NON-INTIMATE FEMINICIDE IN BRAZIL: DECOLONIAL JURISPRUDENCE CASE-ANALYSIS

By Camila Mafioletti Daltoé

Submitted to

Central European University

Department of Gender Studies

In partial fulfillment of the requirements for the Erasmus Mundus Master´s Degree in Women´s and Gender Studies (GEMMA)

Main Supervisor: Judit Sandor (Central European University)

Second Supervisor: María Socorro Súarez Lafuente (University of Oviedo)

Budapest, Hungary

2020

NON-INTIMATE FEMINICIDE IN BRAZIL: DECOLONIAL JURISPRUDENCE CASE-ANALYSIS

By Camila Mafioletti Daltoé

Submitted to
Central European University
Department of Gender Studies

In partial fulfillment of the requirements for the Erasmus Mundus Master´s Degree in Women´s and Gender Studies (GEMMA)

Main Supervisor: Judit Sandor (Central European University)
Second Supervisor: María Socorro Súarez Lafuente (University of Oviedo)

Budapest, Hungary
2020

ABSTRACT

Gender-based homicide (the killing of women based on their gender) represents the most extreme form of violence against women (VAW) and the final act on a continuum of gender discrimination. The recent feminist contribution to nominate and criminalize femi(ni)cide has provided instruments for social and legal analysis to prevent these avoidable—yet recurrent— deaths. This study explores judicial contributions that confront gender-based violence in cases of femi(ni)cides 'resulting from contempt or discrimination against women' in Brazil (article 121, § 2º A, II). In light of the recent criminalization of femi(ni)cide in the country (2015), the judiciary system acquired instruments to address women's homicide based on gender. While the first clause of the law relates to the already criminalized family and domestic violence against women, the second institues a novel approach by addressing non-intimate femi(ni)cides (defined as the murder of a woman based on gender by someone with whom she did not have a relationship). After five years of law enforcement, the judicial interpretations of the latter have not yet been investigated by scholars. By correlating the disputes during the approval of the law to the initial jurisprudence of non-intimate femi(ni)cide cases, I analyze judicial response to femi(ni)cide cases through a feminist and decolonial legal perspective which seeks to recover the memories of these women rather than to simply refer to them as numbers in the system. Understanding legal discourses as a limited and yet crucial sphere in which to confront gender-based violence, I analyze judicial contributions that combat gender-based violence whilst judging cases of femi(ni)cides. In this thesis, I argue that even in its limited capacity, judicial contribution using this feminist category of analysis represents important progress on legal discourses and practices to confront gender-based violence.

Keywords: Gender-Based Violence; Feminicide; decolonial theories; feminist legal analysis.

RESUMEN

El homicidio por razón de género (el asesinato de mujeres en función de su género) representa la forma más extrema de violencia contra la mujer (VCM) y el acto final de un continuo de discriminación de género. El reciente aporte feminista para nominar y criminalizar el feminicidio brindó instrumentos de análisis social y legal para prevenir estas muertes que son evitables, aunque recurrentes. Este estudio explora los aportes judiciales que enfrentan la violencia de género en casos de feminicidios "por desprecio o discriminación contra las mujeres" en Brasil (artículo 121, § 2º A, II). A través de la reciente criminalización del feminicidio en el país (2015), el sistema judicial adquirió instrumentos para abordar el homicidio de mujeres por razón de género. Si la la primera cláusula de la ley se refiere a la violencia familiar y doméstica contra la mujer ya criminalizada, la segunda innova al abordar los feminicidios no íntimos (asesinato de mujeres por razón de género por parte de alguien con quien no tenían relación). Después de cinco años de aplicación de la ley, las interpretaciones judiciales de esta última parte aún no han sido investigadas. A través del escrutinio de los casos de jurisprudencia alineados con los resultados de las disputas políticas en el proceso de aprobación de la ley, analizo la respuesta judicial a los casos de feminicidio a través de una perspectiva legal feminista y decolonial recuperando la memoria de estas mujeres en lugar de referirme a números en el sistema. Entendiendo los discursos legales como un ámbito limitado pero crucial para enfrentar la violencia de género, yo analizo las contribuciones judiciales que combaten la violencia de género en el juicio de casos de feminicidios. En esta tesis, sostengo que incluso en su capacidad limitada, la contribución judicial utilizando esta categoría de análisis feminista representa un avance importante en los discursos y prácticas legales para enfrentar la violencia de género.

Palabras clave: Violencia de género; Feminicidio; teorías decoloniales; análisis legal feminista.

DECLARATION OF ORIGINAL CONTENT

I hereby declare that this thesis is the result of original research; it contains no materials accepted for any other degree in any other institution and no materials previously written and published by another person, except where an appropriate acknowledgement is made in the form of bibliographical reference.

I further declare that the following word count for this thesis is accurate:

- Body of the thesis (all chapters excluding footnotes, references, etc.): 36,981 words
- Entire manuscript: 41,854 words

Signed: CAMILA MAFIOLETTI DALTOÉ

There Are No Honest Poems About Dead Women

"What do we want from each other
after we have told our stories
do we want
to be healed do we want
mossy quiet stealing over our scars
do we want
the powerful unfrightening sister
who will make the pain go away
mother's voice in the hallway
you've done it right
the first time darling
you will never need
to do it again […]".

– Audre Lorde

To Dulcinéia, Jéssica, Vaneci, Marília, Edenir, Ramona and Mara.

Presente, presente, presente!

ACKNOWLEDGEMENTS

This master has (dis/re)located me internally and externally from the beginning until the very end. As much as I came in with questions, I managed to ask new ones that reflect the complex array of interactions I had throughout my life and academic trajectory. In this regard, as much as this thesis enunciates an 'I', translated into my name as an author, it reflects a multiplicity of different interactions, contributions and encounters. Some of these names are mentioned here on this acknowledgement; others compose my reference list. Nevertheless, many interactions are harder to account for. They refer to both the collective feminist mobilizations, as much as to people who crossed my personal, professional, academic trajectory as a woman from the South, as a Latina: people who paved the way and whose names might not be represented on the body of knowledge, but whose contributions somehow informed things from this work. I realize the impossibility to translate the multiple interactions that contributed to sustaining my voice in academia. Still, I recognize them, and I hope my efforts on this work can reflect the gratitude I feel and my desires to honor women who came before me, such as Rupi Kaur's poem: "I stand on the sacrifices of million women before me thinking what can I do to make this mountain taller so the women after me can see farther?" (Legacy).

First, I would like to thank my family for your love, care and support on all levels during this master and throughout my life. Mom, your example of perseverance, faith and courage has thought me so much. I cannot thank you enough for your courage to be the first woman to pursue your PdD in our family and pave the academic and so many other paths in our ancestral lineage. Dad, thank you for always encouraging me to pursue my dreams and freedom. Thank you for wanting

me free and yet, to want to fly with me. Vini, thank you for teaching me perseverance and creativity. I'm happy when we are together. I cherish the three of you.

I recognize and appreciate my academic mentors in this journey. I especially thank my supervisor Judit Sandor for mentoring me through this research and for the support in the challenging moments of writing and for trusting in me and my work. I thank my co-supervisor Socorro's feedback, comprehension and support along these challenging times of producing my thesis in very odd times. I also thank Nadia not only for the encouraging and constructive feedback on this research but also for showing me that it is possible to build a way through a decolonial praxis within academia. I register my gratitude to the incredible professors I came along on this trajectory: Nadia, Sarah, Jasmina, Alejandra, Francisca. Thank you for your valuable academic and life-lessons. I'm also thankful for CEU and GEMMA consortium professionals, represented by two that provided me with kind and encouraging guidance on their respective areas within CEU: Ann and Angelika.

I want to express my gratitude to my extended family. Growing up surrounded by you was not only fun but enriching and I carry lessons from it into my life. I thank all of you by expressly naming my grandmother Maria Aurora, my godmother Dulce and my cousin Jana. Thank you for your care, love and spiritual support.

Thank my chosen family: my friends who had been around even when 11 thousand kilometres away. Thank you for our long video calls, for coming to visit me, for hearing me out on the good and bad moments, for sharing so much of your lives and for making me feel loved even while my choices separated us for a while. Thank you, Ana, Raque, Tami, Tati, Jú, Bruno, Mari and Laura.

I extend these words to Jucimeri and Aureo, adding my gratitude for the constructive feedback and academic support on this master.

On the displacements, I had to re-accommodate what was familiar, far away from Brazil. Along these lines, I want to thank Jéssica for making me feel at home away from home. I appreciate the relationship we built in these two years, our daily care, our sisterhood and your support in every level (academic, emotional). Your life and our friendship matter so much for me, mana. I thank my beautiful latinx community in Budapest. Ana, Mafe and Pau, I cherish you. I'm thankful for so much we had shared, for our short-but-life-long friendship. Thank you for 'never leaving', if it depends on me, you never will. Thank you to my Budapest community. These were hard times, but they would be impossible if I did not have you with me. Thank you, Kate, Shreya, Van, Aiza, Lore, Klime and Cella. Thank you for the support, exchanges and for teaching me about a feminist ethics in practice. Thank you, Nubia, for our remote but continuous connection, support and care online and in life. Thank you, Igor and your family, for making Europe homier to me.

I'm thankful for my job at the prosecutor's office and for the beautiful people I met there. This work experience taught me so much about praxis on the judiciary system, as much as it enabled me to pursue my dream of doing this master abroad.

I'm thankful for Gabriela, who listened to me throughout my processes of analysis and who helped me realize this project had much more to do with me than I could imagine.

I'm grateful for the great force of the universe and for people in here who were instruments to remind me of my connection to this higher energy.

TABLE OF CONTENTS

Introduction

In this research, I investigate judicial contributions to confronting gender-based violence in cases of non-intimate feminicides[1] in Brazil. The act of killing women because of their gender is the most extreme violation against one's life, and it represents both the extermination of women's lives and dreams, inasmuch as the idea that there are roles and rules that women should obey to remain safe. I articulate these deaths as a product of a society that deliberately creates hierarchies and determines whose lives are more valuable and in which conditions they deserve to live and die. When we analyze the socio-historical conditions of these murders and assume they are constructed hierarchies, we comprehend that these are avoidable deaths. Therefore, confronting gender-based violence could prevent them. As the ultimate consequence of gender-based violence against women (from now on referred to as VAW), feminicide crimes reflect unequal power relations among sexes that position men's life as more valuable than women's. This repeated pattern in different parts of the world has led feminist activists, theorists and civil society to organize and denounce the social phenomena of women's homicide based on gender. Naming and criminalizing feminicide has been a recent political contribution aimed at reforming the existing state structures.

The incorporation of women's human rights and VAW into the international arena came because of these disputes and articulations. It happened 'gradually, not all at the same time and not forever' (Bobbio 1996, p, 11), as these rights were not always in the legal texts and are under constant threat and dispute. VAW was not a topic in international documents or transnational articulation

1 While a variety of terms such as femicide, feminicide, feminicídio are used by different scholars, this research adopts the term feminicide as I further articulate in the initial chapter of the first chapter.

until the late 1970s, early 1980s. The term ‘femicide’ was first publicly used at the International Tribunal on Crimes against Women in Brussels, Belgium, in 1976 (Fregoso and Bejarano 2010, p. XXIII). Meanwhile, it was from 1995 onwards that VAW became a “common advocacy position” in the international arena, as it enabled women to organize around a unique agenda (Keck and Sikkink 1998, p. 166). Latin American activists took a leading role in addressing VAW, both as the first regional system to approve a convention to specifically address VAW (Convention on the Prevention, Punishment and Eradication of Violence against Women held in Brazil in 1994) and through feminist advocacy taking cases involving violence against women to international courts. Discussions about feminicide became widespread in Latin America after the “Cotton Field" case, the first international jurisprudence to address feminicide. The case was taken into the Inter-American Court of Human Rights because of the state's inertia towards the numerous murders of women with the same modus operandi in the City of Juarez, Mexico. According to Toledo (2017), many Latin American countries adopted a common strategy to criminalize feminicide. After Costa Rica became the first country to criminalize it, in less than ten years more than a dozen countries replicated the initiative. Brazil was the 16th country in Latin America to approve a feminicide law. In Brazil, the incorporation of laws that confront violence against women represent a symbolic shift from discriminatory legal dispositions to one that recognizes and addresses gender discrimination as a mean to compensate for historical inequalities. The first law addressing domestic and family VAW was approved in 2006, after feminists applied pressure using (among other tools) international litigation as a strategy to denounce the state’s inadequate response. In 2006, after a Recommendation from the Inter-American Commission of Human Rights (OAS), Brazil approved Law 11.340/2006, also known as Maria da Penha Law, addressing domestic and family violence against women. The case was taken into OAS by feminist advocacy, who pointed

out state failure to offer a response in the individual case of a double homicide attempt against Maria da Penha Maia Fernandes; the case illustrates a systematic pattern of judicial ineffectiveness to address cases of VAW.

After almost ten years of disputes over the interpretation and constitutionality of Maria da Penha Law, the only-ever woman president of Brazil, Dilma Rousseff, sanctioned Law 13.104/2015 (Feminicide Law). At the time of the law's approval, Brazil ranked fifth highest in rates of homicide against women compared to other countries in the world (Julio Jacobo Waiselfisz 2012). This data suggests the need for immediate responses to prevent these avoidable deaths, as much as it reflects the historical processes that Brazil underwent such as colonization. Similar to other progressive gender-based policies, feminicide law resulted from the feminist articulation between civil society and government through a 'Joint Parliamentary Commission of Inquiry on Violence against Women' (hereafter I use the Portuguese abbreviation CPMI) to oversee state responses to gender-based violence. After one and a half years of investigation and hearings throughout the country, the CPMI recommended, among other things, the criminalization of women's homicide based on gender. In 2015 on International Women's Day, the feminicide law was approved, with an innovative gender element for judicial analysis. The law differentiates intimate and non-intimate feminicides, divided as (Brasil 2015, article 121, VI): 1. (first clause) domestic and family violence and; 2. (second clause) disparagement or discrimination to women's condition. The latter refers to gender-based homicides, excluding those resulting from affective and family bounds. Whilst domestic violence crimes had court precedents and a trajectory of implementation, the second clause brought a new element for judicial interpretation where for the first time the judicial system has to analyze cases of non-intimate feminicide.

I rely on decolonial feminist legal theories to investigate the contributions and limitations of the Brazilian judiciary system to incorporate this feminist instrument to address gender-based VAW. After analyzing discourses from a historically exclusionary system such as the judiciary, I scrutinize the necessary re-articulations of power to accommodate a feminist demand into it. Four years after the law's implementation, the court discourses on non-intimate feminicides have not yet been researched. My goal in this work is to closely examine those discourses through a decolonial framework which positions the actions and power of the modern legal system and its implications on women's rights to life within a colonial legacy. Understanding legal disputes over the 'right to narrate' not only as a linguistically but as a metaphor to the right of speaking, being heard, recognized and represented on legal systems (Said 1978; Bhabha 1994), it becomes imperative to account not only for the approval of gender-sensitive legislation but its interpretation. Therefore, I engage with decolonial and feminist legal theories to analyze judicial contributions to enforcing non-intimate feminicide legislation. The judiciary structure as we currently understand it in Brazil was implemented during colonization. After the invasion, Portuguese values, language, culture and concepts of justice were forcibly introduced to the native populations alongside ideas of gender roles (e.g. norms of femininity and masculinity). Even though the process of colonization formally ended with Brazilian independence in 1822, the coloniality project (Quijano 2000) continues to operate by recreating colonial hierarchies, both materially and symbolically (such as among different classes, races, genders, sexual orientations, bodies, ethnicities, and others). The extermination of women's body (selectively, as I later articulate) and the erasure of women's voices in society inasmuch as in the criminal procedures represent a continuation of the colonial project over women's lives in Brazil.

Laws have historically been used to maintain power relations and privileged positions in society. Feminist advocacy is a site for new beginnings that represents a recent transition and an opportunity to merge theoretical feminist contributions with practices from the justice system. The political demand for naming and criminalizing gender-based homicide against women resulted from a subaltern[2] feminist articulation of different voices around the world, and especially from resistance vocalized by Latin American women, considering the common trait of colonization, chauvinism and violence in these countries. The process of articulating resistances in the local context is marked by many voices - both silenced and spoken. A decolonial feminist framework provides instruments to understand how judicial interpretations of gender norms are not neutral and to what extent the standards of masculinity and femininity promoted by these discourses enable society to punish women who fail to abide by these standards.

Feminist theorization has questioned the supposed objectivity and neutrality of knowledge production, and it also invites us into a practice of self-reflexivity. As an activist and professional who participated in the process of mobilization for the feminicide law in Brazil and as someone who contributed to the first years of the law's enforcement, I realized many theories seemed far from practical discussions. This reinforced rather than confronted some dichotomies: theories and praxis, victim and abuser, me and the 'other', among others. In the exercise of navigating through these identities and reflecting on my questions, I began noticing that many voices are erased continuously from their own narratives, through personal and state violence. Like the women from the cases I will analyze, when we reflect about our positionality, most of us realize we have been through some type of gender-based violence throughout our lives. Even though these episodes of

2 I refer to the subaltern in post-colonial terms relating to those who have limited or no access to cultural imperialism due to social, political and geographic exclusions produced by colonialism (Spivak 1988).

violence mark our lives, they do not define us, just as they should not reduce these women to the 'victim' role in these criminal procedures. Along these lines, feminists have called for the word 'victim' to be replaced by the word 'survivor' to recognize women's agency and the possibility of overcoming that situation of violence. Nonetheless, for women who were victims of a feminicide, their narrative ends as they are no longer to tell their own histories because of sexism and misogyny. While reconnecting to my own story as a feminist activist, a professional and a researcher (all of them in life-long training), I assume the challenge of using my voice to honor these women whose voices can no longer be heard.

As a feminist and a practitioner in the justice system, I problematize the binary of theory and practice by addressing the interrelation of feminist conceptualizations and its effects on legal analysis. By analyzing judicial contributions to confront gender-based violence, I hypothesize that even though the existing structures are limited and representative of the current inequalities, the incorporation of a feminist discussion provides not only space for the reformulation of the responses, but also the reformulation of the structures. I hypothesize that the theorizations of feminicide impact its praxis, as much as the other way around it. In this regard, I argue that there are many narratives both reproducing and opposing traditional models of law enforcement, shedding light on the importance, from my perspective, to dispute those narratives from a decolonial standpoint. To do that it is necessary to consider and address the plurality of women in their particularities, as each is situated in the specifics of culture, class, time and space. Finally, I imagine that this an ongoing educational process for all professionals and society involved to debate. Therefore, my hypothesis is that by closely examining these first cases it is possible to critically unpack not only the role of the justice system in bringing justice to women, but how it becomes a space that needs to be under constant revision of itself in relation to women’s lives.

I divided my thesis into three chapters and organized them starting from the broader sphere and moving to more specific theoretical and practical discussions. This meant starting with the international negotiations to conceptualize the term feminicide, then moving onto the Latin American and Brazilian contributions to the theorization of feminicide. It also translated into the trajectory from the theoretical discussions about naming and criminalizing it, up until the enforcement of the law on the case-analysis of Brazilian court of appeals. Throughout my text, however, I demonstrate that these divisions represented a *pro forme* structure to conduct the work, considering that one of my arguments is precisely the need to blur the lines that prevent dialogues between theory and practice, global and local, European and 'other'. In light of the above, in the first chapter, I provide the theoretical framework that guides this research, articulating feminist decolonial and legal theories on the conceptualization and meaning-making of feminicide. I engage with the archaeology of the term to make visible feminist contributions, especially the Latin American ones, in the naming and criminalization of women's deaths based on gender, which, therefore, have confronted the most extreme form of VAW.

In the second chapter, I discuss the transition from discriminatory legal dispositions in Brazil to ones that recognize and confront gender-based VAW, which has been the result of feminists' mobilizations. I analyze the incorporation of legislation to confront gender-based violence in the country until the incorporation of feminicide law that provided the innovative element that I focus on which is the non-intimate gender-based VAW. I focus on the disputes over the implementation of the law and the judicial and extrajudicial contributions coming from law enforcement in the country. In the third and last chapter, I engage with the initial jurisprudence of non-intimate feminicide cases. I first present the cases and the analysis of relevant methodological aspects related to data collection and findings. I then scrutinize the reasoning behind the judicial narratives

and the aspects related to the criminalization which either combats or reproduces gender stereotypes in the court narratives. I articulate how the decisions contribute to the meaning-making of femi(ni)cide's concept by applying the theoretical discussion to the case under analysis. I then move to the discussions about the aspects of intersecting vulnerabilities of the justice system and correlate them to the decolonial context where they are located both politically and geographically. To conclude, I engage with discussions about the silences concerning these victims caused both by the violence they suffer and by the structures that reproduce patterns of colonization, sexism and racism.

