Juarez City (Mexico), of which is known that the State reaction was nonexistent and in more than one case the victim was blamed and her death was justified by regarding her as a prostitute (Santillán & Varea, 2009, pg 9). The case of the murders of Juarez City was taken to the I/A Court H.R., so that the Mexican State was found liable of failure to comply its obligations of respect and insurance of the human rights of women. The case was decided by the Court which condemned the Mexican State for its failure to comply with its obligations to prevent, investigate and penalize these crimes.

In the *Gonzalez Case and others (also known as Campo Algodonero Case) vs. Mexico*, the I/A Court H. R. decided in 2009 on the case of femicides in Juarez City in México and it especially focused on analysing violence against women within the context of the Convention. The Court explains that not all act of infringement of human rights is an act of violence against women. However, it will be declared so if it occurs within a culture of discrimination against women and if a pattern of violence against women is demonstrated.

For the I/A Court H.R., violence against women is a form of discrimination and it is precisely that what is relevant when defining it. In the Campo Algodonero Case, the Court not only reports the attacks against women in Juarez City but stands out the apathy of the State to investigate those crimes and finds that this indolence is the result of a culture of discrimination against women. On this case, the I/A Court H. declared:

390. The Commission indicated that “it is essential to understand the connection between violence against women and discrimination which may perpetuate it, in order to value the scope of duty of due diligence in the present case”. According to the Commission “discriminatory attitudes against women committed by public officials influenced the investigation of these murders”.

391. “The representatives indicated that “beyond gender violence, the juarenses girls and women are subjected to a double discrimination, because of the humble origins of Claudia, Laura and Esmeralda, just like other girls and women murdered or who are reported missing, just as much as the mothers and the families of these women, also generates discrimination of social class”. They added that the harm generated by facts of the case were “intensified because they intended to maintain inequality and discrimination to women” and that “among other conditions of vulnerability, the damage caused is extended by the impunity generated by the Mexican State which supports and legitimizes the patterns of discrimination and violence against women”. (...)

395. The CEDAW has declared that the definition of discrimination against women “includes violence based on gender, that is to say, violence aimed at women (i) because they are female or (ii) that affects her disproportionately”. The CEDAW has also indicated that “violence against women is a form of discrimination that prevents and nullifies the exercise of rights in equal conditions to those of men”.

396. The European Court of Human Rights in the case of *Opuz v. Turkey* declared that “the failure of the State to protect women against domestic violence violates their right to equal protection by the law and this failure is not necessarily intentional”. The European Court considered that though the general and discriminatory judicial apathy in Turkey was unintentional, the fact that it affected women mainly led to the conclusion that the type of violence suffered by the petitioner and her mother could be regarded as violence based on gender, which is, a form of discrimination against women. To reach that conclusion, the Court implemented the principle according to which, once it is demonstrated that the application of a rule causes a different impact between men and women, the State must prove that it is due to objective factors not related to discrimination. The European Court established that in the place of residence of the petitioner, the highest number of victims of domestic violence was found and that, all the victims were women, most of them belonged to the same origin and besides, the victims faced problems when they reported violence, this was evidenced in the fact that police officers did not investigate the facts but assumed that such violence was a “family affair”.

397. In the case of *Penitentiary Castro Castro v. Perú*, The Court indicated that the women in detention or under arrest “must not be subjected to discrimination and must be protected from all forms of violence or exploitation”, and that “they must be supervised and checked by female officers”, that pregnant and breast-feeding women “must be provided with special conditions”. Such discrimination includes “violence

against women because they are female or that affects her disproportionately”, and that includes “acts that inflict damage or physical, mental or sexual suffering, threats to force into those actions, coercion and other forms of deprivation of liberty”.

398. In the current case, The Court indicated before the CEDAW that the “culture of discrimination” of women “contributed to the fact that [the] murders [of women in Juarez City] were not initially perceived as a problem of significant importance which had to be addressed immediately and soundly by the competent authorities”. Furthermore, the State also pointed out that, this culture of discrimination against women is based on “an erroneous conception about their inferiority (*supra* par. 132).

For the I/A Court H.R, the following elements enable the qualification of murders as homicides perpetrated because of gender: the context, because in Juarez City there was a situation of violence against women which had been recognized by the State who had also recognized that the homicides were influenced by a culture of discrimination against women; the victims’ profile, because they were young women with low income, workers or students, just like many of the victims of Juarez City; and the modality of the crimes, because the girls were disappeared in a cotton field and it was stated that they went through serious physical aggression and probably some type of sexual violence before their death (Villanueva, 2013:261).

In any event, as Toledo states (2014), the obligation of the State is not only limited to investigating and punishing, but it must provide all the necessary efforts to prevent, that is, to avoid the existence of violence of gender and to avoid that these acts lead to an act of femicide:

However, the emphasis on the protection of the victim over the punishment of the aggressor cannot be reduced to a single “anomaly” from the criminal perspective, but it must be regarded from the perspective of the obligations of the State relating to violence against women and its obligation to prevent it. When the existence of intimate and family criminality is distinguished from common criminality on the one hand, and likewise the obligations of the State relating to the insurance of human rights, specifically on violence against women, on the other, thus it becomes necessary to recognize that the traditional constructs of Criminal Law must also be adapted to that reality, historically excluded from the criminal thinking and view. Those presuppositions, are actually, hard to reconcile with the contemporary concept of Constitutional State, which justifies the existence of the State as a body to guarantee the fundamental rights of people (pg. 77).

