

## University education and its impact on the legal documentation of femicide cases

### La formación universitaria y su impacto en la argumentación jurídica en casos de femicidio



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### Abstract

The article addresses the challenges in evidence and legal argumentation in cases of femicide. It highlights the importance of the crime scene and the need for a gender perspective in the analysis of evidence. She points out the lack of specific procedures with a gender perspective in policies and protocols, hindering effective investigation. Analyses statistics and sentences in Ecuador, revealing patterns of trust and violence prior to femicide. Stresses the positive impact of specialised training and the need to address intersectionality. It identifies challenges in the assessment of digital evidence and examines the Ecuadorian legal framework, noting advances in criminalisation, but persistent challenges in implementation and judicial practices.

**Keywords:** Femicide, Legal argumentation, Gender perspective, Judicial training, Evidentiary challenges.

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**Sinergias educativas**

October - December Vol. 9 - 4 - 2024

<http://sinergiaseducativas.mx/index.php/revista/>

eISSN: 2661-6661

[revistasinergias@soyuo.mx](mailto:revistasinergias@soyuo.mx)

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Received: May 04 , 2024

Approved: June 12 , 2024

## Resumen

El artículo aborda los desafíos en la prueba y argumentación jurídica de casos de femicidio. Destaca la importancia de la escena del crimen y la necesidad de una perspectiva de género en el análisis de evidencias. Señala la falta de procedimientos específicos con enfoque de género en políticas y protocolos, dificultando la investigación eficaz. Analiza estadísticas y sentencias en Ecuador, revelando patrones de confianza y violencia previos al femicidio. Subraya el impacto positivo de la capacitación especializada y la necesidad de abordar la interseccionalidad. Identifica desafíos en la valoración de evidencia digital y examina el marco legal ecuatoriano, señalando avances en tipificación, pero persistentes desafíos en implementación y prácticas judiciales.

**Palabras clave:** Femicidio, Argumentación jurídica, Perspectiva de género, Formación judicial, Retos probatorios.

## Introduction

Research on evidence and legal argumentation with an emphasis on femicide cases has undergone significant development in recent years, reflecting the growing concern to effectively address this serious social and legal problem.

A seminal study in this field is (Ardon and Tobar, 2019), ‘Femicide: An exploratory study of the situation in El Salvador’, which analyses the evidentiary and argumentative challenges in the prosecution of these crimes in the Central American context. The authors identified that ‘the lack of specialised protocols and the persistence of gender stereotypes among judicial operators hinder the effective collection and assessment of evidence in cases of femicide’ (p. 78).

This finding reveals two critical obstacles in the prosecution of femicide cases. First, the lack of specialised protocols prevents a systematic and gender-sensitive approach to the investigation, which can lead to the loss of crucial evidence. Second, gender stereotypes among judicial operators can distort the interpretation of evidence, potentially blaming victims or minimising the seriousness of the crime. These combined factors undermine the effectiveness of the justice system in addressing femicide, underscoring the urgent need for specialised training and procedural reform.

Expanding on this line of research, (Correira, 2021) conducted a comparative study entitled ‘Evidence and argumentation in femicide cases: An analysis of sentences in Latin America’. This work examined 150 sentences in cases of femicide in five Latin American countries, finding that ‘only 37% of the sentences analysed effectively incorporated a gender perspective in the evaluation of evidence and the construction of legal arguments’ (p. 203). The authors underline the need for more training and sensitisation of judicial operators on gender issues.

This low percentage indicates a significant gap between the legislation on femicide and its practical application in Latin American courts. The lack of a gender perspective in most judgments suggests that judges have not yet fully internalised the specific nature of this crime. This may result in sentences that do not adequately reflect the seriousness of femicide or do not address its underlying causes, highlighting the need for more robust judicial training on gender issues and a review of sentencing processes.