Methodology

To analyze judicial inputs to confront gender-based violence, I review the available literature on the topics of gender in the justice system and feminicide from legal and decolonial feminist theories lens. I further focus on my corpus of analysis to explore the meanings produced by courts while judging feminicide appeals. The corpus of analysis for my thesis consists of the Brazilian feminicide law (2015) and its bill and on the jurisprudence research of non-intimate feminicides in the Brazilian courts of appeal. The intention of combining these elements is to establish correlations between legal theories and the different stages of law approval and enforcement. In other words, I investigate the hypothesis that they are continually impacting each other back and forth. I use the decolonial framework to analyze the changes between the feminicide bill and the approved law, especially in relation to the withdrawal of the word gender from the original text, looking at them comparatively while focusing on the discussions about the non-intimate feminicide clause.

Meanwhile, for my jurisprudence research, I used the equivalent in Portuguese for the combined words ‘feminicide’ and ‘contempt or discrimination against women’ in the 27 courts of appeal from every State and Federal District of Brazil. The time frame is the first four years of law enforcement, from March 2015 to March 2019, and the word combination coincides with the legal text of the second clause of feminicide crime. The initial plan for my methodology was to limit my research to 10 Brazilian States, but because of the small number of findings, I expanded it to all the twenty-seven courts. Whereas in domestic and family violence there were hundreds of cases, I found only six cases after searching through the twenty-seven state courts of appeals. In some courts, the databases did not provide reliable results according to the research criteria. They would provide extracts with more than 100 cases relating to both intimate and non-intimate feminicide. Therefore, as a part of my data collection, I thoroughly investigated the data to discard cases of intimate feminicide in order to include only non-intimate cases from the timeframe.

Over the course of my jurisprudence research, I came across some limitations that hindered me from getting a full picture of the second court decisions. The first limitation was time-related. The criminal procedure once a feminicide occurs consists of investigation, prosecution, first and second instances trials. The research I conducted from July to September 2019 represents all cases that had been judged and available at the time, but as time passes new cases will also become available. Similarly, some cases are legally confidential, such as decisions that involve children as victims. Other than that, mistakes in the registration of the cases or in the judgment can make a suspected case of feminicide fall into a different category, therefore becoming unavailable for the search criteria adopted in this research. Even though my jurisprudence research represents all cases in the Court of Appeals at that time of the study, the global result does not provide enough elements for it to be a universal, replicable product. It instead provides material for analysis that informs us as

researchers, and underlines the need for continuous research to evaluate possible patterns in the judicial decisions of gender-based feminicides that are not related to domestic and family violence.

Positionality

I write my thesis from the position of a white cisgender feminist woman from Brazil. I am concerned with how existing legal structures can provide more effective responses to confront VAW, and how we can transform these structures and society as a whole into a more just and diverse space. I engage with these theoretical questions after almost ten years of practical experience within the Brazilian judiciary system, where I felt challenged by the need to further explore the gap between judicial theory and practice. As a feminist activist and a legal advisor in the gender and LGBTQI area at the prosecutor institution in the state of Paraná, South of Brazil, I participated and contributed to the process of approving the feminicide law and the first years of law enforcement state-wise. Furthermore, I speak from the embodied position of a woman in a country that has expressively high numbers of violence against women. A country where I frequently have had to negotiate between acknowledging the risks I take as I step outside home and my refusal to limit myself by not accommodating to the lack of safety which is present in our society.

At the same time, I recognize my privileges as a white cisgender master's degree candidate studying in Europe and writing my thesis in English, considering I come from a society where black, trans, indigenous and other marginalized women face severe issues whilst having fewer opportunities to socially ascend than I do. Overall, through my process of analysis, I reflected that the topic of violence and silencing was closer to me than my professional and academic trajectory. I realized that I was talking about my embodied fears and experiences with sexist violence that,

unlike the fatality victims in my corpus of analysis, did not ultimately silence my voice. This is how I still try to resist while struggling to come across in this research and, ultimately, in this life. A history that also connects me to my ancestral feminine lineage, whose voice often had been silenced before. As I further elaborate in the first chapter, applying a decolonial theory here entails untangling the production of knowledge mainly coming from an European episteme through the pluriversal forms of thinking, which is my way of honoring the voices of these women who can no longer speak. I acknowledge the paradox of engaging with discourses that reproduce western values such as academia and law to contribute to a decolonial perspective. Even though there are different ways to pose questions that decenter the European episteme–such as an ethnographic research that would dialogue with different understandings of justice from one or many different indigenous ethnicities, for example–I propose to articulate my experience and the theoretical knowledge from decolonial feminists to analyze the decisions from within the system. I recognize the challenge of establishing counter-narratives using decision-analysis and looking into systems that still reproduce homogenizing formats and contents. From this multifaceted perspective, I acknowledge the importance but also the limitations of my academic reflections about this newly incorporated topic in feminist jurisprudence in Brazil.

1. Feminicide: An Archaeology of the Term

Violence against women has been recognized as a violation of human rights (OHCHR 1993), a social and public health problem and a barrier to economic development for countries (Bott et al. 2012, 5). While feminicide is not the only way in which we see VAW manifested, it is the most extreme form, as it eliminates women's existence based on gender. Naming it and understanding feminicide and VAW as public and political problems enable us to denounce and, therefore, confront them. The concept of feminicide does not emerge as an isolated phenomenon, but as a concept that exhibits the mechanism by which a system based on the hierarchization of genders is preserved—through the normalization of violence against women. Not all bodies are granted the same living conditions in a world that determines the importance of life based on gender, race, class, sexual orientation, ableism, age, ethnicity, and nationality, among other categories. Some bodies are disposable and their physical experience in the world is denied. The extermination of some lives in a selective and structural manner reflects the denial of their existence in the world not only physically, but also symbolically (mentally, culturally, spiritually and emotionally). Among these, women's bodies are exposed to lethal violence and threats because of their gender. Even though all individuals and groups are exposed to gender-based violence (GBV), women and girls are more likely to suffer from the violence that serves to maintain structural gendered inequalities.

Moreover, some bodies are more at risk than others, for example, black, trans, homosexual, disabled, old and young bodies. My first chapter has two aims: first, to articulate the feminist contribution of naming the problem of feminicide and investigate the interchangeably theoretical

and practical contributions to the meaning-making of the term from legal sphere; and second, to examine the challenges of the progressive incorporation of gender-sensitive legislation, especially in Latin America, up until the criminalization of non-intimate feminicides. With these points in mind, I delve into the archaeology of the term.

Conceptualization and Cartographies of Femi(ni)cide

The feminist creation of a term to define women's death based on gender highlights the extreme outcome of a system of domination and, in doing so, provides an instrument to transform the reality where recurrent and avoidable women's deaths happen daily. The analysis of femicide/feminicide as a term emerges as a feminist contribution to discuss how concepts are related to, arising from, and practiced in political and social reality. Once adopted officially as a legal category, the term inaugurates new dialogues between feminist theorizations and legal discourses and practices.

I adopt the term 'feminicide' as the closest translation of the term adopted in the Brazilian legislation feminicídio –rather than the word femicídio, in Portuguese– and as a political statement representing a 'decolonial turn' (Maldonado-Torres 2007) to Latin American theorizations. I historicize the discussions and the subsequent disputes over the translation and meaning-making of the term within various geopolitical contexts, examining it as proposed by each author. Different realities, cartographies and theorists conceived concepts and spellings sometimes politically dissonant for the gender-related killing of women and girls. After considering these, I engage with the conceptualizations that bear closest connection to the object of this thesis: those recognized as the most relevant theorizations of the term and others that directly connect to the contributions of feminist philosophers from Latin American and Brazilian context.

Tracing back the genealogy of the term, femicide was first formulated by the US-based South African feminist Diana Russel at the International Tribunal on Crimes against Women in Brussels, Belgium (1976). Russel mentioned that she grasped the idea of the term from US American writer Carol Orlock who was planning to write a book about 'femicide' in 1974. The book was never released, so Russel came up with a meaning for the term as a substitute for the gender-neutral word homicide (Russell 2011). The first time the term was used publicly, three women testified to approximately 2,000 women from 40 countries at the Tribunal. Two of them from the United States of America shared cases of rape-murder and of a murder perpetrated by the woman's husband, while the third woman from Lebanon shared a case of a murdered caused by the victim's brother. Russel spoke soon after them and, at the opportunity, she did not define the term; instead, she wrapped it up as a 'shared global experience'. The cases represented concomitantly a 'rape-murder', a murder of a woman by her husband and, a murder within a family context of a brother killing his sister. In a later article, she referred back to the definition she put forth on that day as the "hate killing of females perpetrated by males" (Russell 2011). It was in 1992 that Russel published a book with the English activist Jill Radford, where they defined femicide as "the misogynous killing of women by men" (Jackson 1994, 3).

The theorization of feminicide emerged in the so-called "second-wave" of the International Feminist Movement, a period when women's exclusion from public spaces was evident. Feminists advocated for the recognition of personal struggles as political and denounced imbalance of power in all areas. The dichotomous opposition of public and private in the patriarchy system confined most women to the private sphere, where it was somewhat more challenging to organize resistance or have women's voices heard. Accordingly, initial mobilization to denounce VAW related to domestic and family cases. Nonetheless, the first use of feminicide offered an intake that blurred

these apparent lines by providing a broad definition to it that encompass different situations. One of the testimonies at the Tribunal showcased non-intimate feminicides in case of rape followed by murder. To reflect on judicial interpretation of non-intimate feminicides in the jurisprudence analysis, it is interesting to acknowledge that the first concept encompassed cases of rape followed by murder and left space for further interpretation on another VAW on the public sphere.

Upon tracing back these first different conceptualizations from Russel, it is possible to anticipate the multiple theorizations the word would gain when expanding to numerous authors and contexts. After its introduction, I believe it is essential to observe how the term travelled and propagated in the Latin American context as a relevant theoretical –and legal– contribution. The combination of different aspects such as the first international conviction in Mexico in a feminicide case by the regional justice system, the influential feminist mobilization in the region, the theorizations by prominent local experts and the high rates of women's violence contributed to Latin America's pioneering on the topic. The Latin American area has the second-highest female homicide rate in the world, second only to Africa according to data from the United Nations Office on Drugs and Crime (UNODC 2019). Furthermore, more than half of the 25 countries with high and very high femicide according to UNODC rates (at least three femicides per 100,000 female population) are in Latin America; four in the Caribbean, four in Central America, and six in South America (Nowak 2012, 1). However, this data does not expose —and I would argue that it even erases— the particular historical and political contexts where this violence takes place. Many factors imply in the increase of the likelihood of high national feminicide rates, such as the high general overall rates of lethal violence (Nowak 2012).

Several factors increase the likelihood of high national femicide rates. For example, regions with the highest femicide levels correspond to areas with the highest general overall rates of lethal

violence regardless of gender (Alvazzi del Frate 2011:119; Nowak 2012). However, few researchers have assessed femicide at the regional level, taking into account structural factors, such as cultural, economic, and political issues, which may also have an impact on this problem (Palma-Solis, Vives-Cases, and Alvarez-Dardet 2008, 322). Situations such as dictatorships, wars or violent colonization disappear in this comparative ranking, where the continents ranked first are Africa and Latin America. For the Latin American region, in specific, even though colonization formally ended during the nineteenth century, coloniality (Quijano 2000) continues to operate as the symbolic dimension of domination and feminicides becomes a continuum project of this colonization of women's —primarily black and indigenous— bodies.

The gender relations in Latin America cannot be fully understood outside of the context of racialization produced by the process of colonization. Decolonial theories that have emerged through multiple discourses within broader studies of postcolonialism to critically oppose to colonial domination in the region, denouncing how the colonization of Americas is a mean through which capitalism is still possible in the world: through the race, gender and labor domination (Quijano 2000, 342). Inspired in the South-Asian 'Subaltern Study Group' created in the 70s, Latin American Scholars came up with the Latin-American Subaltern Study Group in 1993, also known as Modernity/Coloniality (MC) Study Group (Ballestrin 2013, 94). The group discussed and exposed the intrinsic relation between coloniality and modernity. The first would be the obscure yet necessary part of the later. According to Ballestrin (2013), the Latin American studies group was eventually dissociated because of theoretical divergences, especially from authors who understood the need to breach from western theorization to focus solely in the local Latin American knowledge production.

Different women from Latin America had offered contributions to reflect about the erasure of women's voices and bodies on colonial/postcolonial spaces. Decolonial feminists' represent a plurality of voices (such as black, indigenous, peripheral, working-class, scholars and others) that problematize hegemonic responses to the axes of oppressions caused by colonization. By expanding on Quijano's concept of coloniality of power, the Argentinean feminist philosopher Maria Lugones develops the idea of 'coloniality of gender' (2010), where she reflects on the intersection of race, class, gender and sexuality especially to understand men's of color violence towards racialized women. It exposes a de-humanized system where colonized such as indigenous peoples of the Americas and enslaved Africans were not humans. Among these, women of color are less human; therefore, their lives are more susceptible to extermination. The violent legacy of colonialism reflects on the ranking that places Latin American and Caribbean countries on the highest rates of feminicide (14 out of 25 countries are from this region) (Nowak 2012). Furthermore, the extermination of women's lives on the colonial project is selective according to the 'coloniality' project. Research developed with data from 2003 to 2013 in Brazil illustrates this data: while there was a decrease in white women's feminicide on 9.8%, among black women, the percentage increased in 54.2% (Júlio Jacobo Waiselfisz, FLACSO (Organization), and Sede Acadêmica--Brasil 2015). The extermination of women's

Decolonial feminisms seek an understanding of political activism in articulation with indigenous worldview (cosmovision), the connection with the territory and ancestral practices, environmental agendas, de-privatization of water and territories and from opposing to violence against LGBTQ communities and the valorization of black lives. Some Latin American feminists took a 'decolonial turn' (Maldonado-Torres 2007) on the philosophical and legal spheres to interact with definitions of feminicide to (re)create it in dialogue with different spaces and perspectives through a plural

and diverse agenda. Nonetheless, not all contributions from the region integrate the decolonial perspective to reflect on women's murders in the area.

The first expressive ‘vernacularization’ (Levitt and Merry 2009) of femicide happened in México, and soon it spread to other Latin American countries. The Mexican feminist anthropologist Marcela Lagarde de Los Ríos first translated the English version ‘femicide’ into Spanish as ‘feminicídio’ in 1994 (de Los Ríos 2004). Lagarde was a scholar and politician in México at the time the gender-based crimes in Ciudad Juarez became widely known because of the international advocacy at the Inter-American System of Human Rights (IASHR). She re-politized the initial definition to incorporate the discussion on how a fracture in the rule of law favors impunity to these crimes, including impunity as a crucial element of the crime. She defines 'feminicides' as "crimes against humanity, including kidnapping, the disappearance of girls and women in a context where institutions fail to provide appropriated answers to the cases. It would be a State's crime as much as an individual one"(Diana E. H Russell and Harmes 2001, 20). It is interesting to see that the author's contribution for the impunity criteria that broadens the scope to encompass a regional specificity, as much as it limits it since the investigated cases would not fit into the definition.

Both Russel and Lagarde (Lagarde 2006; Russell 2011) referred to their early personal interaction when Lagarde consulted Russel whether she could translate the term into feminicídio [feminicide] rather than femicídio [femicide], in Spanish. Posteriorly, they refer to a divergence that led to debates and breakdowns on feminists' networks. Lagarde understood the term femicide as limited because referring solely to the killing of women. At the same time, her translation into feminicide meant a genocide based on "violations of women's human rights, which contain the crimes against and the disappearances of women" (de Los Ríos 2010, xv). Russel answered to Lagarde's critique about the incompleteness reasoning, among others, that the new term reduced the scope of the

original and brought conflicts among feminists. These theorizations historicize the initial trajectory of the feminist philosophical contribution, as much as it showcases some of the tensions and divergences from the later discussions on its criminalization. Even acknowledging the breakdown in some feminist networks in these debates, I believe the studies offered new layers to further strategize on both theoretical and practical use of the term, including its criminalization.

I find it essential to observe that there is no homogenous *vernacularizatio*n or conceptualization on the ongoing meaning-making of the term. Nonetheless, none of the authors cited so far restrict feminicide to cases of domestic and family VAW, as maybe some people might have imagined. While feminicide is the most common term used in Latin America, some authors have translated the term into the correspondent of 'femicide' (Carcedo and Sagot 2002; Barcaglione, Chester, and Centro de Encuentros Cultura y Mujer 2005; Almeida 1998; Pasinato 2011), highlighting the still ongoing debates over its conceptualization and meaning-making. Among these, Costa Rican authors Ana Carcedo, and Montserrat Sagot conceptualize femicídio/femicide as 'the most extreme form of sexist terrorism, motivated mainly by the sense of possession and control over women'(Carcedo and Sagot 2002).

The decolonial contributions from the Brazilian-based Argentinean anthropologist Rita Laura Segato highlight the correlation of violence to the patriarchy and colonial model we live at, in the sense that feminicide is not an isolated phenomenon. Still, it is based on a structure that normalizes the hierarchization of genders. Segato proposes a 'feminicide theory' (Segato 2006) where feminicides happen whenever women disobey any of these two patriarchy laws: men's authority over women's bodies and men's superiority compared to women (Chakian 2016). By acknowledging it as public and warlike violence, she argues there is a strategic counter-rhetoric going on that opposes the privatizing patriarchal effort to make feminicides about the private

sphere. Therefore, politicizing violations would lead to the de-privatization of female experiences (Segato 2010, 267-269).

Segato places this terminology into international law comparing it to other categories such as genocide, crimes against humanity and war crimes. In her opinion, there is a distinction between feminicide on interpersonal relations to 'femigenocídio' [femigenocide]. The latter refers to systematic and impersonal crimes that intend to destroy women (and effeminate male) because of their womanhood without any interpersonal connection or individualization of the victim. Upon shedding light into the impersonality of the crime, the author reformulates the term as a 'strategic counter-rhetoric' to collective pressure to de-privatize women's role in patriarchal society and show the warlike and public aspect of women's (Segato 2010, 274). The introduction of 'geno' in feminicide infer that the lethality and impersonality of the crime affect any women because of their gender. This term is especially relevant for my research as it proposes a distinct concept to discuss public feminicides. Since this category appears separately from private feminicides, it opens up new possibilities in terms of data gathering, investigating, prosecuting and judging these cases. I will refer back to this concept in the case-analysis, as I'm not assuming beforehand that the cases necessarily fall into the proposed category.

One of the immediate repercussions of the conceptualization into the practical sphere is the data gathering and the policymaking based on it. To produce comparative data, organizations need a common criterion, and both the World Health Organization (WHO) and the UNODC systematized international rankings of feminicides comparing different countries. In the recent study 'Global Study on Homicide: the gender-related killing of women and girls' UNODC expresses the difficulties in accessing accurate data, especially for murders that do not occur in the context of intimate violence. They articulate how the absence of a proper conceptualization of feminicide in

the countries hinders the systematization of the data. For the mentioned study, they refer to the use of "femicide" with quotation marks when “it relates to a concept that is not clearly defined and covers acts subject to a certain degree of interpretation and femicide without quotation marks when referring to countries in Latin America that have defined this concept in their national legislation” (UNODC 2019).

Meanwhile, WHO incorporates the definition of feminicide involving both intentional murders of women 'because they are women', and also any killing of women or girls (2012). For the latter, I find it essential to mention that the ranking refers to women's murder generically and not to feminicide as discussed so far in this research. Among the killings, many cases might not have its causes related to genders, such as manslaughter on a car accident or a murder after a robbery. Nonetheless, these deaths will add up to the comparative ranking and hinder a possible data analysis from promoting a more accurate prevention policy. These represented different comprehensions and cartographies of the term, as an introduction of the concept rather than an exhaustive historical review. The situatedness of naming reveals how relative the concept is, even as it interconnects to a phenomenon that happens throughout the world. The less than 40-year-old term fast spread across the globe and undergoes a constant reinvention.

The debates among these prominent scholars and the complexity of globalizing a complex discussion that is contextual-dependent illustrate how femicide/feminicide are concepts constantly re-politicized in different contexts. I am using the term feminicide from now on as the closest translation to the terminology adopted in Brazil and most of Latin American legislation and as a geopolitical statement to prioritize decolonial contributions that most approximate to my object of research. The existence of the social category shed light into the problem in a systematic way as much as it provided a ground for further strategizing about it. In the next section, I will engage

with the legal translations of the term to evaluate possible theoretical contributions to reflect on judicial practices to confront VAW better and prevent avoidable deaths of women.