For the I/A Court H.R, the Mexican State violated the right of the victims of femicide in Juarez City because it lacked to adopt the necessary measures of protection to the victims, in spite of being fully aware of the existence of a pattern of violence of gender and the lack of diligence in the investigation and judicial processing of the facts and in the adoption of the measures of reparation for the victims. Additionally, the Court considered that the perpetration of the crimes took place within a context of discrimination against women and that the culture of discrimination influenced the perpetration of these crimes. The I/A Court H.R, in the *Campo Algodonero* case stated:





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The response of the Colombian State to violence against women is quite recent, in the past only an account of the crimes committed against women was reported. However there are some exceptions, for example the unacceptance by the jurisprudence and doctrine of the existence of sexual violence inside marriage.

285. Moreover, the Court considers that the State did not demonstrate it had adopted the rules or implemented the necessary measures, pursuant to article 2 of the American Convention and to article 7c. of the Belem do Pará Convention, which may have allowed the authorities offer an immediate and effective response to the accusations of disappearance and to prevent adequately violence against women. It also lacked to prove that it had adopted the regulations or applied the necessary measures for the civil servants in charge of receiving complaints, to be trained or to develop the capacity and sensibility to understand the seriousness of the phenomenon of violence against women and the determination to act immediately. (...)

401. Likewise, the Court considers that the stereotype of gender refers to a pre-conception of attributes or owned characteristics or roles which are played or should be played by men and women respectively. Considering the declarations manifested by the State (*supra* par.398), it is possible to associate the subordination of women to practices based on stereotypes of gender socially dominating and recurring, conditions which are aggravated when the stereotypes are reflected implicitly or explicitly on policies and practices, particularly in the reasoning and language of the authorities of the criminal police, as occurred in the current case. The creation and adoption of stereotypes constitutes one of the causes and consequences of violence of gender against women.

Femicide is regarded not only as a crime committed by a person against a woman but as something much more serious. As a state crime, by tolerating the behaviour through impunity, the State sends a double message: to the woman, it informs that there is a border line she must not cross because the price to pay for is her own life; to the man, it is told that if he commits a homicide there will be no punishment or persecution on the part of the State. Some female authors suggest that the term femicide must not be mistaken for violence of gender, because in either case we are referring to different realities and above all, we could be suggesting that it deals with a crime which can affect both men and women (Berlanga, 2010)

The I/A Court H.R, in this case, lay the foundations for what must be understood as violence against women as an act of violation of the American Convention of Human Rights and of the

Convention of Belem do Pará. For the I/A Court H.R, violence against women is not only the result of patterns of discrimination but it affects at the same time their right to access justice, as it was shown in the case *Campo Algodonero*. In the expert's report presented by Lagarde (2009) to the Court in this case, it is shown how this violence is configured from official communications. For the female author, this concept of violence against women is developed by

correlating intentional and culpable homicide with other violent deaths and preventable deaths: accidents and suicides, and avoidable deaths caused by illnesses: cancer, hiv/aids, the so-called maternal deaths (due to lack of conditions of health and comprehensive attention during pregnancy, abortion, childbirth and the postpartum period). Certainly, violence, crimes, and violent and preventable deaths were analysed in their complex relation to other forms of exclusion, discrimination and exploitation of women not only [due to] gender, but [also due to] age, type, ethnicity, social territorial condition (regional and local). And within this group of constructs, unlawfulness and delinquency reigning in their life context or derived from situations of risk as exclusion, marginalization and migration, were analysed in the light of unsafety. The knowledge of the problem which started with the homicides of girls and women made it possible to correlate violent deaths with other forms of family violence, sexual, physical, psychological, patrimonial and economic violence and also with institutional violence. The Law groups the spectrum of violent deaths in the type of femicide violence. (Lagarde, 2009, pg. 11).

In the definition of this violence, the component of impunity must be emphasized since it is categorized not only by a discriminatory social construction but also by a component of absence of justice which in the end, affects the rights of women to access justice. The communicative value of the offence (Jakobs, 2008; Jakobs, 1996; Duff, 2001), is lost when these type of acts are not punished or investigated, and thus it is suggested that they are not as important as to deserve the State's intervention or even, that they have a positive value because they respond to the masculine culture of domination blaming women for the violence they go through.