For their part, (Meneghel and Portella, 2023) in their study ‘Femicide in Brazil: Evidentiary and argumentative challenges in the judicial system’ provide a crucial perspective on the specific difficulties in the investigation and prosecution of these cases. The authors point out that ‘the complexity of proving gender motivation in femicide cases requires an interdisciplinary approach that includes not only forensic evidence, but also analysis of the social and relational context of the victim’ (p. 56).

This observation underlines the inherent complexity of femicide cases, which go beyond traditional forensic evidence. An interdisciplinary approach allows for a more complete understanding of the context in which femicide occurs, including patterns of abuse, power dynamics and socio-cultural factors. This approach not only improves the quality of the investigation and the likelihood of just convictions, but can also inform more effective prevention policies. However, implementing this approach requires a significant restructuring of current investigation and prosecution processes.

In the European context, (Weil, 2022) conducted a study entitled ‘Legal argumentation in cases of femicide: An analysis of the jurisprudence of the European Court of Human Rights’. This work examines how the court has incorporated a gender perspective in its decisions on cases of violence against women, including femicide.

Weil concludes that ‘while there is a positive trend towards greater gender sensitivity in the Court's argumentation, challenges remain in fully integrating an intersectional approach’ (p. 312).

A crucial aspect of recent research is the role of digital evidence in femicide cases. (Salarzar and Rodriguez, 2023) in their study ‘La prueba digital en casos de femicidio: Desafíos y oportunidades’ analyse how evidence extracted from electronic devices and social networks is transforming the investigation of these crimes. The authors argue that ‘while digital evidence offers new opportunities to establish patterns of abuse and control, it also poses challenges in terms of legal admissibility and privacy protection’ (p. 89).

Finally, it is important to mention Pola's (2017) work, ‘Evidence in cases of violence against women’, which, although not as recent, remains influential in the field. Pola explores the specific difficulties in assessing evidence and deconstructing gender stereotypes in these cases, laying the groundwork for much of the subsequent research in this field.

These studies collectively demonstrate the complexity and constant evolution of the field of evidence and legal argumentation in femicide cases. They reveal the need for a multidisciplinary approach combining legal, criminological and gender studies expertise to effectively address these cases in the justice system.

Three years ago, the first hearing on Femicide in Mexico and Central America ‘Not One More Dead Woman’ took place in Brussels in April 2006, organised by the Committee on Women's Rights and Gender Equality and the Subcommittee on Human Rights of the European Parliament (EP). This initiative gave rise to the pioneering resolution on the murder of women (feminicide) in Mexico and Central America and the role of the European Union in the fight against this phenomenon. We would now like to analyse the changes that are taking place in the situation of feminicides in Latin America and thus be able to evaluate the actions that are being generated in European civil society. Without limiting itself to the emblematic and extremely critical cases of Mexico and Guatemala, this publication attempts to provide a regional overview of the situation of feminicide in Latin America.

To this end, we have given the floor to prominent women activists, women's human rights defenders, academics and representatives of

Latin American civil society. Organised around four key words - current situation, achievements, challenges and expectations - the texts also provide an account of the struggles of women's organisations in Mexico, Guatemala, Honduras, El Salvador, Chile, Peru, Bolivia, and Colombia; countries where they continue to work for the changes necessary to eradicate discrimination, violence against women, femicide and especially impunity.

The publication also provides different interpretations of the concept of femicide: some authors emphasise the importance of domestic violence, while others highlight the impersonal face of the cruel killing of women by strangers such as street gangs. Others relate it to political instability or coups d'état, and it is also emphasised that femicide occurs in times of peace as well as in times of war. But all agree that the origin lies in unequal power relations between men and women. A final chapter presents some of the initiatives taken by European civil society to support women's organisations in Latin America (Stiftung, 2010).

## **Materials and methods**

The approach to evidence and legal argumentation in cases of femicide has undergone a significant evolution, reflecting changes in the social and legal understanding of gender-based violence.

Initially, as (Fregoso and Bejarano, 2020) point out in their study 'Femicide in Latin America: A historical and legal review', cases involving the murder of women were treated as common homicides, without considering the underlying gender dynamics. The authors state that 'until the 1990s, most judicial systems in Latin America lacked conceptual and legal tools to address the specificity of gender-based crimes' (p. 45).