Gender-Based Violence and Law: Criminalizing of Feminicide

Implementing laws that recognize and aim to minimize the constructed power imbalance between genders is an important feminist strategy. Even though homicide was a crime before, the incorporation of feminicide as a specific type of crime highlighted the specificity of gender-based VAW in homicide cases. It demanded a gendered analysis on the judiciary part. While some jurists do not reflect on the influence of historical socio-political processes in the laws, others rely on the code as the instrument to transform reality. I approach legal studies recognizing its limited yet significant potential to contribute to reality as long as it reconsiders its theories and practices to transform itself from the inside. By agreeing with the General Recommendation number 33 from the United Nations on Women's access to the justice system (on how effective access to justice 'optimizes the emancipatory and transformative potential of the law',) I conduct a review of gender-sensitive legislation both internationally and regionally (in Latin America) through a subaltern perspective, reflecting upon feminist contributions and limitations to build this counter-narrative in legal discourses.

The judicial field is a discursive field and, for this reason, the struggle of law is the struggle for definition – to name human suffering. It is a struggle to enthrone the names that are already in use and to put in use, in the mouths of people, the words of the law (Segato 2010). Laws have been used to support the hierarchical structure that places men in a superior position in society by using binary and biologicist concepts, and this legal transition represents a new and disputed space. Criminal laws, more specifically, have been built by men, for men and against men – it was mainly

designed to attend their needs (Schulhofer 1995, 2154). By using this binary understanding of the society where there is only men and women, biologically constituted as such, where men are in a superior position, women are mostly not considered as subjects worthy of nomination or protection, neither are they conceived as perpetrators of criminal offences. Overall, non-male identities have been overseen by legal structures.

Social and cultural movements can pervade legal positivism and transform these rigid structures to respond to the nuances of sociohistorical contextuality. The challenge for feminists' jurists is to adapt the male-oriented legal instruments to address gender inequality and offer legal mechanisms to confront gender-based violence and protect women whose lives are at risk. Contemporary feminist philosophy of law represents diverse perspectives in legal theories from critical human rights, postcolonial, critical legal studies, critical race theory, queer theory and disability studies (Malpas, 2012).

While different feminist jurists may disagree about the extent to which criminal law can offer a contribution to confront gender-based violence, a first common point is the identification of the pervasive influence of patriarchy and masculinist norms through legal structures that demonstrate their effect on the material conditions of women and girls (and those who may not conform to historically cisgender heterosexual masculine norms). Different theories within the law, and more specifically, criminal law, relates to the attempt to include women's perspectives and experiences in criminal research and practice. In the critical criminology spectrum, Latin American criminologists based their contributions on three central aspects: 1. The capitalist system of production and its economic exploitation and imprisonment; 2. Social perception of the criminalization and victimization processes based on selectivity –race, class, gender, class,

territory, among others and 3; the need for micro and macro analysis to understand the processes of social control, criminalization and mass incarceration (Martins and Gauer 2020, 149).

Another important aspect of feminist theories is the problematization of the patriarchy structure of law —as a political, economic, social and cultural system consisting in male domination as a social category where men dominate women varying the intensity of the oppression and exploitation based on class, race, ethnicity, sex, gender, gender identity and sexual orientation. Patriarchy regulates not only the private sphere but State structures and societal organization. Feminist theories denounce how these structures systematically exclude or marginalize non-male identities from criminology as professionals and subjects. The prevalence of men and the exclusion of women from power structures such as the judiciary system is historical and it reinforces women's subordinated position in society. Therefore, feminism and law started to intertwine to problematize gender structures within the judiciary system. The word feminist jurisprudence was first used with Scales (Scales 2006) and from then on different scholars used different methods to both criticize the connection between patriarchy and law and to resist it within the field. In this sense, feminist advocacy was essential to approve the feminicide law, as much as it was to enforce it and evaluate its results.

Furthermore, critical feminist legal studies offer important reflections upon the theorization and practices of victimization and criminal justice through a committed ethical practice to develop more just solutions to criminal problems. Even though different theories share these principles, they differ in many aspects. Some feminist jurists oppose criminalization as a strategy to confront inequalities and object to the criminal system as a whole structure of oppression. Meanwhile, others defend a feminist approximation to it to transform the justice system from the inside. While I do not see criminal law as an instrument to directly transform unequal structures in society, I

understand the urge to contribute to critical reflections and practices in the existing system. The Legal field reproduces colonization when it applies a homogenizing response to the plurality of bodies that seek for the state's assistance. As a distinct project, the decolonial approach offers the possibility of listening to the multiple voices that were silenced during colonialism and afterwards. The concept refers to a counter-hegemonic mobilization by feminists that contribute(d) to reconstruct laws from the margins. I engage with decolonial theoretical contributions to reflect on the international and local mobilizations to criminalize women's death based on gender. In other words, my framework supports an interpretation of the law that takes feminist struggles and theoretical contributions into the traditional legal meaning-making.

While in the beginning, those propertied, male, European thinkers were the ones to advance the idea of the individual subject worthy of rights, current feminist theory and practice contributes to expand and gender the concept of human rights. These collective articulations to re-read legal human rights discourses in order to include women's rights happened 'gradually, not all at the same time and not forever (Bobbio and Archard 1996, 11). They result from feminist legal mobilization in what Keck and Sikking named 'transnational activist networks', as actors working internationally on an issue, bound together by 'shared values, a common discourse, and dense exchanges of information and services' (Keck and Sikkink 1998, 2). Nevertheless, this mobilization did not necessarily represent an everyday discourse or an even exchange of information or power among those who participated in the process.

While acknowledging the importance of transnational mobilizations, there is a need to go beyond the legalist perspective and encompass other 'ecologies of knowledge' (MacDowel Santos 2018), such as the diverse voices and practices of resistance in different places/cultures all over the world (e.g., feminist practices of human rights or indigenous cosmovisions of collective rights) can

contribute to global social justice. The legal expertise to mobilize international human rights law is not accessible to most grassroots movements, and local voices of resistance end up erased from this process (Merry 2006; Levitt and Merry 2009).

VAW did not become a topic for international women's movement until the early 1980s. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was the first International that explicitly defined discrimination against women worldwide (United Nations 1979a). Still, the document did not mention the topic of VAW. It aimed at both the elimination of discrimination and the promotion of gender equality. I will briefly get back to the concept of 'discrimination against women' brought by the Convention as it became particularly important for the conceptualization of feminicide brought by the Brazilian criminal law, which I will analyze in the next chapter.

It was in the 1990s that VAW became one of the most important international women's agendas and a denominator for the common strategizing from different feminists around the world (Keck and Sikkink 1998, 166). In response to these transnational activists' mobilization, in 1993 the United Nations stated that women's rights are human rights (and the violation of women's rights is consequently a violation of human rights) and defined violence against women for the first time in the Declaration on the Elimination of Violence against Women. The Declaration defines VAW as 'any act of gender-based violence resulting in physical, sexual, or psychological harm or suffering to women, including threats, coercion, and/or deprivation of liberty' (United Nations 1993). The need to spell out that women's rights are human rights affirmed in the 1948 Human Rights Declaration (UN, 2017) revealed the previous interpretation of men as the addressees of the law.

The disputes around the content of CEDAW demonstrated crucial dissonances between women from north and south. Here I refer to north and south beyond geopolitical boundaries, instead I am concerned with the epistemic demarcations of knowledge production from societies that have been colonizing or colonized. Grasping these apparent dichotomies articulated after the process of colonization to justify western domination of the global south, the decolonial project suppose the re-inclusion of epistemic knowledge produced by marginalized groups both in the global South and North. Therefore, the north would also exist in the geographic south and likewise, such as in the internal process of silencing voices within feminists' movements from the south. Anew, the colonial project is reproduced also on the global south as part of the ‘coloniality’ (Quijano 2000) and not coincidentally those who 'cannot speak' are mainly black, indigenous and poor women within Southern countries.

Latin American Contributions to the Criminalization of Feminicide

Even though it was possible to come up with a final unified document regarding VAW the result of the discussions did not necessarily represent the different voices involved in the process, and that can often reproduce 'epistemic violence' (Spivak 1988). In the international sphere, while women from the North pushed an agenda against discrimination based on civil and political rights, southern women believed there was no way to address discrimination without looking at the systemic global economic inequalities. Dominant feminists discourses were called out for their racial, ethnic or colonial bias (Mohanty 1991; Linda Carty and Chandra Talpade Mohanty 2015; Maitrayee Mukhopadhyay 2015; Grewal Kiran 2012). Recognizing the knowledge and the contributions of these actors to the making of ecologies of women's human rights grammars is also part of the global justice work that human rights defenders shall seek to promote.

Corresponding to the supposedly neutral concept of human rights, the unified discourse of VAW reflects the silencing of many voices in the process. The anthropologist Sally Merry (2006) problematizes the influence of transnational processes and flows and the mutual impacts of local to global. Spaces of litigation, especially in the international sphere, presuppose a series of privileges. While resisting patriarchal structures, oftentimes other hegemonic voices prevail, especially in a context where barriers such as geography, language, and class play an important role in transnational advocacy. Feminists contributed to complexifying human right's discussions highlighting its gender-exclusionary perspective. Meanwhile, grassroots local feminist movements problematize the idea of a possible universal contribution to dialogue with complex, plural and particular problems often caused by this homogenizing approach. A decolonial project that focuses on women's rights does not mean a substitution of power relations that includes women over men, it rather suggests the need for new paradigms. If, for Habermas modernity is an unfinished work, to decolonial theorists decolonization is a journey, not a destination (Mignolo 2003). Meanwhile, it is still utopic to imagine a world that would respect, value and not oppress diverse experiences. I believe that there is a need to approach the privileged position of academia through an ethical commitment to contribute to a more just theory and practice, despite recognizing the limited range of individual contributions in a context of structural inequalities.

The demands from the international documents both inform and are informed by the local scenarios. Activists that participate in the process of creating demands are supposed to present the regional agenda and dispute its incorporation in international discourses, as well as to discuss its content and challenge its interpretation back at the local level. As Kick and Sikkink (1998) argue, the multiplication of these voices is imperfect and selective, for while many voices are amplified, many others are ignored. While considering these important critiques and voices that might never

be heard in this process, I agree with Boaventura (Santos 2007, 22) when he says that there is a difference between the use of hegemonic power instruments to maintain structures as they are, and using them to deconstruct hegemonies by bringing social struggles into the courts, for example. While the criminalization of feminicide challenges the legal sphere by incorporating a new feminist agenda, it does not necessarily problematize other systems of power.

In 1994 Latin America hosted the already mentioned Inter-American Conference that resulted in the first international convention to address the topic of VAW: the *Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women,* also known as the 'Belém do Pará Convention'. Approved in the Brazilian city of Belém do Pará, the Convention was the first international treaty to establish mechanisms to protect women's rights and fight VAW. The document is a legally binding instrument that prescribes specific duties such as the creation of legal and administrative arrangements to confront VAW within the State-parties. After debates on the subject, the final text defined violence against women as any 'act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere'. It did not refer to the gender-based homicide of women as a specific crime, rather as a final consequence of VAW.

The Convention stated that VAW is an offence to human dignity and a manifestation of the historically unequal power relations between women and men and that every woman has the right to live a life free of violence (United Nations 1979, article 6). In order to do so, States must implement policies to prevent, punish and eradicate VAW (article 7). While analyzing the influence of the Inter-American Justice System on the national legislation on women's rights in Latin America, authors have argued for the impact of the Belém do Pará Convention on the adoption of gender-sensitive law in the States-part (Galanti and Borzacchiello 2013). Theorists

indicate two different moments of this legal adjustment in Latin America to accommodate CEDAW and Belém do Pará Convention recommendations to the incorporate legislative measures to promote women's rights: first, correspond to the 'first generation' of non-coercive legislation that addressed domestic and family violence on the 1990s and; the second generation laws refers to the adoption of criminal laws to confront VAW from 2005 onwards, where feminicide regulations are found (Vílchez 2012).

The overlapping of international and national legal levels represent a multidimensional, complex and entrenched system of human rights protection –and for this thesis, women's rights expressly, named as a multilevel system (Góngora-Mera 2013, 316). There is a correlation between international and national levels, as much as different international levels among themselves, where the interpretations feedback the systems. This convergence of decisions increases the complexity of pluralist legal contexts. For the countries that adopted a regional system of human rights, such as the Inter-American System of Human Rights Protection, these articulations gain further dimensions. Understanding this multilevel legal system helps us to articulate the intertwined contributions from the local and international levels as much as from the political practices to the legal conceptualization.

The theorizations of the term directly affect the legal interpretation, and likewise, legal discourses and practices contribute to (re)formulate the meanings of feminicide. Strategical feminist litigation at the Inter-American Commission and Court of Human rights lead to the historical condemnation of Brazil and Mexico on cases of VAW and feminicide, concomitantly. While the first will be addressed on the Brazilian gendered legal history, it is essential to highlight how the IASHR operates on behalf of the signatory states and how in the specific case of feminicide, it has contributed to the theorization of the term. The first time the philosophical contribution was used

in the international legal system was at the Inter-American Justice System (IASHR), while judging the Mexican State Cotton Field case, in 2009.

IASHR played a critical role by pressuring Latin American countries into incorporating gender-sensitive legislation and recognizing women's rights violations. Its intervention into the States is only possible to country-members of the Organization of American States (hereafter OAS) and due to the State's ratification of the International Treaties. The OAS is an international organization created at the Inter-American level to promote justice regionally. Since its creation, it adopted international instruments that became the normative basis for the regional system to promote and protect human rights.

IASHR, differently from other regional justice systems, offers the possibility to lodge petitions with denunciations or complaints of violations to the Conventions by the State Party. Among them, two relate to the discussion of feminicide in the region: the American Convention of Human Rights, also known as Pact of San José, Costa Rica (1969) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará, 1994). The first created mechanisms to investigate states-part that violated the Conventions in the Americas, while the latter protects women's human rights from individual and structural violence. Both combined resulted in the trial of Mexico on the emblematic 'Cotton Field' case of State's violation of women's rights. The decision was the first opportunity for an international justice system to contribute to the meaning-making for the feminicide term.

The American Convention on Human Rights, also known as Pact of San José, was approved on November 22, 1969, and it came into force on July 18, 1978. It established the Inter-American System composed by the Inter-American Commission on Human Rights (hereinafter "the IACHR"

or "the Commission") and the Inter-American Court of Human Rights (hereinafter "the Court"), which it declares to be organs competent to fulfil the commitments made by the States Parties to the Convention (*American Convention on Human Rights - "Pact of San Jose, Costa Rica"* 1969, article 33). (American Convention on Human Rights - "Pact of San Jose, Costa Rica" 1969, article 33). The IACHR held Brazil accountable for violations of women's rights on cases of domestic and family violence (Maria da Penha v. Brazil. Case 12.051. Report No. 54/01 2001),), meanwhile the Court decided that Mexican State was responsible for the disappearance and subsequent death of the three victims (González et al. ("Cotton Field") v.Mexico 2009).

The Cotton Field case presented at the Court received its name because of three women who were murdered and whose bodies were found in cotton fields in Ciudad Juarez, México on November 6, 2001. The feminicides of Esmeralda Herrera, Laura Ramos, Claudia González were taken into the Inter-American System of Human Rights due to State inertia to investigate, persecute and judge these crimes. According to the IACHR decision (González et al. ("Cotton Field") v. Mexico 2009, 127), approximately 113 women, including the three were killed according to this pattern in Ciudad Juarez until 2009. These women were mostly young, students or workers at the maquiladora industries and the crimes follow a similar modus operandi. The judicial decision enacted by the IACHR on December 2009 asserted that those were not isolated incidents, but rather a pattern of disappearances and murders of women and girls without appropriate state responses since 1990. The Court declared Mexico internationally responsible for the disappearance and subsequent death of the three victims.

The decision refers to Mexican state inobservance of 'Belém do Pará Convention', specifically on its duties to create legal and administrative arrangements to ensure that women subjected to violence have adequate access to restitution, reparations or other just and effective

remedies"(Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women - “Belém Do Pará Convention” 1994, article 7).

The decision not only offered OAS interpretation of feminicide, as it reformulated the IASHR legitimacy to deal with any future cases of violence against women. Mexican State raised a question whether the Court could judge a violation of Belém do Pará Convention, as this instrument indicates the legitimacy of the Commission, not from the Court (*Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women - “Belém Do Pará Convention”* 1994, article 12). The Court's decision created a precedent to extend the Belém do Pará Convention jurisdiction to the Court. It offered a systematic and teleological interpretation that despite its apparent exclusion from the article 12, the Convention's purpose of achieving the most significant right to judicial protection possible in those states that have accepted legal control authorizes the Court jurisdiction (González et al. (“Cotton Field”) v.Mexico 2009). Therefore, as a consequence of reflecting on the Mexican feminicide case, women gained supplemental jurisdiction to address VAW in Latin America.

On its decision, the Court dedicates one of the sections to discuss the *alleged femicide*. The narrative refers back to the line of reasoning presented by the petitioners in the case: victim representative's, experts, organizations as *amici curiae* and the Mexican State. Despite the existing discussions about the translation of the term, the Court stood with the term 'femicide' throughout the document, even when referring to the testimonials of specialists such as Lagarde, who uses feminicide. The section points out first of all the divergence in the OAS States organizations when it states that the Commission 'did not classify the facts that occurred in Ciudad Juárez as femicide' and the Court concluded for the occurrence of femicide in the three cases.

Different experts offered concepts of femicide throughout the trial. Among them, some described it *modus operandi* as involving 'sexual systematic femicide' with 'kidnapping of the victim, sexual violation, mutilation and/or torture, murder, abandonment of the body in isolated places and a lack of criminal evidence (Pinedo), and experts such as Marcela Lagarde e de Los Ríos used the already mentioned concept of ‘feminicide’ as a State crime of genocide against women with a pattern of silence, omission and negligence from the State.

One of the pretensions of the representatives while advocating at the Court was to extend the recognition of individual murders to others happened in Ciudad Juarez as feminicides and pressure OAS to come up with a concept of feminicide as a precedent for future similar situations. The Court condemned México for the three murders and indicated the impossibility to further extend the decision without individualized case-analysis. It did not provide a *rationale*, but it defined feminicide as the equivalent to "gender-based murders of women". Later, the Court differentiated it from the generic category of 'murder of women' where there is no co-related gender-based motivation. The cases inaugurated the Court interpretation of the gender category with a non-intimate sexual-feminicide. According to Flores (2012, 144), three characteristics supported the Court's decision to consider them as feminicides: the context of discrimination and violence; victim's profile as poor and young women and the *modus operandi* of the crime where they disappeared, and later their bodies were found mutilated and with sex abuse signs at the Cotton Fields. When one imagined that the Cotton Field case could have been a precedent, the Court limited its decision to the concrete cases. It did not provide a broader definition of feminicide to guide the identification of patterns in Latin American states' responsibilities to address the claims.

While most gender-related homicides of women fall under the general definition of murder for criminal justice, some countries have added legislative provisions to prosecute gender-related

killings of women and girls after the political act of naming the phenomena. In legal systems that presuppose equality and non-discrimination as principles, the only justification for differentiated legal protection is the existence of a previous condition of historical discrimination that needs compensation. That is the case for the killing of women because of their gender. Carcedo and Lagarde (de Los Ríos 2010; Carcedo 2000) argue that by typifying femicide as a gender-specific crime confirms it is caused not by individual factors, but instead lies in society's biased power structure, which maintains men in dominant positions.

Between the years of 2007 and 2019, eighteen countries[3] in Latin American and the Caribbean have approved feminicide legislation(UNODC 2019). The choice of terminologies, as much as the elements that characterize this specific crime vary considerably among different legislations. Some countries have incorporated it amending the existing penal code while others adopted a comprehensive law. Among the latter, most used the opportunity to conceptualize 'gender violence' from a legal perspective, while the first either defined it as an aggravating circumstance for homicide or included feminicide/femicide or in some cases parricide as a specific crime, without necessarily conceptualizing these terms. The adoption of femicide or feminicide occurred indistinctly, and the terminology did not reflect a uniform definition of the crime. I find it necessary to notice that all these different interpretations resulted from a joint regional strategy and yet, produced distinct results in the criminal sphere. The theorizations of the term influenced legal

3 Argentina (2012), Bolivia (2013), Brazil (2015), Chile (2010), Colombia (2015), Costa Rica (2007), Dominican Republic (2014), Ecuador (2014), El Salvador (2011), Guatemala (2008), Honduras (2013), Mexico (2012), Nicaragua (2012), Panama (2013), Paraguay (2016), Peru (2013), Uruguay (2017) and Venezuela (2007).

concepts, as much as the latter created new definitions for feminicide based on the scope of the law.