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In this respect, the I/A Court H.R, based on the *Campo Algodonero Case* has focused on the need to develop policies to eliminate structural inequity on the part of the State, not only because it is violent itself, but because it a factor that generates violence. The analysis of the judgement show how in the Interamerican system of human rights, there is a bridge from the conception of equality as barely formal to a conception of equality as a substantial thing. According to Abramovich (2010),

There is a development from an idea of equality regarded as anti-discrimination towards a notion of equality regarded as the protection of subordinate groups. This means there is an evolution from a classic notion of equality which aims at abolishing privileges or irrational and arbitrary differences, a notion that tries to find the generation of equal rules for all, and which requires from the State a certain kind of impartiality or "blindness" to difference. And it evolves to a notion of substantive equality which demands from the State an active role to generate social equilibrium, the special protection of certain groups who have suffered historical or structural processes of discrimination. This last notion implies a State which is able to put aside its impartiality and that adopts the necessary diagnose tools in order to know which groups or sectors are entitled to obtain urgent and special protective measures in a given historical moment.

(...)

The use of the notion of material equality carries a definition on the role of the State as an active guarantor of the rights, in social contexts of inequality. It is as well a useful tool to examine judicial rulings, public policies and state practices in their creation and application.

Moreover, it has direct consequences on the debate over effective remedies, for it is well known that positive obligations are harder to demand, for example, by judicial domestic means. This happens especially when positive behaviour is demanded to solve conflicts of collective nature (pg. 108 y 111).

This implies a duty on the part of the State to protect these vulnerable groups and to adopt all the necessary measures to abolish the situation of discrimination. In the next section we shall see the types of responses provided by the State and how it has focused on the criminal response, passing over other measures that prevent or could prevent the situation to develop into an act of femicide.

## The State's response

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The response of the Colombian State to violence against women is quite recent, in the past only an account of the crimes committed against women was reported. However there are some exceptions, for example the unacceptance by the jurisprudence and doctrine of the existence of sexual violence inside marriage or against prostitutes, for, in the first case, it was a case of compliance of matrimonial provisions (or marriage contract fulfilment) and in the second case it was argued that the legal asset remained unaffected because prostitutes, according to the analysis, lacked sexual honour and could not be harmed or jeopardized in respect to that legal asset (Valencia, 1989). In fact, as Magistrate Cuellar denounces in the decision of the Colombian Supreme Court on femicide, the criminal code of 1890 granted total impunity to femicide attacks. The Code considered as an extenuating circumstance:

Perpetrating the homicide to her legitimate partner or to any member of the family unit or its prescribes, she who lives by his side honourably, and who is caught in a sexual act with a man different from her husband, or the act that is committed with a man who is found lying with one of the afore mentioned; the same shall be applied in the case that they are caught, not in a sexual act, but in another dishonest action, similar or previous to the sexual act, which leaves no doubt about the illicit relation existing between them (Art. 591-9).

However, there were other forms of economic and symbolic violence that were being addressed by the legislation little by little. With the constitutional amendment of 1936, women were enabled to be elected for Municipal Councils, the education of country women was allowed to exercise as teachers and it was agreed that Colombian women married to foreigners would not lose their Colombian nationality. But, it is only until 1981 that by Act 51 of 1981, the Convention on the Elimination of all Forms of Discrimination against Women, adopted by the General Assembly of the

United Nations on July 18, 1979, is adopted in Colombia. The Convention was regulated by Decree 1398/1990, which defines discrimination as follows:

**Art. 10.- Definition of discrimination.** For the purposes of the present Convention, the term “discrimination against women” shall mean 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.

**Paragraph-** Discrimination can be direct or indirect.

Direct discrimination takes place when a person is treated less favourably than other for being female or male.

Indirect discrimination is understood as the application of conditions of work that, though equal in a formal sense, in practice, favour one sex or the other.

**Art. 20- Equality of rights between men and women.** The Colombian State ensures to men and women equality in the exercise and enjoyment of all economic, social, cultural, civil and political rights.

**Art. 30- Recognition of the social function of women.** The Colombian State recognizes the great contribution of women to the well-being of the family and to the development of society; it stands out the social importance of maternity and the function of the parents in the family and in the upbringing and education of their children.

**Art. 40- No discrimination due to procreation and common responsibility in the education of the children.** The role of women in the procreation of children must not be a cause for discrimination in Colombia. The education of children includes the common responsibility of men and women and society at large.

**Art. 50.- Legal protection of the rights of women.** The legal protection of the rights of women on a basis of legal equality with men is assured. Authorities shall guarantee the effective protection of the rights of women against all acts of discrimination.

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In the development of the principles stated by the CEDAW, Act 23 of 1982 is issued and this fact means a significant advance in terms of struggle against discrimination of women. By this law, the civil rights for women in Colombia are recognized. This Act, also known as *Act of emancipation of women*, establishes that each spouse preserves the free administration and disposition of goods during marriage. In this Act, it is also established that married women, of legal age, may appear freely in court and that she does not require marital or legal authorization to access her goods, having free representation of herself (in the previous regime the legal representative was her father or spouse).

The equity regime is ratified with the Constitution of 1991, which, in his art. 43 establishes:

**Art 43.** Women and men have got equal rights and opportunities. Women must not be subjected to any kind of discrimination. During pregnancy and after childbirth she shall enjoy appropriate services and protection by the State and will receive food subsidy if she were unemployed or helpless.