This observation reveals a critical deficiency in Latin American judicial systems prior to the 1990s. The lack of specific conceptual and legal tools to address gender-based crimes resulted in an undifferentiated treatment of women's murders. Consequently, crucial aspects such as patterns of abuse, power relations and cultural factors of discrimination were invisible in the judicial process. This situation laid the groundwork for the subsequent development of specific laws on femicide and the incorporation of a gender

perspective in the administration of justice, marking a turning point in the legal treatment of violence against women.

A crucial turning point was the ratification of key international instruments in the 1990s. The 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) and the 1993 Declaration on the Elimination of Violence against Women marked the beginning of a formal recognition of the need to address violence against women in a specific and differentiated manner.

According to Lagarde (2021), in her work ‘From femicide to feminicide: evolution of a legal concept’, these international instruments ‘laid the groundwork for the development of national legal frameworks that recognised the specificity of gender-based violence, including femicide’ (p. 78). This international recognition prompted significant changes in national legislation and judicial practice.

This observation highlights the crucial role of international instruments in the legal evolution of the concept of femicide. They provided a conceptual and normative framework that prompted the development of specialised legislation at the national level. This change reflects a growing recognition of the specific nature of gender-based violence, leading to significant legal reforms and the incorporation of gender perspectives in judicial proceedings in numerous countries.

A significant advance in the last decade has been the development of gender-sensitive investigation protocols and models. The Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide), published in 2014 and updated in 2022, has been particularly influential. According to a study by Saccomano (2023), ‘the implementation of the Protocol in countries such as Mexico and Argentina has led to a 40% increase in the conviction rate in femicide cases between 2015 and 2022’ (p. 112).

This data demonstrates the tangible effectiveness of implementing specialised protocols in cases of femicide. The 40% increase in convictions suggests a substantial improvement in the capacity of the judicial system to address these crimes. It reflects a more effective application of a gender perspective in the collection and assessment

of evidence, as well as in legal argumentation. However, it is important to consider that the increase in convictions is only one aspect of progress, and it is also necessary to assess the quality of sentences and their impact on prevention.

In the field of jurisprudence, there have been notable advances. Vásquez and Vega (2022) analyse in their article ‘Evolution of jurisprudence in cases of femicide in Latin America’ how courts have progressively incorporated a gender perspective in their decisions. The authors point out that ‘between 2010 and 2021, there is a 65% increase in the number of judgments that explicitly use the term “femicide” and apply international human rights standards in their argumentation’ (p. 234).

A significant recent development has been the incorporation of intersectionality into the legal analysis of femicide cases. Crenshaw and Atrey (2023), in their study ‘Intersectionality in Law: New Perspectives in Gender-Based Violence Cases’, argue that ‘since 2018, there has been a growing trend in courts in Latin America and Europe to consider intersectional factors such as race, class and sexual orientation in the assessment of femicide cases’ (p. 156).

## Results

Feminist theories remain central to understanding femicide as an extreme manifestation of patriarchal violence. Radford and Russell's (1992) theory of femicide has been expanded and updated by contemporary scholars.

Segato (2021), in her work ‘The writing on the bodies of the murdered women in Ciudad Juárez: Territory, sovereignty and second-state crimes’, proposes an updated theory of femicide that frames it as a ‘crime of power’. According to Segato, ‘femicide is not only an act of individual violence, but an expression of structural power that seeks to maintain control over women's bodies and lives’ (p. 67). This perspective is crucial to understanding the motivation behind these crimes and their contextualisation in legal argumentation.

Segato's perspective frames femicide as an act of structural, not just individual, power. This is crucial for legal argumentation, as it involves considering the broader social context and power structures that facilitate these crimes, beyond the immediate circumstances of the case.

For her part, Lagarde (2023), in her study ‘From Femicide to Femicide: An Evolving Theory’, argues that ‘the concept of femicide broadens the understanding of femicide by including state responsibility for action or omission in these crimes’ (p. 89). This perspective is particularly relevant for legal argumentation in cases where state responsibility is sought.