Costa Rica was the first country in Latin America to criminalize feminicide in 2007. Using the term 'Femicide', Costa Rica was the first country to translate the word into legal text by defining it as a woman's murder by a current or former intimate partner subject to 20 to 35 years of imprisonment (compared to 12 to 18 years for homicide crimes). Besides Costa Rica —that recently amended its legislation to extend the scope of the crime to the public sphere by adopting the term "extended feminicide" — Chile and the Dominican Republic also criminalized feminicide only on intimate relationships. Furthermore, all of the countries criminalize intimate feminicide somehow, usually with some definition that approximate to 'the killing by the current or former intimate partner and family members'. Gender-based violence on close relationships demands a specific State answer compared to those crimes committed by someone unfamiliar to the victim. The conflicting previous relationship of codependency of victim-perpetrator produces particular challenges compared to a situation where the investigation has to discover information such as the perpetrator of the crime. The comprehension of these categories enables an adequate investigation of the crime such as testimonies, analysis of the scene and medical appointments, necropsy, among others. The circumstances of the crime define the methods of investigation and, therefore, its adequate comprehension contributes to decreasing impunity.

While these legislations opened up a variety of possible discussions, I center my investigation on the interpretations for the non-intimate feminicide as a field yet-to-be-explored when considering the judicial interpretation of public feminicides. Despite the different types of violence that women suffer, I find it interesting to acknowledge how intimate VAW slowly gained recognition in the region; meanwhile, non-intimate feminicides have broader and more plural interpretations. All of

the countries offered somehow a different definition to feminicides that do not occur in the family/partnership realm, the reason why there is an essential gap for further academic and judicial analysis. In most of these cases, compared to intimate feminicides, there is less information about the perpetrator, which complexifies the investigation. It rekindles discussions about women in the public sphere and the threshold of women's murder and a women's murder based on gender.

The initial categorization of feminicide reduced it to three types: intimate, non-intimate and because of connection (Carcedo 2000; Jackson 1994). The last refers to a killing of a woman who was not the initial target of the crime, the homicide intent was towards another person. Meanwhile non-intimate is the killing of a woman by a man unknown to her and with whom the woman had no relationship, such as cases of sexual assault (Carcedo 2000; OACNUDH 2014; Barcaglione, Chejter, and Centro de Encuentros Cultura y Mujer 2005). After the first categories, many others were created to try to encompass every possible women's murder. Some authors named feminicide after the intersecting aspect from the victim (e.g. feminicide against trans women, women with disabilities, girls, elderly women, among others), while others named it after the *modus operandi* of the crime. These categories are under constant reinvention and they basically try to encompass different aspects of: a. the context of the crime, b. victims or perpetrator's profile and, c. modality of the crime, to use the contributions from the IASHR in the Cotton Field decision (González et al. ("Cotton Field") v.Mexico 2009). While some authors would argue that through this categories, almost all crimes against could fall into the feminicide type –except accidents and crimes against property – (Pasinato 2011), I believe that there is room and need for interpretation on cases of feminicides in general, but especially those that do not depend on the victim/perpetrator relationship, but on the modality or context of the crime.

Latin American countries together with the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) approved a *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide).* The document offers guidelines for carrying out an effective criminal investigation of gender-related killings, in accordance with the international obligations assumed by States (OACNUDH 2014). The regional strategy, even if not homogenizing, demonstrates an intent to share an orientation as a basis from which nations can depart from. In one of the sections, the Protocol list and define thirteen types of feminicides. Among these, some reaffirm the politics of identity, such as feminicide against children, transphobic, lesbophobic, racist, among others. Others define it based on the modus operandi such as rape-murder and because of trafficking. The guideline opens many non-exhaustive possibilities to support investigation of these cases. Nonetheless, the support has to align with the legal dispositions inside of the country jurisdiction. Therefore, different countries, as beforementioned, will consider non-intimate feminicides differently. I believe there is a need to first of all understand how the State judicial system judges these cases by adjusting laws to local reality and intersecting vulnerabilities on and beyond the document with the decisions.

While questioning the effectiveness of criminal laws to offer a transformative response to VAW, it is undeniable that a society that this legal protection of women's integrity would not be possible in other moments of history. The approval of the laws spread the discussion on gender-based homicide of women as much as it enabled institutions to create data for the specific criminal type.

In her thesis, Saccomano (2015) compared the feminicide rates on fourteen Latin American countries that adopted feminicide laws from the years of 2000-2014. One of the challenges she

pointed out to collect the data was its reliability. The theoretical discussions mentioned in the first section of this thesis appear as challenges on her empirical research as well. The different conceptualizations and data collection hindered the differentiation between women's death and feminicides. Comparing national databases, she concluded that criminal classification of the crime, minimum and maximum mandatory sentencing, level of female education and public expenditures on education and health did not affect feminicide rates among those countries. As mentioned previously in this chapter, criminalization, in general, has been a questioned strategy from the perspective of the counter-hegemonic discourses from some feminisms from the margins. Nonetheless, critically assuming it as one of the possible strategies at this moment, I believe it is important to engage with these discourses and practices for two main reasons: a. law enforcement strengthens the implementation of many other different policies to confront VAW such as data collection, training for professionals, judicial and security policies and; b. the existence of the law means there are disputes concerning its application and I believe it is crucial to guarantee its enforcement based on a critical feminist principles and practice.

The transition from a supposed neutral law to one that can accommodate a legal statement to confront women's murders based on gender is a recent phenomenon. It represented the contribution of feminists mobilizations locally and internationally through the convergence of some voices to both mobilize and create gendered political and discursive opportunity structures. It reflects how feminist engagement with transnational legal activism has contributed to expanding and rearticulating the meaning of women's human rights and the responsibility of the state for failing to effectively prevent, investigate, and punish violations of these rights. Although the criminalization of feminicide is relatively recent and not without problems, it arguably acquires a deeper import as Latin America's contribution to international women's rights law.

It is noteworthy that criminalization of feminicide stablishes new spaces for dialogue between feminists and the judiciary system, where the latter has to accommodate a feminist theorization while feminists dispute the practical aspects of interpretation of feminicide in the judiciary. Understanding especially the multiple interpretations of non-intimate feminicides, in the next chapter I analyze the transition on Brazilian legislation to until the incorporation of feminicide on the criminal code and, the interpretations of 'public' feminicide cases in Brazilian judiciary system.

2. Gender-based Violence in Brazilian Legal System: from Discriminatory Dispositions to the Incorporation of Feminicide Law

In a not-so-distant past, Brazilian legislation authorized women's murder in specific situations such as to protect their partner's honor in case of adultery. The recent incorporation of mechanisms that not only recognize but confront gender-based discrimination in Brazil is a new measure only possible because of feminist mobilization to pressure State structures. This ongoing transition is symbolic, and it represents a rupture with structures that would condemn women's behaviour to the point that they could be punished with death if they disobeyed certain social conventions. Instead, the State now acknowledges the need to condemn women's murders based on gender. This legal reform represents a possible site for new beginnings. I understand there is a need for feminist decolonial accountability to enforce the recently approved law and, the articulation to incorporate gender-sensitive legislation. Considering that, in this chapter, I analyze: a) the incorporation of feminicide law into Brazilian legal system; b) the mechanisms to enforce the law and evaluate its effectivity compared to the initial feminist intention to propose an additional tool to confront VAW and c) the extra-judicial contributions of law enforcement in the country.

Feminist Legal History in Brazil

As a means to analyze a gender-sensitive law and its enforcement in Brazilian judiciary, it is crucial to understand how current State structures respond either enforcing or contesting specific historical events. Brazil adopted a political model of a federative republic with three branches, with a system of checks and balances among themselves to avoid a centralized authoritarian power as a response to a period of 300 years of colonization and two dictatorships (the last one lasted 21 years, and it

ended only at the end of the 1980s). The justice system (re)produces spaces of exclusion. Bodies that occupy these spaces do not represent the multiplicity of races, genders, sexual orientation and ethnicity. There are ongoing discussions about which bodies can access the justice system as much as in which conditions, what are the hierarchies that operate in these spaces. The legal area is mainly a discursive one. Even though there are laws nowadays that represent the State's recognition of historical and cultural inequality, history of the law reveals that they reproduced marginalization of certain bodies. When Portuguese colonizers arrived in Brazil in 1500, it is estimated that around five millions of native indigenous people from 1400 different tribes and 1200 different languages lived in its territory (Guidon 1992, 52). Comparatively, according to the last demographic research, (Brazil, Ministério do Planejamento, and Instituto Brasileiro de Geografia e Estatística 2000) in 2010, Brazil had 896.9 thousand indigenous people belonging to 305 ethnicities and speaking 274 languages, with different religious traditions. Portuguese and Christianism introduced in the country by colonizers persist as the official language and most common religion in the country. This was the ultimate result of colonization that exterminated bodies and a massive part of native culture because of European diseases, violence and miscegenation. Nevertheless, it is harder to account for the immaterial loss in terms of culture, language and traditions, which continue to conform to Brazilian's national project. Colonizers imposed their domination of territory, slavery and servitude – forging a supposed natural hierarchy using formal legal mechanisms to it (Quijano, 2005, 118).

Using discourses of *terra nullius doctrine* – a statement of unclaimed land, belonging to no one – and *vacuum domicilium* that because natives did not have a 'title' to the property as such or a bordered area, it was vacant (Springborg 2015; Kumpulanian 2016) they not only occupied the territory but annihilated native conception of territoriality, culture and political

organization. Customary legal traditions existing among the native population were suppressed under the argument that indigenous people were “Godless and lawless people, with no social organization” (Souza Filho 2006, 29, quote translated by me). Instead, Brazil adopted the civil law system, based on the Roman-Germanic tradition. Although custom and case law are part of the legal framework, written law prevails over them from an interpretive point of view. The hermeneutic-interpretative imposes a hierarchy of norms where the Constitution occupies the highest position and laws –whether at the federal or regional level– submit to it. This information becomes particularly crucial when analyzing the possible interpretation of the status that the international human rights treaty holds when it is incorporated into the national codification.

Brazil has transitioned from customary legal traditions where norms were passed on orally to the current Roman Civil Law system, implemented during Portuguese colonization in the country. The plural concepts of justice from different indigenous ethnicities gave room to a unique codification depending on the centralized State figure. From a gender perspective, from the very first written codes in Brazil –the 'Ordinances of the Kingdon' named after each one of the Portuguese kings Afonsines, Manuelines and Filipines– women were educated to serve men: father and brothers when single and husband, after marriage. Women needed tutors because of 'weakness of their understanding' and husbands could punish their wives if they committed adultery (v. book 5, Titles 36, 38 and 95). Even though the legal disposition was revoked, the argument of legitime defence of honor continued to be used to reduce the punishment of men who murder their partners interpreting the previous Brazilian Criminal Code (1890-1940).

Brazilian Federal Constitution is a milestone in this transition towards more equalitarian legal dispositions in Brazil. The eighth Constitution in the country was the first collectively crafted after 21 years of violent dictatorship. Due to women's contribution, the Constitution specifies, among

others, equality among men and women as a principle; punishment to human rights discrimination (article 5, XLI) and; equal rights and obligations in marital society, equally exercised by men and women (article 226). The new text altered the idea of male's obligation for the maintenance of the family and household through the 'father's power' (*pátrio poder*) to assume the concept of 'family power', where husband and wife would share the family's obligation concerning household and kids. As much as this represented progress, it is noteworthy that this disposition set the heterosexual family with children as a model, excluding the many other existing families from legal protection. Other codifications have to observe these constitutional dispositions; otherwise, they can get declared unconstitutional at the Supreme Court. Concerning VAW, the Constitution established the State's obligation to create mechanisms to confront domestic and familiar violence. Nevertheless, this was never graciously granted by the State. Instead, it happened because of feminist pressure using, among others, the conventions ratified by the State.

From the international perspective, the *Convention on the Elimination of All Forms of Discrimination against Women* (hereafter CEDAW), adopted in 1979 by the UN General Assembly and ratified by Brazilian State in 1984[4] was the first international Convention to address discrimination against women. The concept of women's discrimination become an essential piece for the analysis of feminicide law, as it is one of the legal circumstances to characterize a non-intimate feminicide. The criminal law did not propose a definition of the term. Therefore, CEDAW's concept becomes a reference for judicial interpretation of the cases in Brazil. Whenever professionals from the judiciary cannot decide over the occurrence of a non-intimate feminicide

[4] Brazil ratified CEDAW with two reservations regarding the equal rights of men and women to choose their residency and equality in marriage. In 1994, Brazil withdrew the reservations and fully incorporated its content into the national text (United Nations 1979).

as I discuss more extensively in the next section, they should refer back to this concept incorporated into national legislation through the ratification of the Convention.

The incorporation of international human rights become particularly relevant to understand the compatibilization of internal and international norms of women's rights in the so-called conventionality control when the judiciary bases its interpretation of the law on international human rights instruments (Sarlet 2011). Formally, relations between regional and national legal orders are defined in the States Parties' Constitutions. Much has been discussed about the hierarchy and status of human rights treaties by Brazilian jurists and, in 2008, the Supreme Court decided for the supra-legal and infra-constitutional status of human rights treaties ratified before the constitutional amendment 45/2004. The decision has been problematized by different jurists with whom I affiliate to (Piovesan 2014; Mazzuoli 2018; Sarlet 2011), because it not only creates a previously inexistent and unnecessary hierarchy between norms but most importantly the decision downgrades human rights treaties that could be equivalent to a constitutional amendment, such as those approved after the reform brought by the amendment 45/2004.

Transitioning from the international to the regional scenario, the Court pointed down this jurisprudential dialogue between national and Inter-American judges as a "new jurisdictional standard for the effective application of human rights in the 21st century. There lies the future: a point of convergence in human rights for the establishment of an *ius constitutionale commune* in the Americas" (Cabrera García and Montiel Flores versus Mexico 2010). This research provides evidence that, in the Latin American region, different but functionally equivalent solutions provided an effective mechanism of enforcement of international human rights provisions. Nevertheless, the implementation of this dialogue remains a challenge, and I argue that the mobilization for the implementation of feminicide laws in Latin America contributes to this

convergence. The incorporation of women's rights treaties provides further dimension both to (re)formulate internal and international human rights system, as much as it dialogues back to the social and theoretical feminist contributions. The common Regional System of Human rights that offer a new mechanism to pressure States into the incorporation of gender-sensitive norms; a Latin American feminist mobilization and; the elaboration of a common Latin-American guideline to confront feminicide altogether contribute to not only confront women's violence, but it also strengthens a supra-national legal system in Latin America, known as a Latin American *ius commune.*

The Inter-American Justice System contributed not only to incorporate affirmative actions for women's legal protection, but it also provided mechanisms to hold the State accountable for their international commitments. The Pact of San José (1969) created the IASHR as a mechanism for external control of States-parties in violation of international treaties. The Inter-American Commission issued recommendations to Brazil for violation of women's rights in a case of domestic and family VAW (Case Maria da Penha versus Brazil), as much as the Court condemned Mexico in the aforementioned feminicides at Ciudad Juarez. They considered that the States failed to grant women's rights to a life free of violence as a pattern of systematic violations of their rights. These were only possible because Brazil ratified the Pact in 1992. Initially, the State opposed two reservations related to the facultative clauses 62 and 45, regarding: a. the competence of the Commission to receive communications from another State Party to denounce a violation of the human right and; b. the binding jurisdiction of the Court related to the interpretation of the Convention. In 1998, Brazil withdrew these reservations, incorporating the full text of the Convention and allowing the IASHR to analyze accusations against the State.

If the Pact of San José brought the mechanisms to hold Brazil accountable for the human rights violations, the Belém do Pará Convention (1994) expressly integrated women's rights to a life without violence to the list of protected rights in the Latin American Region. The Convention ratified by Brazil in 1995 represented the first norm about VAW both internationally and in Brazil. It introduces a list of non-exhaustive crimes that characterize VAW, whenever an "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" (*Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women - "Belém Do Pará Convention"* 1994, article 1). By expressly discussing public and private violations, the Convention broadens the interpretation of human rights to address violations that happened to women in the private sphere, an object of a long-term feminist mobilization. Even though Brazil ratified the Convention in 1995, it only complied with its obligations to create legal and administrative arrangements to confront VAW after the IASHR issued recommendations in the Maria da Penha case. The Center for Justice and International Law (CEJIL), the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) and the victim Maria da Penha Maria Fernandes (hereinafter Maria da Penha) strategically litigated at IASHR against Brazilian State's systematic inertia to offer support to cases of domestic VAW. In a summary of the case, Maria da Penha, pharmaceutics from Belém do Pará, suffered two attempts of murder from her former husband and father of their three daughters. During the first attempt, in 1983, the Colombian University Professor Marcos Heredia Viveiros shot her while she was sleeping. As a result, Maria da Penha suffers irreversible paraplegia. The second attempt, weeks after she got back from the hospital, he tried to electrocute Maria da Penha where she was taking a bath. In 1998, after more than 15 years, the case did not have the final ruling, and it was pending some

appeals. The petitioners denounced Brazil to the Commission for condoning the situation and failing to take the adequate measures required to prosecute and punish the aggressor, despite repeated complaints[5]. In 2001, the Commission concluded that Brazil violated Maria da Penha's rights. The decision pointed down to the State's failure to assume its duties under the article 7 of the Belém do Pará Convention and Articles 8 and 25 of the American Convention, respectively regarding the obligation of the State to condemn all forms of VAW and rights to a fair trial and judicial protection not only on her the individual case, but as a systematic response of the State to domestic and family VAW (Maria da Penha v. Brazil. Case 12.051. Report No. 54/01 2001). For the first time, Inter American System applied Belém do Pará Convention in a case of domestic and family VAW issuing recommendations for both the beyond the individual situation and determining the State adopt further measures to prevent, punish and protect new cases of VAW.

As a result of this international advocacy, in 2006 Brazil approved Law 11.340/2006, widely known as Maria da Penha Law, to confront domestic VAW. It is the first federal legislation to incorporate gender perspective to combat domestic violence in Brazil, as opposed to the previous bill in the country that would reinforce gender inequality. The law written collectively with the contribution of many feminists' activists defined VAW as human rights' violation and reinforced the concept of domestic violence from Belém do Pará Convention. Among its mechanisms, it proposed measures to assist and protect women in domestic violence cases, and it indicated the need to create specialized services to support survivors of VAW. Maria da Penha's Law is considered a milestone for women's right to a life without violence. It helped to publicize discussions instead maintained in the private realm about domestic and family violence against

5 There was a particular challenge in the case as the facts occurred before the ratification of the American Convention. The organizations used the concept of a continuous violation, alleging that after Herodias's violence towards Maria da Penha, the State continues to violate her rights once it did not grant her rights to justice and a fair trial.

women (VAW). If in the beginning jurists refused to apply the law based on moral/religious beliefs or other justifications; after almost 15 years the judiciary gained expertise in domestic and family gender-based VAW. Maria da Penha's Law became the most popular legislation in Brazil. In research (Data Popular and Instituto Patrícia Galvão 2013) 98% of the Brazilian population answered they knew the law –even though knowing it did not necessarily mean they recognized all the mechanisms brought in the 46 articles from it. Nevertheless, the bill represented an outrage to the current legal dispositions. After its implementation, the law has been questioned in different instances and by various reasons in the judiciary. Some of the arguments related to the supposed unconstitutionality of the law because it insulted the equality principle. In a historic decision, the Supreme Court ratified the need for positive discrimination to remedy historical discrimination against women. As one of the first opportunities to discuss gender in the judiciary system, Maria da Penha law challenged existing discourses and practices and peeled off the first layers of the gender discussion.

Nevertheless, because of the scope of the law on domestic and family VAW, the analysis centred itself on intimate violence. Pasinato (2011) suggests that feminicides that do not result from family and domestic relationships have been overseen throughout the years. Brazilian researches that focus on domestic and family feminicide tend to reproduce the dichotomy of public and private in gender-based violence. The idea of the domestic and family femicides occurring in the private spaces while other possible gender-based feminicides occur in public spaces reinforces this differentiation. Therefore, with the incorporation of non-intimate feminicides by the law, there is a gap in judicial understanding of the gender element in cases other than from domestic and family violence. In this next section, I situate the incorporation of feminicide law on this feminist legal

history in Brazil focusing on the interpretation of the non-intimate feminicides as a decolonial feminist legal contribution to this legal analysis of gender.