The State shall provide especial support to women heads of household.

In this way, the Colombian legislation –and not necessarily public policies– has been facing the issue of economic inequality. However, the situation of inequity prevails, in spite of the fact that women have accessed the labour market, education and high positions in the private sector and in the State, the wage gap still exists and the situation of real economic difference and discrimination does too.

For Sabogal (2012),

In Colombia, women have got lower salaries than men though their participation in the labour market has increased, their higher number of labour hours and the levelling of certain observable characteristics, such as education, during the last three decades. In fact, the Rate of feminine Global Participation (TPG) in the 7 main Colombian cities raised from 40,6 % in 1984 to 55,0% in 2006, whereas the male TPG has remained constant during the same period. The average number of hours worked per month varied from 213 in 1985 to 218 in 2006, and the average of years of approved education surpassed the average of men since 1987. At the regional level, in Latin America a similar phenomenon takes place: women have levelled men in terms of education, in fact, women nowadays have got better chances to access secondary and higher education than men (pg. 54).

78 Nonetheless, legal development had not addressed direct violence against women because it was assumed that it was a matter that belonged to the private sector, and therefore, it had to be subject to measures of conciliation or to measures particular to Family Act. However, as a consequence of the increase in the acts of domestic violence in the country, Act 294 of 1996 was approved. It states norms to prevent, repair and punish domestic violence. Within this Act, there is an explicit procedure of protection of women against all acts of violence within the family group which includes the intervention of the Commissariats for Family. In the same Act (art.22) the crime of domestic violence was created, and it is defined as follows:

**Art. 22.** Domestic violence. The perpetrator of a physical, psiquical or sexual abuse to any member of his/her family group, will be imprisoned by (1) or two (2) years.

**Art. 23.** Maltreatment leading to personal injury. Whoever harms by physical or psiquical *violence*, by *cruel, intimidatory or degrading treatment causes harm in the body or psychological health to a member of his/her family group*, will be imprisoned for the crime related, and the punishment augmented from a third part to half of it.

**Paragraph:** *For the effects of this article, forcing or inducing the consumption of psychotropic substances to another person or consuming them in the presence of children, is considered degrading treatment.*

**Art. 24.** Mistreatment by restriction to the physical freedom. Any person who, by force and without apparent cause restricts the liberty of locomotion to another legal person belonging to his/her family group, shall be imprisoned from one (1) to six (6) months and a given a fine of one (1) to sixteen (16) minimum monthly wages, provided that this act does not constitute an offence subject to a heavier penalty.

For the Constitutional Court, in the judgement C-285 of 1997, with the inclusion of this crime into the criminal code, it was intended to ensure protection to the victims of violence by other family member. It relates to a sort of protection not only for the health of the person, but above all, for the harmony and unity of the family.

The Colombian Law penalizes sexual violence between spouses and legal partners and with this fact, the old criminal doctrine on this crime is left aside and sexual violence is now considered a threat against sexual freedom and not against sexual honour. Thus, in the Criminal Code of 2000 (Act 599 of 2000), the legal asset of freedom and sexual formation is introduced, therefore, any act threatening that freedom, independent from social condition or the professional situation of the victim is said to be an act of sexual violence. However, the legislation grants privileged treatment to the crime of sexual violence because it is only punished by a prison term range from 6 months to two years and this implies a conditional suspension of the penalty, probation measures and proceeding through a legal complaint, leaving the victim subjected to threats from his aggressor to prevent her from filing a lawsuit. On this respect, the Constitutional Court in its sentence C285 of 1997 declared unconstitutional the legislation mentioned above due to the following reasons:

Regarding the legal asset protected in “sexual crimes” the legislation has had relevant variations: initially, protection referred to honesty which meant that those who had a social behaviour which did not agree with socially accepted rules were left unprotected. Ultimately, what was intended with those prohibitions was to impose certain sexual morality; more recently, it is being considered that the legal asset protected is sexual freedom, an approach which is derived from the acknowledgment of the pluralist character of society, by virtue of which, it is illegitimate to impose a specific conception of morality. It is then, a duty of the State, to punish the behaviours that preclude the free practice of sexuality, regarded positively, as the practise of sexual potentialities and negatively, as the prohibition to involve a person in a sexual deal, without her/his consent. Some authors have proposed to denominate the legal asset protected as sexual indemnity, and this due to the fact that in regard to some people like the under aged users and the disabled population, it is not possible to claim a sound faculty to dispose of their sexuality.

In the light of the Constitution of 1991, the legal asset protected by the legislation cannot be honesty nor moral, for everyone has the right to live her/his sexual life according to one’s own decisions. The current legislation (Act 360 of 1997) in agreement with this consideration, establishes as legal assets protected, sexual freedom and human dignity.