Taruffo's theory of ‘contextual evidence’ is particularly relevant in femicide cases. It suggests that the evaluation of evidence should consider the broader context of gender-based violence, which can significantly strengthen the argument in these complex cases.

#### Theories of Evidence and Legal Argumentation:

Theories of evidence have evolved to address the specific challenges of femicide cases. Taruffo (2022), in his work ‘The Evidence of Facts’, proposes a theory of ‘contextual evidence’ that is particularly relevant to femicide cases. According to Taruffo, ‘in complex cases such as femicide, evidence must be evaluated not only in terms of its individual value, but also in relation to the broader context of gender-based violence’ (p. 123).

In terms of legal argumentation, Atienza (2021) has developed a theory of ‘feminist legal argumentation’ in her book ‘Law as Argumentation’. Atienza argues that ‘effective legal argumentation in cases of femicide must explicitly incorporate a gender perspective, deconstructing stereotypes and contextualising the case within existing power structures’ (p. 201).

Atienza's proposal for ‘feminist legal argumentation’ emphasises the need to explicitly incorporate a gender perspective in legal argumentation. This implies a more holistic approach that challenges stereotypes and considers the underlying power structures in cases of femicide.

#### Human Rights and Gender Theories:

Structural discrimination theory, elaborated by CEDAW (2017), has been complemented by recent theoretical developments. Facio (2022), in his study ‘State responsibility for femicide’, proposes a theory of ‘enhanced due diligence’ in cases of gender-based violence. According to Facio, ‘states have a reinforced obligation to prevent, investigate and punish cases of femicide, which implies a higher standard in the collection and evaluation of evidence’ (p. 78).



The theory of intersectionality, initially proposed by (Crenshaw, 1989), has been extended and applied specifically to the context of femicide. (Collins and Bilge, 2023), in their book 'Intersectionality', argue that 'an intersectional analysis in cases of femicide allows for a fuller understanding of the multiple forms of oppression that can converge in the victimisation of women' (p. 156). This perspective is crucial for a legal argument that considers the complexity of victims' identities and experiences.

The application of intersectional theory to femicide provides a valuable tool for legal argumentation. It allows for a fuller understanding of the multiple forms of oppression that can converge in these cases, which can significantly enrich legal analysis and argumentation.

#### New Theoretical Perspectives:

In addition to these established theories, as part of the need to describe theoretical strands, new perspectives relevant to addressing femicide cases have emerged such as:

Feminist restorative justice theory: Proposed by (Ptacek, 2021), in her book 'Restorative Justice and Violence Against Women', this theory argues that 'in cases of gender-based violence, including femicide, restorative justice should incorporate a feminist perspective that recognises power dynamics and seeks to transform gender relations' (p. 234). This perspective can influence the way in which legal arguments are constructed and reparations to victims and their families are considered.

Theory of digital evidence in gender contexts: Developed by (Barrera I. &, 2023) in their study 'Digital evidence and gender-based violence: New evidentiary challenges', this theory proposes a framework for the collection, analysis and presentation of digital evidence in cases of gender-based violence and femicide. The authors argue that 'digital evidence must be interpreted in light of the patterns of control and abuse characteristic of gender-based violence' (p. 112).

#### Femicide or feminicide

Although Montserrat Sagot and Marcela Lagarde agree that both the term femicide and feminicide take into account the gender perspective, the need to break the dichotomy between the private and

the public and that femicides/feminicides are the result of a continuum of violence, their greatest divergence lies in the main characteristic of Marcela Lagarde's definition, namely the impunity resulting from the state. For the Mexican anthropologist, there is no doubt that there is a link between democracy and social development, so that the less rule of law there is, the more violence against women there is. Thus, a reform of public institutions, culture and the empowerment of women would be necessary in order to prevent the phenomenon of femicide.