Incorporation and Disputes of Feminicide Law

After almost ten years of disputes over the interpretation of Maria da Penha law, in 2015 Brazil sanctioned the Law 13.104/2015, also known as 'feminicide law'. The law added a new qualifying circumstance to the criminal code for gender-based homicides against women. Understanding these processes—of elaborating, approving and interpreting the law—from a non-linear but interconnected perspective and taking women and feminist protagonism into consideration supports to remake legal history from its margins. Hence, I begin this section by analyzing the context and disputes to elaborate and approve feminicide law as a feminist contribution to confronting VAW in the country and, subsequently, I discuss technical aspects related to the application of the law that subsidizes judicial interpretation of the crimes.

Similar to other gender-sensitive legislation in Brazil, the incorporation of feminicide law resulted from feminist mobilization wherein women from all around the country articulated demands to legislative representatives calling for better state responses to confront this problem that affected society as a whole and women in particular. The feminicide bill is one of the results of the 'Joint Parliamentary Commission of Inquiry on Violence against Women (from now on referred to by the Portuguese abbreviation CPMI)' proposed by both the Congress and Senate in 2012 to oversee the State's response to gender-based violence. The CPMI was created after the country ranked among the worst on a comparative scale of cases of violence against women globally. At the time, Brazil occupied the fifth position in women's murder in comparison with the other 83 countries with homogenous data (Julio Jacobo Waiselfisz 2012). This meant that more than 92 thousand

women had been killed over the past 30 years, 43 thousand in the last decade alone. This alarming number of feminicides, the high levels of violence against women and State's tolerance towards violence against women was the justification to implement the Joint Parliamentary Commission (Federal Senate 2013, 7). The CPMI worked consistently over the course of a year and a half of investigation in different regions of Brazil. Their methodology consisted of visiting 17 out of the 26 states of Brazilian federation, receiving 744 reports/legal requirements and inquiring various authorities, feminists and hundreds of different specialists on services that assist women who suffer violence. As a public server assisting the prosecutors in the State of Paraná, I participated in the organization of the investigations and the hearings that happened in the State of Paraná, where I used to live. The conference on the State consisted of inquiries to the public institutions and space for denunciations from different sectors of civil society. The hearing confirmed the numbers that showed State's inefficiency in confronting VAW, even after five years of Maria da Penha's Law. In 2013, after one and a half year of investigation on different regions of Brazil, the CPMI presented the 1000-page-report with the scenario of VAW, more than 70 recommendations to the State and 14 bills. Among them, there was the 'feminicide bill proposing to "modify the Criminal Code to include feminicide as a qualifying circumstance for the homicide crime" (Federal Senate 2013, 1002-1005).

The bill which resulted from the CPMI defined feminicide as the "extreme gender-based violence that results in a woman's death in three circumstances: 1. Intimate or family relationships; 2. Before or after a sexual violation; and 3. That results in mutilation or disfigurement of the victim." In a symbolic homage of International Women's Day celebration, the only woman president of Brazil Dilma Rousseff sanctioned Law 13.140/2015, popularly known as Feminicide Law, on 9 of March 2015. The final text of the law added ended up different from the one from the CPMI. It

added two aggravating circumstances to homicide committed 'against women because of their female condition': 1. domestic and family violence (first clause) and 2. contempt or discrimination to women's condition (second clause). Additionally, the law stipulated the increase in criminal penalties (from one third to one half) if the crime occurred during:

1. Pregnancy or after up to three months after childbirth;

2. Against a woman younger than 14, older than 60, or with disabilities; and

3. In the presence of her children or parents (2015, article 121, § 7º I-III).

Finally, it modified law 8.072/1990 to incorporate feminicide into the list of heinous crimes. This was somewhat of a formality to update the list of heinous crimes, such as other homicides. Being categorized as a heinous crime, practically, means that feminicide cases are not eligible to receive pardon, amnesty or indult (wherein the State may choose not to punish other crimes in specific contexts).

These legal modifications both reflect the incorporation of the new criminal type into criminal code and illustrate the disputes during the legislative procedures around the content and nomination of the law. Although the modifications might not limit judicial interpretation, they influence how judges will read the cases. Therefore, through feminist legal analysis, I focus mainly on two aspects of the modifications made between the bill and the approved law: a) replacing the word gender with the expression "against women because of their 'female-sex-condition'" and b) changing the final two clauses of non-intimate feminicides in the bill to the 'contempt or discrimination against women's condition'.

Departing for a moment from the differentiations proposed by the law, it is worth noting the conceptual distinctions between violence against women, gender violence, and domestic and family violence against women. The terms domestic and family violence refer to violence that occurs within the private sphere, perpetrated by family members. These terms do not necessarily address the gendered nature of family relationships, within which the violence takes place (Merry 2011, 27). Violence against women, on the other hand, is directed at women because they are women, considering women's subordinate social, economic and political status (True 2012, 9-10). It is a broader term and incorporates actions outside the family context but does not specify the perpetrator (Merry 2011, 28). Gender-based violence is violence that occurs because of unequal gender relations and can be perpetrated against and by men and women, boys and girls. The term 'gender violence' draws attention to the systemic nature of violence that is a product of gendered relations of power (Shepherd 2008, 42-43), and for this reason, is often disputed in international documents. While conservative commentators prefer the use of 'violence against women', other authors also suggest that 'gender-based violence' might fail to highlight the disproportionate victimization of women (Merry 2011, 28).

Returning to the law, the first aspect of my analysis is the substitution of 'gender' by the expression against a woman based on her female condition. Initially, there is an aspect of this change that might go unnoticed for non-native speakers which refers to the unconventional expression used to substitute the word gender in the text. This is rather a long and unusual substitutive expression in Portuguese *[contra a mulher por razões da condição de sexo feminino*]. It is used to oppose terms that seek to problematize gender binarism and biologization of bodies. The expression was used to avoid the word gender in an articulation from conservative sectors, that led up to the erasure of the term not only from the feminicide law but from many other documents such as the national

planning for basic education in Brazil. When analyzing the removal of the word gender, some authors (Reis and Eggert 2017; Cavasin 2015; Orlando 2017) have articulated these mobilizations as a political statement from conservative sectors of Brazilian society aimed at deliberately excluding any diversity of bodies, genders, identities and sexualities from official discourses and spaces. These conservative groups accused the so-called 'gender ideology'[6] of being a field of study wherein feminists supposedly included gender theorizations in order to push forward pedophilia as a sexual orientation and encourage children to transition their gender. This correlation was an apparent attempt to block the on-going progress of the gender equality agenda in the country. It primarily targeted theorizations that questioned the association of gender and biology, refuting the existence and possibility of trans people to their rights. The removal of the term 'gender-based' from the feminicide bill was an attempt to push away discussions that problematize gender-binarism and to prevent trans women from benefiting from the qualifying circumstance. Likewise, I argue that the expression with which 'gender-based' was replaced attempts to erase any complexity of gender theorization, instead connecting the legal concept to a reduced understanding of gender as a binary biological construction. Even though the discussions around the term gender on feminicide law represented a backlash in these processes as it was removed from the legal text, the term has remained under dispute after its sanction. When looking for the cases that fit my object of analysis with regard to the second clause (non-intimate feminicides), I came across one decision that applied the feminicide law to trans women, despite the fact that the final text of the law did not include the term gender (TJDFT 2019). This suggests that there is a direct and troubled relationship between the context of the law's approval and its

[6] The conservative anti-gender ideology emerged in Latin America and it became an international phenomenon using the false narrative of 'gender ideology' to prevent the progress of women and f LGBTQI's rights.

interpretation and subsequent application. It proves first of all that the withdrawal of the word gender from the legal text did not put an end to the discussion and, secondly, suggests that a part of the judiciary is resisting gender-binarism from within, echoing the feminist voices which have contributed to the reformulation of legal structures. When a law such as this one has resulted from a collective feminist project, it is necessary to comprehend the reasons behind the approval of or changes to the content of the law, as well as how the law is enforced.

The second element of difference between the approved law and the original bill relates to the legality principle and the reach of the law. The circumstances considered to be non-intimate feminicide in the bill changed in the approved text, and I focus on analyzing the reach of these feminicide cases:

Bill 292/2013	**Law 13.140/2015**
1. Current or former relationship between victim and aggressor either by kinship or consanguinity 2. Before or after a sexual violation 3. Through mutilation or disfigurement of the victim.	1. Domestic and family violence **2. Contempt or discrimination against women**

Within the law, not all women murder cases are considered to be feminicide. Otherwise, it would not be necessary to discuss the two different clauses separately. As illustrated, women's murder in the context of an intimate relationship has been consistently considered to be of feminicide. This progress on the interpretation of intimate feminicides reflects the results of years of feminist disputes around the enforcement of Maria da Penha's law. The path-yet-to-be-traversed concerns the second clause of the approved legislation. The divergence from the bill to the adopted law showcases the on-going disputes over the content and interpretation of non-intimate feminicides.

As a first opportunity for the judiciary to analyze the gender element outside of intimate relationships, the approved clause provided a space for new beginnings. The approved text is broader, and its meanings will be produced as the cases come into the system. The 'contempt or discrimination against women' can be understood in a more reduced or more progressive way. The guidelines, for instance, offer some examples where cases of gender discrimination are hardly ever disconnected to the gender aspect. Even though this might not be a consensus among legal professionals, examples of cases involving murder after a rape, murder of prostitute or in a context of women's trafficking necessarily carry a gender marker into consideration. Despite the final text reduction on the number of clauses compared to the draft, the expression 'contempt or discrimination against women' broadens the scope of interpretation to encompass not only those two clauses from the draft but many other possible non-intimate feminicide cases based on the legal definition of the term.

Prior to the approval of feminicide law, the killing of women fell into the criminal types of simple or qualified homicide. Brazilian criminal code defines homicide as a crime punished from six to twenty years of imprisonment (article 121, Brasil 1940). If it occurs under one of the five circumstances that qualify homicide crimes,[7] the criminal sentence is raised to between twelve and thirty years of imprisonment. In the absence of a better fit, women's murders used to be interpreted using the existing qualifying circumstances based on aspects such as the *modus operandi* or motivation of the crime. For instance, jurisprudence used to understand as futile qualifying circumstances those cases where men justified the murder based on women's refusal to continue

7 If it is committed: 1. for pay or other reward, or other vile motive; 2. if its motivation is futile; 3. with the use of poison, fire, explosive, asphyxia, torture, or other cruel or insidious mean, or of any mean that may result in danger to other; 4. by treachery, ambush, dissimulation, or other means that turn defense difficult or impossible; 5. to ensure the execution, occultation, impunity, or profit of other crime(article 121, § 2°, I-V, Brasil 1940).

in the relationship. Therefore, legal discourses could go both ways; sometimes, they oppose gender oppression, referring to gender-based violence as a historical grave violation of women's rights. Other times they reinforce oppression by using futile motives to diminish the importance and isolate the event from its sociohistorical perspective. In the end, even though the final result consisted of aggravated punishment, the discourses played a crucial role in gender stereotypes. The approval of feminicide circumstance put an end to this discussion.

Many cases of feminicide occurred in a context where women refuse to obey men's orders. Historically, social and legal norms prescribed that women could not exercise full autonomy over our desires. As examples, in a revoked article from the previous Civil Code, women needed their husbands authorization to exercise the profession of their choice (article 242, VII, BRASIL 1916) and according to doctrine and jurisprudence, they should not deny sex to their husbands. These are just exemplifications that support the argument of women's alienation of their body and desires. Most of these situations occur in the context of intimate relationships, where there is a proximity between victim and aggressor and the latter feel more entitled to rule women's life under the argument of protecting and safeguarding them. Nonetheless, many times people who do not hold any relationship with women do not accept their negative to fulfill men's desires and orders. Women's rejection of a male's order seems to disturb a logic of superiority both for the individual and for society as a whole. Therefore, as a not-uncommon reaction, men would act violently towards these women, even strangers. Along those lines, before the approval of feminicide law, jurists would analogically apply Maria da Penha law to interpret cases of strangers who committed VAW after a rejection from the victim to engage in intimate/sexual relation with them. This was a legal maneuver to get around the absence of a more appropriate gender instrument for analysis while still using existing legislation. The approval of feminicide law with the two different clauses

for intimate and non-intimate cases provides more specific and certain instruments to confront VAW on non-intimate gender-based violence.

The second clause of the approved legal text defines non-intimate feminicides occurrence on two hypotheses: contempt or discrimination against women. Comparatively to other criminal types, these are somewhat open-ended concepts. Therefore, there is a need for the scrutinization of the gender element for every woman killed in a non-intimate context. Aspects such as context, scenarios, the type of wounds and violence, perpetrators, victims, inquiry of testimonies/defendant and surviving victims become particularly essential to untangle a possible 'contempt or discrimination against women'. Some mechanisms instrumentalize the meaning-making of non-intimate feminicide at the judiciary in Brazil: the existing legislation, the comparative law and the guidelines adopted by the State. Differently from the first clause that counts in the trajectory of Maria da Penha Law to clarify aspects of intimate feminicides, the second clause inaugurates legal analysis over non-intimate women's murders. I analyze the instruments to support jurists on the meaning-making of the legal term before delving into the cases that represent the initial jurisprudence on the topic.

The incorporation of a new criminal type obeys the constitutional and criminal principles, as much as it should align to the existing legislation and the social function of the norm. Therein, to construct the interpretation of non-intimate feminicide crime, feminisms resist from within judicial structures to hold them accountable for an understanding that encompasses intersecting women's vulnerabilities, such as race, ethnicity, age, ableism, sexual orientation, among others.

The law considers 'contempt and discrimination against women' as a basis of feminicide, but it does not define the term. Therefore, criminal judges might refer back to existing legislation to

address these concepts. While the wording 'contempt for women' is first introduced into legislation by feminicide law, 'discrimination against women' finds a correspondent at the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW defines it as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (United Nations 1979b).

This international treaty incorporated into national legislation on a supra-legal and infra-constitutional status became a reference to interpret cases of women's murders. The rather broad concept encompasses different situations of women's murder, and it serves as a consultancy instrument when there is a question whether the case derivates from a situation of gender discrimination. Furthermore, it contributes to strengthening conventionality control and the Latin American *ius commune* at a local level through the approximation of international legislation and comparative case-analysis such as the Cotton Field case at the Inter-American Court. Local judges become the first internal authorities to establish these dialogues and their ability to creatively and responsibly apply these legal frameworks into the cases contributes both to transnational feminist and legal conversations to confront VAW.

The UN offers a broad definition of non-intimate femicide in the 2014 Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide). They defined it as *'the killing of a woman by a man unknown to her and with whom the woman had no relationship. For example, a sexual assault that culminates in the murder of a woman at the hands of a stranger. This also includes a case where a neighbor kills his female neighbor without there*

having been any type of relationship or connection'(OACNUDH 2014, 15). As a guideline supporting the investigation of feminicide crimes throughout different Latin American countries, it does necessarily encompass country-specificities. It does not displace or substitute other instruments or strategies for criminal investigation. Still, it provides some reference for the elements that support the understanding of the gender element within the homicide case.

In 2016, Brazil approved the 'National guidelines to investigate, prosecute and judge women's violent deaths from a gender perspective (feminicide)' adjusting the Latin American Protocol into the socio-political, cultural and legal local reality. The document results from a partnership between the UN Brazilian Office, the National Secretariat of Women on the Presidency and the support of Austrian government to provide orientation to improve justice system professionals to intervene in the investigation, persecution and decision-making in cases of feminicides (BRASIL 2016). The concept of non-intimate feminicide in the Brazilian Guidelines is a literal reproduction of the content from the Latin American document. The description does not refer to the second clause of the law. It composes a chart with other thirteen cases of feminicides, from which the first eleven configure possible non-intimate cases: child feminicide, systematic sexual feminicide, femicide because of association/connection, femicide because of prostitution or stigmatized occupations, femicide because of trafficking, femicide because of smuggling, transphobic femicide, lesbophobic femicide, racist femicide, femicide because of female genital mutilation, family and intimate feminicide. As much as the guidelines offer instructions on how to conduct judicial procedures to investigate and judge from a gender perspective, the examples contribute to a growing common understanding of initial discussions on the scope of the law. The models do not limit the interpretation, but they help to elevate the initial common ground for the debate and push away some understandings that might be more restrictive and conservative in the analysis of

the law. As an example, despite the aforementioned discussions to exclude the use of gender from the law, both guidelines consider the transphobic killing of women to be encompassed by the law's scope.

These important antecedents and instruments should be taken as references for legal interpretation. The mentioned guidelines, the existing legislation, the professional ethics codes and protocols for action provide devices to base legal analysis. Along those lines, I understand that this framework must be interpreted taking into consideration other instruments, such as gender studies, anthropological, cultural, or other studies that allow for going deeper into aspects of cases.

Contributions Beyond Criminal Aspects

The contributions of feminicide law are often reduced to those operated into the criminal sphere. Feminist legal scholars have been fighting to incorporate women's rights and instruments to confront women's violations not only as a way to build a legal system that represents the plural existences and resistances but also acknowledging that many changes are propelled by this shift in legislations. Before delving into the case-decisions in the third chapter, I formulate this final section analyzing contributions from feminicide law that surpass the aspect of criminalization of women's murder to transform judiciary from within and support some social progress from the limited—yet crucial—branch of power in the country. I considered them using a somewhat fictional division to understand how they reverberate in different areas. In reality, they occur simultaneously and articulately on a symbolic, political and technical spheres. I articulate these three extra-judicial contributions separately to facilitate the analysis, but they are rather intertwined and constitute a complex structure under constant new meaning-makings. These intersections among political and legal strategies make room for new perspectives in terms of access to the

justice system (B. de S. Santos 1986). This is indeed the reason that I engage with the topic to reflect upon its meaning-making while producing new ones through a feminist decolonial perspective.

When discussing the use of criminal instruments to confront VAW, there is divergence among scholars about the (im)possible contributions from this colonizing justice system to confront inequalities. As much as this is an essential move towards a less exclusionary field of studies that has practical consequences to women's lives, the contributions from regulating these social transformations do not end at the judicial interpretation of the law for each concrete new case of feminicide. As a legal adviser working with gender at the judiciary system in the initial years of law enforcement, I perceived and participated in many of these transitions at a regional level, such as the implementation of the national guidelines or implementing local training and orientations for professionals from the justice system. Since I worked in the public institution before and after the existence of the law, I could perceive the differences and contributions such as training that could exist previously but were only implemented after the sanction of the law to facilitate professional's interpretation of the new mechanism.

The first relates to the symbolic field. If approving criminal laws bring visibility to some topics as valuable legal assets deserving of State protection, they also endorse a punitivist state that makes use of a failed patriarchy instrument that perpetuates a selectively oppression of some bodies. Significant criticism pointed down that these legislations do not hold a real effect, rather a symbolic one that does not touch upon structures or the roots of the social problems (Rifiotis n.d.; Karam 2015). Along the same lines, the social structures that organize both gender and prisons in Latin American countries cannot be understood outside of the decolonial theorization and the constructed hierarchies based on racialization. Paradoxically with the high levels of impunity in

the country where only around 5% to 8% of the homicides are solved (Conselho Nacional do Ministério Público 2012), the country still holds one of the highest positions on the rank of incarceration worldwide. The incarceration of poverty is also reflected in the sampling from this research, as I discuss further on the case-analysis. Still while impaired, the investment in punitive power in Brazil tends to overcome those related to other policies such as prevention and protection –taking the '3P' paradigm (prosecution, protection and prevention) framework into account. The criminal system is invariably a space of institutionalization of violence against black and indigenous bodies in this postcolonial space. Flauzina (2008) pointed out how the approximation of black people to the justice system is mediated by the same State agents that represent the genocide against black people in Brazil. When agreeing with the pragmatic failure of criminal law to restructure historical unequal power relations, I understand it is also necessary to articulate how these criticisms intertwine with other complex contributions at the symbolic, political and technical level. The sanction of feminicide law on the disputed legal sphere produces an impact of reinforcing women's rights to a life free of violence as a valuable legal asset. It delivers a message that the State does not tolerate VAW –at least on a formal symbolic level– and validates the declaration that women's rights violation equals human rights violation (OHCHR 1993). If the State had been condescending with VAW in the past, these legislations became symbols of the transitions to active opposition to this social problem. Maria da Penha Law, for instance, granted visibility to issues before relegated to the private sphere, where the State was not supposed to interfere. In a definite shift, Maria da Penha shed light into domestic violence against women, and the topic became widely discussed throughout the country. Research from 2013 demonstrated evidence that around 98% of Brazilians have heard about Maria da Penha's Law and the majority of them (66%) were familiar with its purpose and function (Data Popular and Instituto Patrícia

Galvão 2013). Feminicide law, on the other hand, publicized discussions about women's deaths from the creation of the CPMI until the current moment of law enforcement. Differently from some different criminal types, women's murder was considered a crime previously, and the purpose of the law was nominating and offering instruments for a gender analysis as something that might aggravate punishment once a women's murder occurs. While not all cases would fall under some of the aggravating circumstances previously, the murder of any got to be investigated as a heinous crime. The symbolic impact results from the nomination of the crime and reverberate into other spheres concomitantly.