With regard to the categorization of the behaviours of sexual violence, when there is a marriage bond, considerations have varied in the course of time. These have been the main approaches: 1) the behaviour of the aggressor is immoral, but not unlawful, since the object of marriage is procreation and this means is obtained through sexual intercourse, a spouse can react mistakenly for an action that is allowed by law; 2) the fact is usual, but it is justified by the law that protects him over the couple; 3) there are special cases in which the couple can reject the sexual act and as a consequence, the behaviour of the aggressor

becomes criminal, like in the case of a divorce, interruption of cohabitation, or when the refusal is generated by unhealthy reasons or the intention of carrying out practices against nature. The previous accuracies have been created from a misunderstanding of marriage obligations and therefore, do not cover marital relations. 4) Lastly, it is accepted that the behaviour is punishable, a spouse is not empowered to use force against the other. Refusal of the spouse to have sexual intercourse entitles someone to get a divorce but not to rape her couple.

According to the constitutional principles that rule us, only the last approach is acceptable. The sexual freedom of the spouse must not be diminished thanks to marriage, otherwise it would be a case of servitude, proscribed by the Constitution (art.17). With marriage, civil rights are acquired but the person is not alienated. As a consequence, the behaviour of the aggressor is equally unfair when sexual violence is practised against her/his couple or any other person.

Rape, regardless of the persons who take part in the act, implies depraving the victim of one of the most meaningful dimensions of her/his personality which include her/his self-esteem and her/his sense of one's self, and which degrade her/him for she/he is taken as mere physical object by the aggressor. The punishment of the behaviours connected to rape is derived from the acknowledgment of the Law to make use of one's own body and constitute a mechanism intended to safeguard its effectiveness.

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(...)

To sum up, the legal asset protected with the punishment of the crimes of rape and violent sexual access is sexual freedom and the dignity of the persons; those legal assets cannot be diminished by the existence of a marriage bondage, by living together or by having had a previous relationship which implied a sexual intercourse.

(...)

Although it is true that Criminal Law is the hardest mechanism of control affecting the freedom of people, it is also the most efficient guardianship form to safeguard the legal assets and fundamental rights of individuals. For that reason, when the legislator, thanks to criminal politics, adopts this means of control in order to guarantee a certain legal asset, it is said that every person under equal circumstances is entitled to have the right to enjoy equal protection. In other terms, though it is clear that the legislator is the person who decides when it is necessary to use Criminal Law to resolve conflicts arising among persons, when she/he makes use of that mechanism to protect a certain legal asset, she/he is not authorized to make distinctions that are not based on legitimate reasons.

(...)

...the acceptance by the Law of a privileged criminal type for the crimes of rape and violent sexual access when directed against the spouse or the person whom with one lives or lived together or whom with a child was conceived and born, is disproportioned and as a consequence, it infringes the right to equality.

There are several laws that address the issue of providing a better participation to women in the labour market, in public life and in education and all of them try to eliminate all types of structural discrimination.<sup>7</sup> However, in spite of those efforts, or perhaps due to them, physical attacks against women achieved great popularity.

As a result of these attacks against women, a new analysis was taken up about this new modality of violence of gender, in which the victim is murdered because of being female. Thus, in 2008 in Colombia, there is a discussion about a new criminal type of femicide. In this year, Act 1257 in its art. 26 included a new aggravating circumstance to the crime of homicide, when the act were perpetrated only for being female.

The purpose of Act 1257 is adopting regulations which can guarantee women a life free of violence, both in the public and private domain. It also imposes to the State the obligation to develop public policies which direct towards the exercise of the rights of the victims. The law defines what is understood by violence against women and by harm against women, the latter being categorized as psychological, physical, and patrimonial. It introduces a new regulation about the rights of women who are victims of these forms of violence and the obligation of the State to adopt measures of sensitivity and prevention. It also introduces modifications to the following articles of the criminal code: 104 (aggravated homicide); art. 135 (homicide in protected person); art. 170 (aggravated extorting kidnapping); art 210A (sexual harassment); art.211 (aggravating circumstances of the crimes against freedom, integrity and sexual formation); art.216 (aggravating circumstances of the crimes of sexual exploitation); and art.230 (mistreatment through the restriction to physical freedom)---, aggravating the behaviour when it is perpetrated against a victim because of being female or including the spouse or common-law spouse as beneficiaries of criminal protection.

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The Colombian Law penalizes sexual violence between spouses and legal partners and with this fact, the old criminal doctrine on this crime is left aside and sexual violence is now considered a threat against sexual freedom and not against sexual honour. Thus, in the Criminal Code of 2000 (Act 599 of 2000), the legal asset of freedom and sexual formation is introduced, therefore, any act threatening that freedom, independent from social condition or the professional situation of the victim is said to be an act of sexual violence.

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7. Some of these acts are: decree 2200 of 1999, Act 581 of 2000, Act 679 of 2001, Act 731 of 2002, Act 755 of 2002, Act 823 of 2003, Act 984 of 2005, Act 1009 of 2006, Act 1023 of 2006, decree 4685 of 2007, Decree 164 of 2010, Act 1448 of 2011, Act 1496 of 2011, Act 490 of 2012 and Decree 001 of 2013.