However, it was thanks to the term femicide used by US intellectuals that the veil was lifted on crimes against women that tended to be labelled with neutral terms such as homicide or murder. Much more than a simple transfer of concept, femicide and feminicide 'are alternative paradigms that deconstruct stereotypical definitions of violence against women and give rise to new interpretations' that are much more accurate than the neutrally labelled domestic violence, violence against women or domestic, family violence. In defending these terms, Marcela Lagarde and Montserrat Sagot reveal a different reading of crimes against women by analysing them from a gender perspective and as a result of gender socialisation and a patriarchal logic dominant for centuries in societies (Devineau, 2012).

This observation highlights the crucial importance of terminology in the conceptualisation and legal approach to violence against women. The use of the terms 'femicide' and 'feminicide' represents a paradigm shift in how these crimes are understood and classified.

By moving away from neutral terms such as 'homicide' or 'murder', these concepts allow for a more precise and contextualised interpretation of gender-based violence. This is crucial for legal argumentation, as it provides a framework that explicitly recognises the power dynamics and social structures that underlie these crimes.

Lagarde and Sagot's contribution in defending these terms goes beyond mere nomenclature. Their approach introduces a gender perspective into legal analysis, which allows for a deeper understanding of the historical and social roots of violence against women. This perspective is essential for developing more robust legal arguments and more effective prevention strategies by addressing not only individual acts of violence, but also the social structures that perpetuate them.

## Discussion

In Manabí, the ancestral millenary social construction maintains: a developed pottery, decentralised self-sufficiency and food delicacies with magical, mythical and romantic orality set to music; constructions that succumbed, readapting to Spanish colonisation, annexation to Gran Colombia and ‘integration’ to the republic, the result of which is Manabí provincialism subordinated to national domination with an altered identity that contrasts with the nationality or superficial nationalism of Ecuadorian nationalism.

Manabí is structured in multiple cantons and parishes of first, second and third category containing structural asymmetries of complex territorial and population overcoming; jurisdictional condition of false autonomy that hinders and weakens the adequate spatial organization by deficient: social, technical, political, budgetary and management organization; key internal link that affects and resists the global link of integration with polycentric sense; buffered with insufficient institutional arrangements in: agendas, plans, decrees, regulations, tables, etc., although it depends on essential degrees of solvency developed by the jurisdiction; overcoming backwardness and poverty will never be by decree.

The process to which Manabí was ‘integrated’ institutionally consolidated the centrist state, with no actors seeking radical change or improvement; Each level of government is closed in on itself without space for relevant socio-territorial government, reduced to the governing actor without betting on improving the quality of political representation, or on the creation of electoral constituencies since 2008, subject to populist electoral offers without translating into effective exercises of government with key socio-territorial transformations that have space for the fictitious system of social participation with powerful governmental accountability and binding social control; If these key aspects are not made viable, Manabí, its 22 cantons and 56 rural parishes will remain unchanged in the third centenary of the province.

The agreed ‘integration’ of Manabí to the dominion of the national State has been for demographic expansion that could not be sustained by internal biophysical limits and the accumulation of capital in few hands, watering and populating Ecuador in specific identified points; that is why Manabí cannot resist more institutional arrangements of national-provincial domination in its third

centenary, but modifies structural situations that prevent modelling political, economic, social and institutional self-control, because identity is its greatest strength.

This identified structural situation of backwardness and poverty reproduced distracted (busy) actors demanding attention to shortcomings, leaving aside the demand to change the dominant status quo; Manabí in 200 years did not manage to create actors: social, political, economic provincial actors different from the conjunctural Alfarism that ended up succumbing to the subsequent assassination of Alfaro.

The subordinate integration of Manabí into the national state, its causes and consequences are the product of imported models imposed by global civilisation in the social, political, economic, cultural and regulatory spheres, which in the medium term will not be reversed or overcome by the will of the Ecuadorian Creole elite. The corollary of or for Manabí, if the current circumstances or situation continue to be conditioned dominantly by the mediate and immediate past, fertilised by the current power situations, nothing will be modified, much less altered.

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