The second aspect of analysis relates to the political one. The male heterosexual white individual represents the supposed neutral addressee of political decisions. The recent but progressive ingress of women as subjects and addressees of politics represented a formal and material shift in politics – later problematized as somewhat hegemonic womanhood. Along the lines of the progress resulting from feminist contributions into the political sphere, feminicide law represented both a result and a project of feminisms in the political field. It (re)produces meanings and effects on diverse political relations, from the individual to the international foreign policies. As much as the discussion of VAW was either relegated to the private sphere or absent from essential policies and documents at local and international levels (e.g. CEDAW), the incorporation of the topic in legislations brought it into the public sphere and, therefore, politicized the debate. The articulation to accommodate VAW on the international political agendas resulted from a feminist mobilization lead by Latin American activists. The transnational mobilization represented an opportunity of dialogues among states to formulate public policies that would consider aspects thus far ignored. The political articulation at the international level changed the course of foreign policy while strengthening networks on a global and regional level. At a local level, the political debate initiated

by the cooperation of the three branches of power to approve, sanction and implement the legislation. The work conducted at the Parliamentary Committee allowed for the politicizing of the debate with society in each region of the country. At the time, the United Nations congratulated Brazil and its presidency for the 'political act' of confronting VAW as the fifteenth country in the region to criminalize feminicide (ONU Mulheres 2015). Altogether, these were imperative impacts from the incorporation of feminicide to build more equal and complex political relations on society and among individuals. If, on the one hand, the law does not correspond necessarily to a solution of VAW or the most extreme expression of it, it reverberates as an instrument to build new spaces and formats of resistances within systems that understand women's bodies as a space for invasions and violence.

The last aspect of this symbolic division to investigate extra-judicial contributions of feminicide law are the technical ones. Once the feminicide bill was approved, the existing structures had to reinvent themselves to accommodate the new criminal type, provide mechanisms to support judicial interpretation and evaluate it as a public policy. Besides the symbolic and political aspects aforementioned, some central material changes, such as the new field on the databases, were adopted to address feminicide in the judiciary system.

One of the most important changes was the registering of the cases. The existence of a specific criminal type in the judiciary system allows for the creation of a new filter on the already existing databases to account for the cases and evaluate it as a judicial policy throughout the years. If previously the data used to rank countries among with the highest data of women's murder came from the public health system, registering them into the judicial system allows for 1. the evaluation of feminicide while previously the numbers from the health system referred to every women's murder as a feminicide; 2. The comparison between data from the public health system and the

judiciary system to evaluate eventual inconsistencies on policies to confront VAW; 3. A system of counter-proofing among data that might go missing in one of the systems. According to Maria da Penha Law, the Public Prosecutor is the service responsible for registering cases of VAW (article 26, clause 3, Brasil 2006). After one year of law enforcement, I had the chance to analyze –with my former boss, the prosecutor Mariana Seifert Bazzo– the implementation of the law in the 399 cities of Paraná State, where I used to work. Using the data registered at the Public Prosecutor service, we investigated cases denounced as feminicide, and every other occurrence of women murder occurred in that year in the State. We found 156 cases of feminicide, from which 131 were adequately registered in the system. These last 25 cases were incorrectly registered or capitulated, as they could only be found after manual research of every women murder in the State occurred in that year. The researched confirmed data that most crimes involving VAW[8] were committed by people who are familiar with the victims and indeed, only 1 out of these 156 referred to a non-intimate feminicide case, the object of analysis on the next chapter. The data provided information that supports a formulation of public policies, such as the crime took place, the relationship between aggressor and victim, if it was an attempted or consummated crime, the modus operandi and the alleged motifs for the crime. Besides evidencing the alarming number of feminicides on the State of Paraná –where one case occurred every two days in that first year of law– the evaluation proved both 1. the importance of registering the cases to formulate public policies that can more effectively address and, therefore, prevent VAW; 2. The limitation of the information provided by the system, such as the lack of information about race, ethnicity, class, disability that justifies the adoption of differential policies and; 2. The need for training to minimize the change of the sub notification as it has happened with these 25 cases that were initially left out of the

8 The research pointed out that most of the crimes happened at victim's residency, committed by someone they are familiar with and because of their refusal to comply with some order from the aggressor (Daltoé and Bazzo 2018).

system as feminicides. The possibility to filter this information from the databases enable to develop researches that support a constant evaluation and improvement of the methods to better confront VAW. It was, indeed, through the data from judiciary register system that I could collect the corpus of analysis for this research.

This point connects to the other essential 'technical' and extra-judicial contribution provided by the law, which are the training and discussions about gender on the judiciary system. The law functioned as a propellant to necessary and repressed discussions on gender topics among professionals from the justice system. Due to the workload and format that judiciary functions in Brazil, much of the priority the issues receive is connected to the urgency of the incoming demands. Therefore, even though there was a need to discuss gender-based violence within the system before the approval of feminicide law, it potentialized it, especially considering the adoption of non-intimate feminicides that had not been analyzed before such as those from domestic and family VAW through Maria da Penha law. Thus, many different documents, training and study groups were created throughout the country. The guidelines mentioned above adjusted from the Latin American model were created by a study group with professionals from different areas in order to adjust it into Brazilian criminal laws. Besides this, events and training were happening regionally and on a national level. Among one of the progress after Maria da Penha law's implementation was the organization of specialized sectors and groups among professionals from the justice system to discuss its applications: judges formalized the 'national forum of judges discussing VAW' (hereafter cited by the Portuguese abbreviation FONAVID), prosecutors gathered on a formal constitution of a National Council to address VAW (hereafter named as its Portuguese abbreviation COPEVID) and layers and public defenders as well reunited on periodic encounters to formulate a thesis on how to implement national protocols and how to progressively

deal with emblematic cases and convince their peers until it became an institutional policy rather than a private practice by those who might approximate to the topic. These jurists have to face aspects of day-to-day gender discussions and use criminal law to interpret violent discrimination over women's bodies. Aside from the dimensions mentioned above of the incorporation of a qualifying circumstance in the criminal code, the other paramount technical aspects provide contributions and challenge structures with a more profound understanding of gender outside of intimate relationships.

One of the premises I depart from in this work is that most of these deaths are avoidable. They exist as an instrument to maintain men's power on a structural unequal system that creates hierarchies among bodies. Acknowledging this, the state both have the possibility and the obligation to prevent women's deaths by confronting VAW. The most frequent public investment is on punishment policies and often the state's intervention was reduced to it. Only recently there were discussions to incorporate what became known as the '4P paradigm' framework including prevention, protection and integrated policies to respond to VAW, besides the prosecution. These policies encompass punishment as a mean to grant law enforcement and make the perpetrator accountable for his acts; prevention of violence through the deconstruction of stereotypes that make VAW acceptable; protection of women who are at risk by offering them the necessary support and; implementing coordinated integrated policies at a state-wide level to confront VAW (Council of Europe 2014). Among them, we can specify shelters, specialized police officers, social, legal and health assistance, campaigns, training, data gathering and elaboration of policy plans, among many others. Nonetheless, often the case solution focuses on the criminal aspect, which not only burdens the justice system, as it also prevents a more integral assistance for the survivor and the society as a whole. In this regard, full assistance in the case contributes to

preventing the recurrence of such crimes. The combination of these policies represents an integral assistance to survivors and a possibility to prevent new cases. As a matter of fact, the demand for prosecution indicates the failure of the other policies and, consequently, a need to repair the damages caused by the episode of violence. It was not uncommon for women to constantly need to repeat their violations at different services, to receive mistaken information or to be judged at spaces that were supposed to shelter them. This model reflects the social construction of women as objects, whose agency was not recognized both formally and informally in a paternalistic state. It was due to feminist mobilizations that state structures started looking at women's agency and to seek to understand their needs holistically, within the particularities of each woman.

The ongoing reforms on the system attempt to bridge the existing structures with new possible more plural and feminists' spaces within the public policies and laws. Among the findings from the jurisprudence, for instance, at least half of them refers to cases where the perpetrators committed murder(s) before. This evidences that the state most probably had already failed to provide criminal responses on a previous case of murder, avoiding the death of the victims from this research. Even though we cannot extract from the decisions which other policies the survivors might have accessed, the defendants' recidivism demonstrates that the state had been called out to prevent these crimes. If services are working together, however, there is a smaller chance that the victim would go through a revictimization on the services or that perpetrators would reiterate their criminal act. The establishment of networks aims to broaden the impact on confronting VAW by creating horizontal relationships among services and de-centering the unidirectional focus to criminal policies. When all the services dialogue and mutually recognize their attributions and limitations, they can provide better assistance to survivors and prevent new cases. In this regard, as mentioned on the second chapter of this, the judiciary's contribution to confront gender-based

homicide does not end in the investigation, prosecution and judgment of the cases. Even though there are indelegable attributions, they do not limit the contributions that each service can provide. Judiciary can contribute far beyond the decision on the case. Judiciary contributes to the '4P approach' by, among others, referring survivors to other services and informing them about their rights, creating databases for the evaluation of public policies, organizing events and trainings from professionals and for society, to mention a few extrajudicial contributions. On the same lines, the other services also extrapolate their responsibilities on this attempt to build a network among services. Just as the recurrent cases by the same defendants shed light into the failure of the system, it demonstrates possibilities to break this cycle of violence. Recognizing gender-based violence as a constructed social problem supports to crack into the ideas that punishment is the only remedy available to deal with it, demonstrating the need to confront VAW through an integral and joint strategy among diverse services and society.

The judiciary had to adapt to interpret it in a more sensitive way and create instances of internal control within the judiciary to make sure professionals within the justice system would comply with their obligations to apply the law in the most progressive way possible. Many of these measures could have been adopted before the approval of the law, but in reality, the law functioned as a propellant to an ongoing change in the system. Considering these different instances, I can say that feminicide law interchangeably impacts and is impacted by legal discourses and practices. The process of approving, applying and enforcing feminicide law are unfinished and complex, but they contribute to reinventing judicial spaces. Therefore, analyzing and interpreting it from the perspective of decolonial feminists represents a form of resistance within a system that had occupied women's bodies through violence and death. If these spheres of power had been historically made by men, for men and about them, remaking and recounting these histories

through women's voices contributes to endorse the multiple possible political projects in opposition to the imposed ones that reproduce binaries such as colonizers/colonized and men/women.

In this second chapter, I analyzed how the Brazilian legal system has transitioned from one that reproduces gender-based exclusions to one that includes instruments to confront VAW. It was in the past two decades that Brazil started incorporating gender-sensitive legislation, initially with Maria da Penha law addressing cases of domestic and family VAW and more recently, with feminicide law. The later criminalize gender-based women's murder adding the element of non-intimate VAW to the criminal legislation. I contextualized the transitions articulating how feminists' contributions have been essential to transforming law from within and from outside. Feminicide law approval represented the result of different mobilizations in the international, regional and local level. The contributions from feminicide surpass those from the criminal sphere. Nonetheless, the use of the criminal instrument in order to interpret the first decisions of non-intimate feminicide provide elements to comprehend how the judiciary established the initial dialogues with gender theorization beyond intimate relationships. Grasping from these discussions, in the third chapter, I analyze judiciary interpretations of the first of non-intimate feminicide to arrive at the Courts of Appeals of the country.

3. Non-intimate Feminicide Cases in Brazilian Judiciary System

Considering the theoretical and contextual analysis developed thus far, in this chapter I engage with the jurisprudence of non-intimate feminicide cases. As Brazil incorporates this feminist agenda naming and criminalizing feminicide, there is the need for adjustment in order to make space for a new beginning: one that demands a gender analysis for every women's homicide. This dialogue between feminist theories and the judicial narratives is key to the understanding of judicial contributions that can confront these often-avoidable deaths. It represents a means through which is possible to blur the apparent dichotomic lines between theories and practices. These first decisions are emblematic as they form the precedents for the jurisprudence and contribute to the judicial meaning-making of feminicide in Brazil. This third and last chapter consists of an overview of relevant methodological aspects that directly affect the findings of the research, followed by a summary of each of the six cases. Subsequently, I analyze the arguments and discourses present in the first decisions of non-intimate feminicide from the Courts of Appeals. By doing that I am specifically focusing on: a. the data collection and translations; b. criminalization and contributions to the theorization of feminicides; c. intersectionality and decoloniality and d. victimization and reproduction of silences.

Analysis of the Data Collection, Case Summaries and Necessary Translations

As the first research to look at the national decisions of non-intimate feminicides, my methodological findings become a crucial element of analysis. In a brief overview of the Brazilian judiciary system, it is relevant to mention that the country is a federated nation divided into 26

states and a federal district, geopolitically divided into five regions. Even though there is not a judicial structure in every one of the 5,570 cities in the country, every one of them has a correspondent county court where the demands first arrive to the system. First instance demands can be revised by the correspondent court of appeals in the state or, in the last instance, by the Superior Tribunal and Supreme Court. My initial methodological plan was to collect the data from every region of the country in the states with the highest rankings of women's murders, based on the 'Map of violence' (Júlio Jacobo Waiselfisz, FLACSO (Organization), and Sede Acadêmica--Brasil 2015). Nonetheless, once I started the research I realized that there were, at the time, very few cases on the second clause. The majority of feminicides referred to crimes in the context of intimate relationships. Therefore, due to the small number of findings, I investigated the correspondent in Portuguese to the second clause of feminicide in the 27 the courts of appeal on the first four years of law enforcement (March 2015 to March 2019). While there were hundreds of cases of intimate feminicides, for non-intimate crimes, there were only 6 cases in total. These were the cases that had already been judged on the second instance and that had their decisions published at the time of the data collection (from June to August 2019). As time passes it is possible that other new cases become available referring to the same four years of law enforcement.

The possibility to collect data from both intimate and non-intimate feminicides enables a parallel analysis with statistics coming from the health system. For instance, the 'Map of violence' estimated that among the women's homicide from 1980 and 2013, 50,3% were committed by a close family member. From these, 33,2% were the victim's partner or former partner (Júlio Jacobo Waiselfisz, FLACSO (Organization), and Sede Acadêmica--Brasil 2015). Even though the judiciary system does not provide a filter with comparative data of feminicides from each of the two clauses, my research revealed a significantly smaller number of non-intimate cases compared

to the hundreds related to family and domestic VAW. My findings agree with those from different studies that identify the same discrepancy in the numbers. One of the contributions from the criminalization of VAW in Brazil is precisely the systematic collection of data which generates statistics that can, in turn, be compared between different databases, thus providing a more realistic picture of the situation. Furthermore, it can reveal how the trajectory of implementing Maria da Penha's law has supported the implementation of intimate feminicides. The first decade enforcing Maria da Penha's law addressed practical questions raised on the variety of circumstances that qualified as gender-based VAW in an intimate context (e.g. that the law applies for VAW committed by cousins, sons, boyfriends and father/son-in-law). Therefore, comparatively, non-intimate feminicide might need more time to address the upcoming questions and to adjust the databases accordingly. Furthermore, it was due to the sanction of Maria da Penha law that the country created the first national database to register the cases. Meanwhile, the system operates with the existing know-how deeply rooted in the colonial and patriarchal characteristics from its foundations.

The findings of the research, therefore, do not necessarily represent the totality of existing cases of non-intimate feminicide. There is underreporting either because of incorrect capitulation or registration of these crimes into the system. This small number of cases in the system demonstrates the need for more research to hold the judiciary accountable for continuously providing more reliable sources of information. Along those lines, in 2018, I had the opportunity to analyze the first year of law enforcement in the state of Paraná (Daltoé and Bazzo 2018). In the occasion through the internal database of the prosecutor office, where the research was developed, we evaluated not only the decisions but the terms in the denunciation of every case of women's murder in the first year of law enforcement, including the ones registered as feminicides in the system.

After analyzing hundreds of cases that we understood as feminicide but that were not registered or denounced as such, we identified three main challenges for implementing feminicide law into the judiciary: temporal, technical and material. The first two refer to delays or mistakes to register the cases into the system, and the later refers to the inadequate capitulation and registration of the case. Sometimes judges refuse to apply the legislation based on their unfamiliarity with the newly approved law or based on personal and religious convictions. Most of the time, though, the elements provided during the investigation and persecution prevent a clear identification of a hypothesis of feminicide. Out of the 156 feminicides, 25 were not in the databases due to surmountable mistakes. One example among these 25 cases clearly illustrates how the absence of gender lenses in the investigation, prosecution and judgment of feminicide contributes to the underreporting of feminicide. It involves a case of an aggressor who tied the victim's hand and neck with a rope and choked her attempting against her life. He threatened her by saying he 'would kill her anyway'. On this criminal investigation, there is no information about the relationship between victim and aggressor nor possible motivations of the crime. Even though the case looks like a possible feminicide, due to the lack of elements to confirm it during the investigation, it cannot be judged as such respecting legality and legal certainty principles. If during the investigation or persecution of this case, professionals would raise these questions related to the gendered aspects of the crime, it would be possible to capitulate or discard the feminicide with certainty. There is a straight correlation between the absence of gender analysis in the investigation and persecution and the underreporting of cases, which reflect, as well, the small number of cases identified as feminicide in this research.

An aspect that I undermined at first, but that proved to be a challenging part of the analysis was doing the translations. When reading the cases multiple times to put them into a dialogue with the

feminist decolonial theoretical framework I chose, I perceived that many aspects related to the language, among these were the peculiarities from the organization of the criminal justice system in the country and the judicial language used in Brazil, pejoratively called 'legalese' (*juridiquês*) as a reference to an elitist language only accessible for those from legal studies. The multiple dialogues between gender and legal studies, the translations from Portuguese to English, the need for an explanation of legal terminologies, and the deconstruction of a traditionally elitst narrative proved to be obstacles for a more direct and objective understanding of the cases. The extracts of the decisions used in this thesis were translated by me. While reading these decisions where some were smaller (around 5-10 pages) and others longer (close to 50 pages of legal argumentation in Portuguese), I noticed I was trying to get around some of these 'legalese' terms in order to come across as clearly as possible. I worried about being able to differentiate technical aspects (such as from the strict appeal compared to a general appeal) to reflect on the elements used by judges to characterize feminicide itself. I did not realize, at first, how the language I had been trained to use after almost seven years of formal studies in the legal area was itself reproducing these arguments in my analysis. As I mentioned in my theoretical chapter, there are sometimes abysmal distances between legal discourses and justice practices. The elitism of the legal language (verbal and non verbal) is one of the main causes that hinder justice access on an equal level to people coming from different backgrounds. The narratives in the justice system in Brazil consistently reproduce those from colonial times both in its model and as a frame for those who operate it. Under the justification of technicality, the language, in reality, reproduces an elitist model that complicates itself in order to differentiate the system and consequently exclude others from accessing it. Thereby, from a decolonial feminist standpoint, there is an effort to re-read the arguments to judge non-intimate feminicides understanding the many layers that unfold from this apparently hermetic

system. Addressing such distinctions can contribute to a more effective communication, thus building new narratives. When presenting the summaries and analyzing the cases I take these aspects of multiple challenging translations into consideration. Even though the academic and legal languages may not be the most emancipatory ones, rethinking them from within represents a substantial contribution to confront VAW. As I approach the research through decolonial lenses, I try to deconstruct some of these codes and I articulate elements that I understand to be crucial for the analysis of some systematic exclusions produced by the system.