The categorization of the crime of femicide is part of a wave of criminalization of this behaviour, on the basis that in Criminal Law there is no criminal type capable of gathering the whole weight of the result implied by the act. However, this wave of criminalization is paradoxically placed between the tension generated by the minimal use of Criminal Law –typical of critical thinking- and the demands for more Criminal Law from social groups (Van Swaaningen, 1996; Abadía, 2014).

However, Criminal Law has been defined as a mechanism of social control whose goal is the protection of the most important legal assets against the most serious forms of attack. But, as Hassemer points out, the dialectics of modernity has changed Criminal Law from a negative principle to a positive one of criminalization, “what was usually stated as a criticism to the legislator who was not able to create crimes where there was no existing legal asset, has become a demand to penalise certain behaviours” (Hassemer, 1991). In this way, Criminal Law is not anymore the limit of criminal politics, and becomes, quintessentially, the basis and instrument of a punitive criminal politics.

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The instrumental functions of Criminal Law are moved into the background and begin to play a more symbolic role. Instead of giving solutions to the problems of public safety, the law and the criminal system resort to a parody of troubleshooting and make use of terms of imprisonment –or the threat to do so- just to give the impression that something is really being done about it. Thus, side by side with the state punitive populism, nowadays we face a punitive populism from social organizations, which every time demand for more imprisonment and Criminal Law to guarantee an equal protection of their rights:

Symbolic Criminal Law does not alleviate this process, but strengthens it. The preventive gain implied by it, is not generated with regard to the protection of legal assets but with regard to the image of the legislator and of the “moral businessman”. What is achieved when Symbolic Criminal Law performs this trick between dormant and manifest functions is that the critical question over the real capacity of Criminal Law to protect legal assets is not even made.

Criminal legislation and criminal execution are regarded as cheap jokes: it is unnecessary to fundament extensively because this way out to the dilemma of prevention is a wrong way. A symbolic Criminal Law which is able to change its manifest functions to favour the dormant ones, betrays the principles of a liberal Criminal Law, especially the principle of protection of legal assets, and undermines public trust in the matter of Justice Administration.

Provided that the character of appearance is a part of Criminal Law and Criminal Politics, it remains to be seen how it can accomplish the apparent preventive functions rather than handing them over.

Precisely during a period in which preventive policies and global social needs rule, Criminal Law could have the mission of reviving the tradition to focus on the definite actions of harm against a legal asset (Hassemer, 1991: 30).

For that reason, standardized measures, like those of Criminal Law, cannot be adopted, instead they must recognize the reality in which they are applied. This means applying the criminal response, but also a large wide of measures adopted to prevent the perpetration of a crime and guaranteeing safe contexts for all persons.

Laurenzo (2008) analyses the effects of the criminal cycle which has been adopted as a consequence of the punitive claims from a sector of social groups, he states that when resorting to Criminal Law a reorganization which in many cases, loses focus among the fake universalisms of a patriarchal society, rules and holds that it seems difficult that a movement in which sex is implied for the victim -and the attacker- can evade the suspicions of exceptionality.

The tendency to punish more frequently the acts connected to domestic violence has caused, according to this author, intervention in situations different from domestic violence and that the issue of structural inequality, which is the base of the problem, is left aside. This does not mean that homicides must not be punished, but focuses on the importance of distinguishing from acts between equal beings and those which are the result of contexts of domination. He adds:

With the constant claim to Criminal Law, the (official) feminist movement becomes conservative and renounces to its prominent position as developer of social change. When depositing all their trust in one of the most important instruments for assuring the *status quo*, which is basically an authoritative and oppressing tool that controls conflicts basing on the limitations of the rights, women's associations recognized in public Spanish life run the risk of betraying the greatest ideals of feminism which have always been associated to a fight for a more fair society, less authoritative and with more space for freedom (Laurenzo, 2008, pg. 37).

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In spite of the critics that could arise, the fact is the Colombian legislator introduced the concept of the crime of homicide with the aggravating circumstance of being committed against a person for being female. Clearly, this aggravating circumstance tries to consider the context of discrimination, but it is not justified why only women are included and no other groups like LGBTBI people, afro-descendant populations or indigenous people. Obviously, the intention is to include the crimes of hate which end up in a homicide in the Colombian legislation, but the fact that this type of crimes are based on the need to protect all groups of any type of discrimination is omitted.<sup>8</sup>

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8. Act 1482 Of 2011 categorizes two types of crimes with the purpose of punishing discrimination against people belonging to groups especially protected. The object of this Act is the protection of the people, groups, communities or populations who are victims of acts of racism or discrimination, assuming that racism is a special type of discrimination. The crimes categorized are the following:

Art, 134A. Act of Racism or Discrimination. The person who, arbitrarily hampers, obstructs or restricts the full exercise of the rights of people due to race, nationality, sex or sexual orientation, shall result in jail for a period from twelve (12) to thirty six (36) months and fines of between (10) and (15) times the statutory monthly minimum wage.

However, Colombian jurisprudence has mainly centred on the cases of sexual violence and only recently, it has analysed the issue of violence of gender or of violence against women as a wider framework of interpretation. This actually happened in a case on November 17, 2012, in which the accused Alejandro de Jesús Ortiz Ramírez murdered with a knife weapon his sentimental partner Sandra Patricia Correa in a room of a hotel located in the city of Medellín. The corpse of the victim was found by the hotel staff. Subsequently, on November the 20<sup>th</sup>, the sentimental partner of the victim appeared before a Police Station and confessed having murdered Mrs Correa. The local Court sentenced him with the aggravating circumstances in numbers 1<sup>o</sup> and 11<sup>o</sup> or article 104 of the Colombian Criminal Code.<sup>9</sup> The defence attorney appealed to the sentence conviction arguing that it was a crime of passion and therefore, it had to be considered under mitigating circumstances rather than under aggravating circumstances. In the sentence of second instance, the Tribune of the city of Medellín revoked the first instance ruling considering the arguments of the defence attorney.

The legal representatives of the victim who demanded an appeal of the sentence, established the regulations of what is known as gender code of laws, that is to say, all the regulations directed towards achieving recognition and effective equality of rights for women. Arts. 13, 42, 43, 93, 94 of the Colombian Political Constitution of 1991. These regulations are: the Convention on

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Art. 134B Harrasment on grounds of race, religion, ideology, political party, nationality, ethnic or cultural origin. The person who promotes or instigates acts, conducts or behaviours of harassment oriented towards causing physical or moral harm to a person, group of people, community or ethnic group on grounds of race, ethnicity, religion, nationality, political or philosophical ideology, sex or sexual orientation, shall result in jail for a period from twelve (12) to thirty six (36) months and fines of between (10) and (15) times the statutory monthly minimum wage, unless the behaviour constitutes an offence subject to a heavier penalty.

Art.134C. Aggravating Circumstances. The punishment established for the previous articles shall be augmented from a third part to a half whenever:

1. The act is perpetrated in a public space, public establishment or a place open to the public.
  2. The act is perpetrated through the use of communication means of mass media.
  3. The act is committed by a public server.
  4. The act is perpetrated due to or thanks to the supply of a public service.
  5. The act is directed against a boy, girl, adolescent or elderly person.
  6. The act is aimed at neglecting or restricting labour rights.
9. Art 103. Homicide. Whoever murders a person, shall serve a sentence of imprisonment [...]of between thirteen (13) and twenty five (25) years. It defines domestic violence as physical, mental or sexual abuse inflicted on any member of the family unit and it prescribes, It defines domestic violence as physical, mental or sexual abuse inflicted on any member of the family unit and it prescribes,

Art 104. Aggravating Circumstances. The sentence shall be extended from twenty five (25) to forty (40) years of imprisonment if the behaviour described in the previous article were committed:

1 Against the couple, legal partner; father and mother of the family unit, even if they do not live in the same place; against the offspring or parents of the former and adoptive children; and all other related persons who permanently live or are linked to the family unit.

1.1 If it is committed against a woman because of being female.

the elimination of all forms of discrimination against women –CEDAW–; The American Convention on the Prevention, Sanction and Eradication of Violence Against Women –or Convention of Belém do Pará–; Act 1257 of 2008, which establishes regulations for the awareness, prevention and punishment of all forms of violence and discrimination against women, re-estates the Criminal Code, The Criminal Procedure Code, and Act 294 of 1996 and dictates other legal provisions; The Universal Declaration of Rights, Arts. 1 and 2; The American Declaration of the Rights and Duties of Man (American Declaration), preamble and Art. 2; the International Covenant on Civil and Political Rights, Arts. 2, 3 and 26; the American Convention on Human Rights (American Convention), Arts. 1 and 24. The legal representatives of the victim quoted a study published by the Corporation Sisma Woman in which femicide is defined as:

Patterns of risk for femicide, of this specific type of femicide, that is to say, that which takes place in couple contexts, we have identified four: (i) the existence of a background of violence, (ii) the practise of considering the lives and bodies of women as instruments and objects, (iii) the presence of relations of control or power over women by the aggressors and (iv) continuous impunity of forms of violence against women when they have denounced them because we also accept that for several reasons, in many cases, women do not denounce”. (pg. 2).

When analysing the *Ortíz Ramírez* case, the attorneys proved the existence of a pattern of violations such as a previous attempted murder in which the victim was attacked with a knife weapon by the aggressor and was stabbed 9 times, fact which was surprisingly considered by the State Prosecutor’s Office as personal injuries; the victim was described by the aggressor “as mine and only mine”; the relations of control that were practised on her and the continuous impunity. Against the categorization of the crime as a passion crime adopted by the defence attorney and Superior Court of Medellín, in the lawsuit in appeal, they claimed:

In this context, the crime of passion, jealousy and uncontrolled emotions, constitute a morbid device of gender which minimizes violence against women, who paradoxically, have been regarded as emotional, opposed to the naturally attributed rationality of males. The crimes and homicides caused out of jealousy are misogynist crimes. A Court that applies such crime, not only re-victimizes, but also discriminates the victim.