The existing corpus of analysis refers to the total number of cases in the court of appeals at the time of the research. The six cases illustrate the initial jurisprudence, but because they are few in numbers, I cannot claim that they demonstrate a tendency or illustrate all of the non-intimate feminicide cases in the judiciary. It is important to mention that in crimes against life, the justice system in Brazil divides the judgment in two different stages in the first instance. The first is the decision made by a single judge, the same that oversees the investigation and decides if the case has enough elements to make it into the jury. The second refers to the jury trial, formed by seven lay citizens where the verdict does not have to be unanimous, a simple majority is sufficient. Along those lines, for the first stage, shreds of evidence of authorship and materiality are sufficient to take the case into the jury. The *in dubio pro societate* principle rules the case in 'disfavor of the defendant', when we need less strong convincing in order to send the case to the jury. The latter is more permanent, and it is ruled by the *in dubio pro reo* principle, meaning that, theoretically, we need to have strong elements to make sure that the defendant can be considered guilty. The appeals arriving at the second instance can refer to any of these two decisions, but in either case, the second instance judges cannot address the merit and the pieces of evidence from the first instance, only procedural-related questions. Before delving into the analysis of the findings, I briefly introduce

the six decisions from the jurisprudence. Most of the cases are consummated feminicides and, therefore, women's voice and life stories have been erased. I use their first names on the research as a political statement and as a way to preserve the memory of the women whose deaths could be prevented. I write about existences whose lives-stories we could have heard more rather than the story of their deaths in criminal processes. It is noteworthy mentioning that every court and case have different narratives and formats to present the decisions. The information disclosed from each case presents different elements of the investigation and prosecution (sometimes they replicate data from the denouncement, technical reports or declarations of survivors, defendant and/or witnesses). Therefore, my analysis is based on three elements: the information selected by each court; the theories developed so far and; my practical experience working in the judiciary. Furthermore, as new cases come into the system it increases the chances for more comparative studies with the important questions raised in these first case-analyses. Considering the above, in the following paragraphs, I present a summary of each of the six first decisions of non-intimate feminicide in the Brazilian judicial courts.

The first case refers to a feminicide that occurred in 2015 in the city of Maringá, South of Brazil. The denunciation provided a detailed description of both the case and the investigation procedures. The defendant approached a street commonly known as a space for prostitution on his BMW in order to hire the sexual worker Mara. They agreed on the amount of 80 reais (around 15 euros) for the victim to perform oral sex on the defendant. He drove to a more isolated area and after the victim took off her clothes, he asked her to perform oral sex without a condom. Due to the victim's refusal, the defendant strangled her up to death inside of his car. After murdering her, he drove to different sites to dispose of the victim's belongings at some cornfields in the city and, after, the victim's body on another spot close to an avenue in the rural area. Her body was found by a rural

worker the next day, who contacted the police. On the investigation to find out information about the victim, the police found her belongings at the cornfield, a place where other women's bodies have been found previously on similar conditions (sex workers naked dead bodies with signs of death by strangling). They identified the defendant and found the car with the missing piece. At his hearing, the defendant confessed that he had killed five other female sex workers before with the same *modus operandi*. When asked about the motivation for committing the crime, the defendant first said that he tried to prevent the victim from getting out of the car naked after their discussion because he did not want to get pulled over by the police. Later, he also mentioned that he killed her because he nurtured hate towards sex workers as this was his mother's profession after she divorced his father. The investigation also indicated that she was murdered in front of him when he was four years old. The case unfolds many other aspects of the defendant's life such as the fact that he had been betrayed by his former spouse, he has been arrested for robbing a bank before and his son has passed away. The case was taken to the Court because the defendant did not agree with the first Court decision to consider the homicide qualified by three different circumstances: foul motive, feminicide and hindering the victim's defence. The Court decided to maintain all three circumstances that aggravated the crime and reinforce the need for the highest punishment. It did not discard the gender circumstance or considered it double jeopardy with the foul motivation, as requested by the defendant (TJPR 2019).

The second case refers to the feminicide of two indigenous women committed by an indigenous man in the Tribe Serro Y, in the Midwest region of Brazil. The defendant tried to kill the victims Edenir and her mother Ramona using a machete. He went to their house when they were alone and started attacking the victim Ramona, who got hurt but managed to escape to seek help. Meanwhile, Edenir, who has hearing disabilities was attacked by surprise and stabbed to death. He hid her body

by dragging it into brushwood. The alleged motive of the crime was the debt of 20 litres of honey that one of the victims had with the aggressor. The survivor Ramona speaks on the criminal case referring to information about the defendant and reporting back to the day of the crime. She mentioned that the defendant is the son-in-law of the tribe chief (*cacique*) and that they all got along fine before that day and the defendant would even eventually get some water or tea from their house. Ramona also tells her she was aware that he had killed two other persons before, one of those to steal money from. The criminal report in the decision does not give further information about the context of the crime nor about the cultural/ethnical background. The Court of Appeal decision confirmed the first instance one to find the defendant guilty for the two feminicide (TJMS 2019).

The third case happened in the Southeast region of Brazil and it refers to a case where the defendant and the victim Dulcinéia met on a bar and, after drinking and flirting, they decided to leave together to have sex elsewhere. When they were about to start the sexual act, the defendant could not have an erection and the victim complained about it. The defendant got upset about her complaints and stabbed her neck with a knife. She tried to run away but fell, lifeless. He got rid of the knife and ran away from the crime scene. The appeal intended to reform the first instance decision to remove all qualifying circumstances, including feminicide. The court decision accepted the defence's arguments to push away the feminicide circumstance. It maintained the conviction for homicide qualified by futile motive and hindering the victim's defence (TJSP 2019).

The fourth case is an appeal to reform the first instance decision to, among others, push away the qualifying circumstance of feminicide on a case happened in the Northeast region of Brazil. It occurred in a motel, a common facility in the country where people rent by hour for sex purposes. The defendant approached the victim Marília, who was waiting for the public transport at a bus

stop and offered her a ride on a Hilux he was driving. They went together into a motel bedroom for sexual purposes and, according to his hearing, when he answered affirmatively to Marília's question about whether he had a wife, she slapped him in the face and he reacted by strangling her to death. He mentioned he could not remember what happened, but at some point, he confessed he had strangled the victim on a perturbed state of mind under the effect of drugs. He carried her body and disposed of it by an avenue on another neighborhood. The case indicates that the defendant had practised the exact same crime to another woman in the same place in the previous day. According to the investigation, the defendant owns a car wash and the vehicle he used was one of his client's car. He alleged that he was under the effect of cocaine and because he had a fancy car that day, he thought he might be able to go out with someone. The Court denied the appeal and maintained the first instance conviction to take the case into the popular jury for the evaluation of all criteria presented at the denunciation (TJBA 2019).

The fifth case comes from the Midwest region of Brazil, in the capital of the country and it refers to an attempted feminicide against a trans woman named Jéssica. Among the arguments on the appeal, the defendant asked to exclude the feminicide qualifying circumstance based on the argument that the criminal law does not allow an analogy in *malam partem*, meaning one that could worsen the defendant's condition. Jéssica was on the streets working as a prostitute when two men and a teenage boy approached her violently. They started beating her with different instruments such as rocks, a chair and sticks, besides punching and kicking her. Meanwhile, they would shout at her telling her to 'become a man' and threatening her life, saying they would kill her soon. She managed to escape running into a snack bar, but once she left, they continued to beat her up with different instruments. As they did not manage to fulfil their feminicide intent, when she spoke in the criminal process, she mentioned that they first tried to rob her and then, they

started beating her up and cursing her as a “disgraced, fag” and telling her she could not stay there. She mentioned that what motivated them was the hate toward her existence as a trans woman. The aggressions only ceased because a peasant intervened and, meanwhile, she managed to escape. The Court maintained the first instance decision to take the judgment of the case as feminicide to the popular jury, refuting the defence’s argument (TJDFT 2019).

The last of the six cases occurred in the state of Rio Grande do Sul, South of Brazil. The defendant attacked the victim Vaneci when she was walking at a street in their neighborhood. They met previously as he had done construction work for the victim and her husband. At the time, the defendant had hit on the victim and she demonstrated that she was not sexually interested in him. On this day, as she was passing by the street, he dragged her into some scrubland and raped her anally. After it, he strangled her up to death. Vaneci’s body was found shortly after, as a neighbor overheard some screams and asked for her husband to check it. When the police went to the defendant’s house, he had lit a candle and the policeman mentioned it as another proof for the fact that he had killed her, as he would be praying for mercy. The defendant’s request to reform the sentence was denied by the Court, that confirmed the first instance decision to take the case as a feminicide into the popular jury (TJRS 2018).

I chose to use a feminist decolonial lenses to analyze three aspects in the reasonings of the decisions: the chosen arguments to justify the feminicide; the judicial responses to intersecting vulnerabilities on the cases and; the silencing of women’s voices and histories at the criminal procedures.

Case-Decisions' Reasoning and Judicial Meaning-Making of the Term

I start by engaging with the arguments used to either discard or, in most of the cases, confirm the feminicide. The reasoning of the decisions reveal the first traits of this judicial approximation of non-intimate feminicides and, therefore, the trajectory to be covered henceforward. The confirmation of the first instance's conviction does not necessarily equate to the reflection about gender as resulting from unequal power relations. In this subsection, I articulate the contributions provided by the decisions to the meaning-making of feminicide, as much as situations where there was a reproduction of gender stereotypes even when they enforce the law and punish the perpetrators.

Whereas the sampling represents a small total number of non-intimate cases at the time of the data collection, it confirms Latin American's tendency to criminalize considering that five out of six decisions confirmed the first instance verdict to condemn the defendants. The decisions considered that there are sufficient elements to maintain the feminicide circumstance and raise defendants' punishment accordingly (increasing the punishment from 6-20 years on a common homicide to 12-30 years of imprisonment, based on particular elements from each case). By problematizing the tendency to criminalize I do not mean to affirm that these decisions need to be reformed. This overall tendency in Latin America to criminalize as a response to social inequalities and violence composes, as discussed in the theoretical chapter, the result of the colonial legacy in Brazil. The trend to punish is rooted in the idea that there are some bodies that need to be domesticated and segregated to establish the order. When feminists find a fissure to introduce a gendered instrument into legal structures, it translates into a more representative space even as it does not have the capacity to, by itself, dismantle a historical gendered colonial project. The criminalization agendas

usually (re)emerge after emblematic cases of human's right violation, as a subaltern strategy to raise state attention to long-term demands for addressing this violence. By shedding light into cases of extreme violations and state's inertia towards it, such as in the Maria da Penha case, civil society pressures state's into implementing policies and properly approving or enforcing the law. The approval of such laws resulting from a collective pressure usually reflects a long process of dissatisfaction as they illustrate a pattern of inequalities not adequately addressed by the state. Authorities from diverse political positions are invited to take a stand on the mobilization to criminalize human rights violations. As much as these laws result from mobilizations, they start to integrate political agendas and gain visibility through social pressure from different sectors of society. Therefore, embracing or refuting them gets translated into political capital for people in charge of the different branches of government. After the approval of a law to criminalize human right's violations, sometimes the state assumes it has provided an official response to it, preventing it to be held accountable for eventual inertia. Nonetheless, as mentioned in the previous chapter, no policy is sufficient to confront this millenary social problem by itself, particularly an ill-considerate use of criminal justice. If the approval of criminal laws becomes the only response to confront social inequalities, it might represent, ultimately, a disengagement instead of a commitment to confront gender-based VAW, especially in postcolonial spaces. The selective segregation of bodies on these spaces contributes to reinforce binarism and to breed the ongoing colonial project of the nation. The criminal policies contribute to challenging these oppositional binarisms (e.g. good and bad, colonizer and colonized, women and men, victim and aggressor, heterosexual and homosexual, among others), where state's responsibility is reduced to the incarceration whereas it does not necessarily build bridges into a less violent society. The punishment and the segregation of bodies, even when coming from progressive agendas, continue

to selectively exclude black, poor and non-normative bodies. The colonial structures and understanding of the world had not been reformulated. In this regard, it is necessary to acknowledge that the criminal policies demand engagement from the state and the combined investment on preventive, protective and integrated policies in order to decenter the focus from solely individual accountability to also rethink the structure as a whole.

Among the six decisions of non-intimate feminicides at Brazilian courts, five confirmed the qualifying circumstance and one considered that the feminicide did not occur. The only decision that refuted the feminicide refers to the case where Dulcinéia was murdered after she complained that her partner could not have an erection. The justification used by the judge was that 'the defendant and victim met at the day, therefore, they did not have a domestic or affective relationship'. He adds that the 'simple fact that the victim is a woman does not classify the crime as a feminicide'. The theorization about feminicide developed thus far aligns with the judge's argument that not every women's murder is a feminicide. Indeed, if every women murder was a feminicide, there would be no need for two different circumstances to classify it. Occasions of women's murder after a theft or a traffic accident might not be motivated by the victim's gender. Even in these cases, the feminicide cannot be dismissed at first. For instance, a car accident might be intentionally provoked by a sexist driver who understands that women should not drive or that women are bad drivers and any mistake they make should be punished. This example serves to illustrate a need for gender lenses on every women's murder, at first. In Dulcinéia's case, the judge did not engage with the crucial circumstances of the crime. The imprecision lays on the argumentation to discard a non-intimate feminicide by looking at circumstances from an intimate one, naming the absence of a relationship between victim and perpetrator. While the premise that not every women's murder is a feminicide is true, other elements on the case indicate, I believe,

that the homicide based on gender. The case not only involves sexual intimacy, one of the most common contexts for non-intimate feminicides, but it illustrates expectations over gender performances. This episode of violence locates on a scenario where they were supposed to have sex, but they could not as the defendant lost the erection. When this occurred, he "failed" to "prove his virility" which is a constructed symbol of masculinity, heteronormative and sexist theorizations about men's power and their active role compared to women. In order to be perceived as masculine and thus to achieve a higher social status, men should outwardly adhere to these dominant and highly valued aspects of manhood in contemporary terms, such as virility. Otherwise, they may be relegated to an inferior position in this binary understanding of the world, which makes him closer to the women's –inferior– position in society (Connell 2018). Furthermore, when Dulcinéia complained about his performance, she not only plays an active role by demonstrating her discontentment refuting the expected passivity on this relationship with men, but she also evidenced his failed masculine performance. That was the moment when the defendant stabbed her with a knife on the neck, violently murdering her. This relation and the violence produced from it is highly gendered and results. As I understand it from discrimination and contempt against women from the second clause of feminicide. Furthermore, the decision reforms the decision of the singular judge, on the very first stage of judgment. The Court decision prevents the case from being analyzed by the jury, pushing the feminicide away when the suspicion should operate in favor of the society –and therefore against the defendant. He ended the discussion about the application of the feminicide circumstance maintaining the other two qualifying circumstances (hindering the victim's defence and futile motif), interrupting further gender analysis of non-intimate feminicide with few words to contribute to the theoretical discussions.

On the other five cases, the court of appeals confirmed the defendant's conviction on the crime of feminicide, increasing the punishment accordingly. While in some of these decisions, the topic of feminicide is directly and deeply addressed, others either do not refer to the facts or choose one out of the many narratives to justify their decision. In this regard, I find it relevant to mention that, despite the fact that the judges did not mention it, all the cases from the corpus of analysis find a correspondent example or definition at both the Latin American and Brazilian feminicide guidelines (BRASIL 2016; OACNUDH 2014) either based on some particular characteristic from the victim or on the context of the crime: indigenous women, women with disabilities, on a context of sexual violence, sex workers, transphobic murder.

On some of the cases such as the one that refers to the murder of the Ramona and Edenir, the judge confirms the qualifying circumstance without addressing its reasons. The defence claimed that for a feminicide to happen it is not enough that the victims are women and that on the case of the two indigenous women there were no aspects of 'contempt or discrimination against women'. The judge maintained the feminicide referring back to the 'impossibility to analyze shreds of evidence unless they are manifestly opposed to the evidence on the process'. While some of the cases brought elements that supported the configuration of the feminicide, Ramona and Edenir's decision only refers to an economic motivation. A possible gender-related motif does not appear in the narratives from the decision. The pieces of information from the decision demonstrated either that the case was not motivated by the victim's gender or that the investigation and prosecution did not scrutinize the gender aspect up to the point to surely discard or confirm it. Other aspects of the investigation and persecution that are not integrated into the decision might shed light into evidence of the aspect of 'contempt or discrimination against women', absent from the narrative of the decision. Nevertheless, the judge's silence towards a question raised on this

challenging aspect of the decision opens space for new appeals and demands a committed (re)analysis of the gender element from the system.

Among the decisions that address the feminicides, they both contribute to and benefit from the theoretical discussions. They reveal that as much as some discourses contribute to pose new questions and deepen the theoretical discussions, others use this space to reinforce gender stereotypes, even when punishing the individuals who committed these crimes. I intend to analyze these decisions understanding their individual perspective for the peculiar case, as much as contextualizing them on a larger scheme. In some cases, the judges leave behind central pieces of argumentation that could contribute to strengthen the decision and to create a relatable jurisprudence for future similar cases. As an example, in Marília's case, the decision confirmed the feminicide, on short terms, arguing that the "evidence and context of the crime point out to the occurrence of feminicide. This adds up to the fact that on the previous day the defendant had killed other women by using the same *modus opperandi"(TJBA 2019, 24, translated by me).* The final argumentation did not connect the context of sexual intimacy and the fact that the victim reacted when the defendant answered her question that he did have a wife. These elements correspond to central pieces related, once more, a context of sexual intimacy and a women's reaction within this context. Nonetheless, the judge decided to leave these pieces of information out of the decision. Likewise, on Mara's case, for instance, the decision does not mention the victim's refusal to perform oral sex without a condom to justify the feminicide, nor his family-history when his mother was killed on a similar condition in front of him. The hate circumstance was brought by the defendant on his hearing when explaining his motivation to kill Mara and the other five women sex workers because he "felt something very strong, that made him kill them". Even though these informations compose the decision's report, the data are not translated into the reasoning of the

decision. This illustrates a common ground for further unexplored argumentation by the judiciary that might strengthen the case-decision.

The only appeal that was not based on circumstances of the crime, but on the characteristics of the victim was Jessica's. In her case, the defendants claimed the exclusion of the feminicide based on the argument that "Jessica was born as a man" (TJDFT 2019, 19, my translation). The judge first acknowledged the divergences about the application of feminicide law –and Maria da Penha– for trans women. While part of the doctrine understands that criminal laws to confront VAW apply to trans women under particular conditions such as the reassignment surgery and name change, others understand that they are applicable regardless. The judge dedicated a section on the decision to explain why the feminicide circumstance should be taken into the jury. Among the arguments, he used a jurisprudence that applied Maria da Penha's law for trans women without surgery or name change and a bill that intends to reform Maria da Penha's Law to trans women. In this decision it is possible to, first of all, comprehend the importance of the trajectory of enforcement of Maria da Penha's law, considering that many of the decisions –this included– refer back to questions that had been addressed by it. Furthermore, the judge referred to aspects of the crime such as the hateful violence used against Jessica while the aggressors would shout at her to "become a man" and curse her using words such as "fag". The judge pointed down to the innovative and complex issue, which interpretation is yet to be constructed by jurisprudence, especially on the non-intimate aspect of feminicide and who is the addressee of the law. Upon recognizing all these divergences, he chooses to confirm the application of feminicide referring to the double vulnerability that trans women go through because of both the discrimination based on their gender and gender identity. Despite the discussion during the approval of the law to withdraw gender aiming to prevent trans people to benefit from it, these cases confirm the argument that the approval of the law does not end the

theorizations about the topic. This represents one of the contributions from the judiciary to reinvent the meanings of feminicide, confirming its broader aspect to encompass trans women despite the conservative articulations to push otherwise as discussed in the second chapter.

In Vaneci's case, the judge partially attended to the defendant's appeal, as he considered the feminicide circumstance and discarded the foul motive. The judge dedicated a large part of the decision to the explanation of the socially constructed roles of men and women on society and how this affects the society as a whole and this particular case, where the defendant did not accept that the victim refused to sexually engage with him. He had harassed her previously, while doing construction work on the house where she used to live with her husband. Knowing she did not want to sexually engage with him, he attacked her by surprise on another day, raped and murdered her. The judge takes five pages of the decision to explain what configures as a feminicide and why the concrete case fits into the description. The case contributes to the remaking of the term by referring back to the idea of women's vulnerability on intimate relationships and the submission of 'female' to 'male'. The judge borrows elements of intimate feminicides to convey the idea of men, who even unfamiliar to women, do not accept their refusal and punish them when they if they do not want to attend their requests. The judge connects the characterization of feminicide with the refusal of the victim to engage in sexual activity with the defendant. Even though the law eliminated the word gender compared to the bill as discussed before, the decision referred back not only to the word gender, inasmuch as to the gender studies as a source of knowledge necessary for the better understanding of such cases. Furthermore, the case contributes to complexify the idea of necessarily harsher punishment for feminicides, as the judge rejected the prosecutor's argument to include both feminicide and foul motif as qualifying circumstances. He maintains the first and excludes the later, as the arguments for both related to the victim's refusal to engage on

sexual relation with him. He thoroughly argues for the maintenance of only the feminicide circumstance as a better fit for the aforementioned reasons. The decision contributes to the understanding that harsher punishment does not necessarily represent a progressive gender agenda, inasmuch as a well-reasoned decision strengthens the theorization of feminicide while turning the legal sphere into a just space, both honoring the victim and enabling for a more just defence for the defendant.