Colombian jurisprudence has mainly centred on the cases of sexual violence and only recently, it has analysed the issue of violence of gender or of violence against women as a wider framework of interpretation.

According to Myriam Jimeno, the crime of passion is a cultural construct, and in her exact words this construction is immersed within “The complex that I call emotional configuration in which the beliefs, feelings and their verbalization, and the structure of social hierarchies are interwoven. In spite of that, certain discursive devices present the crime as if it was caused by a propensity or natural tendency hiding its real cultural components”. (Pg. 2.) (...).

Violence against women is not a private issue but a social and political problem that, as established by the preamble of the Organization Act No. 1/2004 of 28 December on Comprehensive protection measures against gender-based violence, is manifested as “the most brutal symbol of inequality existing in our society. It consists in a type of violence that is inflicted on women for being female and because their aggressors think they have no right to freedom, respect and decision making.” In the very legal text there is a reference to a technical definition of the battered women’s syndrome which consists in “the aggressions suffered by women as a consequence of the sociocultural constraints which influence the masculine and feminine genders, leaving them in a position of subordination to men and manifested in the three basic fields of relation of a person: maltreatment within couple relations, sexual aggression in social life and harassment in the working environment”. (Pg. 39).

86 The Supreme Court of Justice accepted the appeal and on March 4, 2015, and with the presentation of Magistrate Patricia Cuéllar, she delivered a sentence dismissing the judgement of second instance and establishing certain criteria to understand and apply the aggravating circumstances in numeral 11 of article 104. When analysing the aggravating circumstances, she holds:

One of the aggravating circumstances, connected to the murder, as it was said before, was perpetrating a homicide against a woman “because she is female”. Since this is inscribed into an Act aimed at preventing and eradicating violence against women which mainly is generated from unequal historical relations with men, it cannot have the scope imposed by the Superior Court of Medellín, which related it to the crime of femicide or murder of women due to reasons of gender, a crime that, in her view, is motivated by misogyny, that is to say, scorn and hatred against women.

Killing a woman because whoever perpetrated the act feels loath towards women, is undoubtedly, the most obvious event of “homicide of a woman due to reasons of gender”, which was the expression adopted to refer to femicide by the Interamerican Court Of Human Rights in its sentence of 16 November 2009, issued in the Case González and others (“Campo Algodonero”) vs. México. However, the same behaviour also takes place when the death of a woman is a consequence of violence inflicted on her which occurs within a context of domination (public or private) and where the cause is connected to a reduction of her being as an object.

In other words, murdering a woman because she is female, when the violent act that produces the death is determined by the subordination and discrimination inflicted on her, and from it a situation of extreme vulnerability arises. This context of femicide violence, which is an expression of a long tradition of dominance of men over women, is what has motivated the legislator to consider more serious this type of violence which is generated in a context of inequality and which he/she rightfully tries to counteract by adopting examined measures of criminal nature equal to others adopted by Act 1257 of 2008.

The former argument means that not all murder of a woman is a crime of femicide and it fulfils the grounds for aggravating Act 11 of article 104 of the Criminal Code. To admit this conduct, it is required that the violence which causes it, is connected to the discrimination and domination inflicted on her.

Particularly, in the context of heterosexual couples –who live together or are divorced-, the mistreatment of men in order to keep a woman under his domination and possession as “his”, the constant harassment inflicted on her to achieve his domination, the intimidation that is produced thanks to it, the rise in the intensity of that siege and the aggression as she draws herself near to “not belonging” to him and the final death perpetrated on her “so that she does not belong to anyone else”, is clearly the homicide of a woman for being female or “for reasons of gender”.

That additional element which must be evident in the behaviour to constitute a punishing aggravating of femicide, that is, discrimination and domination of a woman implicit in the violence that caused her death, shall obviously be proved during the criminal process in order to be attributed to the author. As a consequence, in no case it must be taken for granted from the simple circumstance of being the aggressor a male and the victim a woman, but it must be founded on demonstrative evidence of the situation of abuse of power in which the woman was inserted.

In the case analysed the Court demonstrated the existence of a pattern of violations to the rights of SPC, who was constantly harassed and even inflicted a homicide attempt caused by jealousy. However, The Court shows that this alleged jealousy is part of a pattern of domination and violence against the victim. Thus, clear criterion are established to demonstrate that the crime of homicide has been perpetrated because she was female, that is, as a consequence of a pattern of discrimination.

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## Conclusion

Violence against women is a wide concept which cannot be lessened to sexual violence nor mistaken with femicide. This is the extreme case of violence, but in between we find other forms like symbolic, structural and economical violence.

Femicide was categorized in Art. 26 of Act 1257, 2008, but only until the 4<sup>th</sup> of March, 2015, the Supreme Court rendered a sentence which stated the grounds for understanding the behaviour and to define it in all its enormity. Opposed to what was claimed in the sentence of second instance analysed, jealousy is not an act of passion, but a part of the pattern of domination and thanks to that, it cannot be considered as a mitigating circumstance but as an aggravating one. It has been a long way to go for reaching real equality between men and women, but there is still a long way to go to eliminate violence and discrimination.

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