Mara's case was taken to court because the defendant did not agree with the first Court decision to consider the homicide as aggravated by three different circumstances from Brazilian's Criminal Code: hindering the victim's defence, foul motivation and feminicide. I focus on the last two motivations, as the defendant argues that there is no evidence that he practiced the crime based on the victim's gender and that the combination of foul motive and women's discrimination would represent double jeopardy or *bis in idem* – which is forbidden by the national legislation. The Court decided to maintain all three circumstances into a popular jury. The articulations on the case demonstrate interesting gender aspects that even with the most severe punishment, might not have been addressed by the decision. Altogether, the decision brings diverse elements but in order to discard the defendant's claim of *bis in idem*, the judge indicated that, in reality, these two qualifying circumstances had different reasonings. The feminicide occurred as the "crime was committed against a woman (a more fragile target), denoting in the case the superiority of the perpetrator that confirms the practice of feminicide", while the foul motivation because "he nurtured hate towards prostitutes such as the victim". Nonetheless, the other elements were left out of the reasonings, such as the women's refusal to perform oral sex without a condom, the defendant's confession of other five feminicides against prostitutes previously, their common condition as sex workers at the street, the defendant's family history with a mother who was

murder victim as a prostitute, the disposal of the victim's body and belongings on a cornfield, are all related to the 'contempt or discrimination to women's condition'. All the elements reflect the defendant's refusal to understand these women as subjects of their own lives and sexuality. Mara's existence, similar to Vaneci's, was reduced to a subject to fulfilling the defendant's desires if her body did not correspond to a person with desires and will. On his hearing, the defendant explained he choked the victim because he wanted to avoid getting arrested as Mara wanted to get out of the car naked. Theoretically, if that was the case, he would not be the one arrested, considering that she was the one committing the crime of indecent exposure. Nonetheless, this argument, even if a *pro forme* one, sheds light into understanding of a body that cannot be held accountable, a body that belongs to someone else and as a belonging, this 'other' would be responsible for her attitudes. It is a belief on an absent body –supposedly disconnected to a mind with will– one that only exists if obedient to the function of serving a man.

These elements approximate from those used to confirm the feminicide at the inter-American Cotton Fields' jurisprudence, meaning the context of the crime, the profile of the victim and the *modus operandi* used to commit it. As much as on the Mexican case, Mara's murder was not the first with the same *modus operandi* in the city of Maringá. On her case as much as on the other victims', the defendant meticulously chose the victims because they were sex workers on a vulnerable condition working at the streets. He then raped and killed them, disposing their bodies and belonging on the cornfields, for Mara and the other five women he confessed to having murdered. The police investigation anticipated the place where the body and her belongings could be, demonstrating that the state was aware of the systematic pattern of these crimes in the city. The *modus operandi* points down to the analogical confirmation of feminicide by the IACHR, as much as to the Latin American Protocol definition of systematic sexual violence, as the repetitive

"killing of women who had been kidnapped, tortured, and/or raped" (OACNUDH 2014). The possible argument of the similarity of the cases coming from an analogical Latin American jurisprudence did not come up on the decision, as a possible conventionality control to strengthen the aforementioned Latin-American *ius commune*.

Even when applying the harshest punishment to the aggressor, the arguments reproduced gender hierarchies and a patriarchy state. To understand that women are a 'fragile target' and 'men are superior' is a discourse reproduced by the court that essentializes a dichotomic division that places women in an inferior position. It disregards the social function of the norm constructed through feminist contributions to indicate how these essentializing differentiations had served to justify a supposed inferior position occupied by women. Furthermore, if we assume the premise used by the court that women are fragile compared to men, then, technically, every women's murder would become a feminicide. If that was the intention of the law, as already mentioned, there would be no need to specify two different clauses for a feminicide. The Feminicide Protocol (2016, p. 23), in a matter of fact, presents prostitution as one of the examples of the feminicide on the second clause. It is presented as one of the categories that carries a lot of stigmas, when men would justify the killing of women because "they deserved ", "she was an evil woman", "her life was not worth it". Even though there is a minority of men in prostitution, it is a highly gendered work and because of the objectification and sexualization of women, it expresses the idea of men's unlimited access to women's bodies and sexuality in accordance with their economic power. It usually relates to hate and misogyny towards the stereotype of a woman who 'sells herself', as in the case. In that sense, the Protocol assumes that aggravating circumstance of feminicide would be configured not only because the victim is a woman, rather also because of the hate feeling the defendant nurtured from a woman who chooses to use her body regardless of moral values of a society that would

expect her to preserve her body and image. Often the investigation is not properly conducted and prevents a proper analysis and classification of the case by despising important questions for the testimonies or not collecting important pieces of evidence. In this case, the thorough investigation with many aspects brought to the decision supported an understanding of the hate and misogyny that the defendant had towards women and sex workers, particularly.

In this section, we navigated through the arguments used to problematize the enforcement of the law, as much as the contribution from some of these judicial discourses into re-making the term. These decisions offer insights to reflect upon the subsumption of the theoretical discussions into the legal practice. The enforcement of feminicide law did not, necessarily, represent the judiciary's reflections on the gender aspect. Regardless of the confirmation of the criminalization, the decisions provided an overview of most of the cases reinforcing gender stereotypes either expressly or by not investing much space on the discussions about it. While half of the decisions did not extensively address the feminicide circumstance, others provided important contributions either to broaden the aspect related to the victim, as to politicize some circumstances for the occurrence of the crime, serving as a reference to similar decisions in the future. Nonetheless, the findings that do address the qualifying circumstance of the research provide a myriad of reasonings and contexts that contribute to re-make meanings for the term feminicide. These first decisions and their reasonings, even when a few, orient future decisions. They illustrate, even within this small sample, the ongoing disputes and progress provided by the criminalization of feminicide. They also demonstrate how this feminist instrument has changed criminology itself, not only posing new questions, but also demanding new methods from the judiciary system and inasmuch as the judges were invested on it, new dialogues were invested with not only better decisions at the moment, but space for reflection and creation of new practices within the judiciary.

Race, Gender, Ethnicity, Disabilities: Articulating Intersectional and Decolonial Aspects

It is not possible to discuss women as a homogenous category. Women are different, plural and so it is the expected performance of womanhood according to time, space and history. Even though the imposition of gender roles affects all women, the oppression operates differently according to multiple aspects such as race, class, sexual orientation, gender identity, age, rural origin, disabilities, among others. Altogether these aspects intersect with other varied and complex factors of exclusions to potentialize discriminations and demand specialized assistance from the state. Intersectional and postcolonial feminisms have pointed out the lack of reflexivity and the need to collectively reflect about women's experiences as diverse, yet singular.

The first time the concept of intersectionality appeared was in 1989 when the professor and jurist Kimberlé Crenshaw used it to describe the overlapping vulnerabilities while analyzing three judicial cases related to both racial and sexual discrimination (Crenshaw 1991). When looking at their decisions, she concluded that the court's narrow view of discrimination demonstrated the conceptual limitations to judge these issues as one-sided rather than on their complexity. The courts either see the case as racial discrimination because it has happened to a black person or as gender discrimination as the victim was a woman. However, what happens to black women was erased from this framework of legal protection. The law seemed to forget that black women are both black and female and therefore, subject to multiple discriminations. State's inefficiency to address these peculiarities produced other discriminations, as, for instance, white women were better assisted by the state. The initial axis of intersection among gender, class and race vulnerabilities does not represent a prescription. It rather serves as an initiation for the dialogue between "several horizontal and vertical dimensions of social inequality" (Bürkner 2011, p. 181).

The intersections reflect not only on the oppressions but also on how the state correlates to them. When it starts to incorporate mechanisms to repair historical inequalities, it is often incapable of addressing it on the complexity that it holds. Intersectionality, in that sense, represents both a lens for analysis of power imbalance, inasmuch as the instruments to confront it.

Decolonial feminists approximate to intersectional theorizations by claiming the necessary consideration of colonization onto these intersecting axes of discriminations (Lugones 2010). Lugones contributes to the decolonial studies adding the coloniality of gender to the conceptualizations of coloniality of power, knowledge and being. She develops a criticism towards Quijano's decolonial contributions that makes use of a European and heteronormative concept of gender that do not correspond to the reality of colonial and post-colonial spaces. She identifies the coloniality as a necessary intersecting element to overcome colonial domination when discussing violence against women. Accordingly, it is not less relevant to affirm categories such as womanhood, blackness or poverty, than it is to understand why some women are racialized, enslaved, sexualized or othered. Lugones (2010) discusses a two-folded gender system, where the clearer side relates to the hegemonic gender relations among white bourgeoisie men and women and; its more obscure side is the erasure of gender relations existing before colonization. She explains that gender conceptions only consider white heterosexual men and women. Moreover, she discusses how violence against people of color affects women of color differently, as they cannot ally to men of color because they can be the perpetrators. She denounces the erasure of indigenous woman or black woman on the mainstreaming gender theorizations. The consubstantiality of oppressions is different than taking intersectionality into perspective. Therefore, she points out the need to build decolonial feminisms that transverse the silences on modernity and coloniality regarding gender.

On the six-case-sample found on the jurisprudence, it is possible to identify intersecting categories such as ethnicity, disabilities, religion, gender identity and class. The information about some of these categories came up accidentally through the chosen narrative of the cases. The only case disclosing data about race or ethnicity is the case from Ramona and Edenir. The circumstantial disclosure of the information does not reflect a mandatory field on the system that enables the construction of public policy. From the cases, I can only guess that there might be some women of color among the seven victims. This supposition is based on the class element present in the case-narratives of a country where poverty is deeply racialized due to the processes of colonization that usurped material and culturally from black and indigenous people. Along those lines, the research with data from the health system –the same used to justify the approval of feminicide law– (Júlio Jacobo Waiselfisz, FLACSO (Organization), and Sede Acadêmica--Brasil 2015)– identified that within ten years (2003-2013), the number of white women's murder decreased on a rate of 9,8%, while black women's murder raised on the alarming percentage of 54%. Posing the question about the absence of systematized data about race and ethnicity is the first necessary one taking into consideration the repercussions of colonization to the black and indigenous population. Among the six cases, two refer to feminicides occurred against prostitutes working at the streets. Even though there is no racial with data about prostitution in Brazil, 95% of street sex workers are poor (Mazzieiro 1998) and, on a society where poverty is extremely racialized and gendered (Carneiro 2011), we can deduce that the sex workers at the streets are, massively, black women. However, once again, the absence of data erases this social marker and prevents further analyses on how to better address the intersectional axes of discrimination.

The findings on this research demonstrate that violations from different backgrounds arrived into the system: poor, indigenous, rural, prostitute, trans and disabled women were among these six

cases from the corpus of analysis. Nonetheless, the denunciation and even the conviction of feminicide perpetrators does not necessarily translate into the addressing of the intersecting axes of discriminations they experienced.

I chose to focus on Ramona and Edenir's case as it not only discloses multiple aspects of vulnerabilities at once, but it also refers to violence committed against indigenous women, which relates to a core discussion from the decolonial framework. By reading their case, it is possible to identify the intersection of as many elements as race, ethnicity, gender, class, coloniality, disabilities and geographical inequalities. The challenges represent not only the intersecting vulnerability on the crime itself, inasmuch as on the state responses to it. Among indigenous people, women are the ones who have to negotiate constantly over their cultural and gender oppressions. From the tribal fights in the XX century up until today, women's bodies have been - as much as the land - territory for enemies and space for occupation and violations (Segato, 2011). Their agency is under constant threat: from gender stereotypes that undermine women; to white colonizers violence, invasion and sexual exploitation and; feminist imposition of western political agendas. Thus far, exterminating indigenous women's bodies, voices and cultures serve to continue white hegemonic nation's project.

When discussing gender identities in the different ethnical contexts, there is divergence among indigenous scholars about whether white justice system can contribute to the pluri-ethnical concept of justice. While some authors argue it is impossible to benefit from a colonizer justice system or from mainstreaming feminism to confront inequalities within the different ethnic group (Cunningham 2006); others (Sierra 2008) understand it is important to dispute legal discourses both from inside and outside of the tribe, dialoguing with existing – yet problematic – structures. Indigenous women have pointed out the blind spot on mainstreaming feminism in terms of looking

at indigenous, black and poor women. When seeking spaces of commonality in the gender agenda, "feminism has excluded or marginalized indigenous experiences that seem to deviate from mainstreaming agenda" (Cunningham, p. 58, 2006). Accordingly, cases of violence/feminicides committed by indigenous men inside of the tribe such as Ramona and Edenir's represent the 'perfect victim-case'[9] that authorizes the white justice system to interfere and 'protect' the fragile victim, meanwhile imposing both ideas about justice and gender. For Cunningham, indigenous feminists cannot dissociate their gender advocacy from auto governance and plurinationality demands. In that sense, their post-colonial positionality enhances mainstreaming feminisms –and I would add 'western concept of justice'– while transforming it.

Upon moving onto the decision's narrative, the arguments used by both the defendant's lawyers and by the judge portray discriminatory elements that dialogue with the theorizations developed thus far. His lawyer argued that because the defendant "is not integrated into society, his knowledge and understanding is totally different from civil society"[10] (TJMS 2019, translated by me), reason why the futile circumstance should be discarded. Firstly, I find it interesting to discuss the argument of 'integration'. This idea remits to something/someone that is outside, who is the 'other', the one to 'get integrated into something/somewhere'. The idea of integration demands a concept of exclusion, where the indigenous population are situated. They are not the ones 'integrating' white people. They are 'the others', the ones who, hopefully, receive state's assistance –if it gets to those spaces– and get some 'integration into society'. There is an idea of what society is, which does not encompass indigenous culture and traditions. Belonging to some indigenous ethnicity would mean, in the end, that you are an outsider and therefore, your 'different knowledge

9 Here I refer to Spivak's metaphor of white British men praised for saving brown women from brown men as the white male savior of this 'perfect victim'. (1988, p. 92).

10 [...] não integrado à sociedade e, portanto, suas noções e conhecimento são totalmente diferentes da sociedade civil].

and understanding' prevents you from fully comprehending your actions on 'civil society'. Furthermore, I find it curious how the use of the word 'civil society' in this context. I suppose the defendant meant to say 'society', as the context and discussions do not connect to the idea of civil society. By saying that indigenous worldview is 'different from civil society', the lawyer implies that the place where indigenous population could belong to –if and when integrated– is among civil society, not necessarily among the state structures or elsewhere.

Likewise, on the justification to deny the appeal, the judge rejected the defense's arguments, alleging that 'the defendant is integrated into society, since he can speak Portuguese and that he even declared to work on a farm'[11] (TJMS 2019, translated by me). The judge continued the discussion about 'integration' by declaring that because the defendant speaks the language –imposed during colonization– and works on a farm, he is able to fully understand the crime he committed. I articulate that these narratives presuppose, first, that there is a homogenous idea of indigenous identity in the nation; second, that indigenous population are the ones who are outside and, therefore could be integrated into 'society' and; third, that criteria such as language and labor would define this 'integration', and; fourth, that there is a totalitarian correlation between the integration and capacity to understand as if 'understanding' derived from 'getting integrated' on a supposedly straight relation.

Regarding the first articulation, as discussed in the first chapter, indigenous populations are multiple, belonging to diverse ethnicities and speaking many languages. Therefore, it is not possible to reduce indigenous people to a unique concept of ethnicity, culture or worldview (cosmovision). Doing so would mean, once again, erasing their plural and singular existences. This

11 [...] o recorrente encontra-se inserido na sociedade, possuindo domínio da língua portuguesa e, inclusive, declarou exercer atividade laboral remunerada em fazenda.

is one of the reasons why both the Latin American and the Brazilian guidelines to investigate feminicide (Gomes, Menicucci, and Rousseff 2016; OACNUDH 2014) suggest the incorporation of anthropological expert testimony or judicial anthropological evidence on cases of feminicides involving indigenous people. The expertise on the ethnicity involved would bridge up language and culture barriers between the judiciary and the indigenous ethnicity in the case. A necessary language and cultural translation could provide instruments to comprehend survivors and testimonies hearings, inasmuch as particularities from the ethnical context that might not be so obvious for white justice. Additionally, it would offer an idea of how that indigenous ethnicity understands this crime and even if they had eventually addressed it within its own understanding of justice. By reading the decision, it is not possible to extract if there was any ethnical adjustment to this particular case. The decisions restrain its analysis to the object questioned by the appeal. Nonetheless, the presence of these experts could contribute to unveil the crime and its meanings. Even though it is important to recognize the need for translation, a reservation is necessary for its limitations. The expert testimony/evidence will –to some extent–demonstrate the translator's understanding of the facts. Violence committed against indigenous women exterminates more than their bodies. It paralyzes their personal dreams as much as it contributes to destroy a collective ethnical identity. The judiciary system does not account for this deprivation. The criminal response to the perpetrator of the feminicides does not provide further response to prevent or effectively narrate these stories.

These reflections unveil limitations from the legal system to confront violence against indigenous women. It problematizes the discussion of ethnicity, gender and colonization and it blurry the lines of binary concepts of white/indigenous; civilized/savage; center/margin; male/female; urban/rural; disabled/people without disabilities; nature/economic resources considering the fact that the

perpetrator of the feminicide against indigenous women was a man from the same indigenous tribe and the alleged motivation of the crime was an economical one. Violence against indigenous, black, trans, poor, disabled women continues to symbolize an instrument to breed national ideas of whiteness, masculinity and European, as a legacy of imperialism in Brazil. The jurisprudence shed light into the limitations of the Judiciary to accommodate indigenous worldview. The lack of further information about the context in the court decision hinders a more complex analysis of the cases. Nevertheless, it also reveals the lack of adjustment of the case, that regardless of its complexity were apparently judged like any other feminicide.

Even though feminist decolonial theories offers instruments to decentralize discourses of power and bridge dialogues with marginalized voices, the question about its practices remains. It is essential to continue to problematize its praxis since State's structures are both a product and they breed colonization models in Brazil. Segato (2011, p. 11) points to the move towards legal pluralism and indigenous practice of law in order to consider human acts in its different spheres and contextual variation as a flexible tool out of an enclosed on itself. Therefore, its criticism contributes to fade the lines of an existing Eurocentric model to start moving towards one that would take different living experiences – historically disregarded - into consideration. In the cases that the data appears in the narrative apparently the procedure adopted does not reflect an adjustment to address eventual specificity of the case. Different demands and vulnerability might demand specific assistance from the state. An analysis of a context of murder after rape on a context of intimacy, where an adult woman might comply with expected gender performance is different than the analysis of an indigenous murder within the tribe. These important differentiations reflect on the investigation of the crime and on the narratives and reasoning chosen on the judicial decisions. Furthermore, as mentioned previously, it also corresponds to a further

need for a dialogue among services for adequate referral that goes beyond legal assistance. The decolonial analysis that takes these multiples oppressions into account is indispensable for studying the forms of violence that might have affected the femicide victim before, during, or after the crime. These intersections, once identified, have to be taken into account on the particularities of the case, inasmuch as, related to a global structure of domination.

Victimization and Women's Silencing on the Judiciary

One of the central questions that have driven me to this work relates to the systematic erasure of women's voice produced in individual relationships once a feminicide occurs; this erasure is often reproduced by state structures as well as when a case of women's right violation gets into the system. I conceive this silencing as a political project to reinforce the passive role expected of women. The unequal presence of women in the spaces of power and decision-making impact these erasures as much as it (re)produces them. Recovering women's life stories, voices and memories represents a counter-political project: one that seeks to consider women's contributions to construct alternatives for their lives and for a more just system. Therefore, in the last subchapter of this research, I discuss the silencing of women through the non-intimate feminicide cases, articulating the space relegated to women's memories and voice in the decisions about the violation of their lives.

Historically, women were either excluded or restricted in their participation in the judiciary. In spite of the recent trajectory towards a transition to a more gender-egalitarian system, there are ongoing consequences of this exclusion. Women did not occupy legal professions or were the addressee of the norms in the past and if they did so, it often meant a limitation of their rights (e.g. restriction for women's political participation until 1932). The scenario reflects the historical processes of exclusion of women in these spaces of power and decision-making in the judiciary.

Only recently, some research has been released about the gender profiles in the judiciary system. There is a recent growth in women's presence among those 'saying the law' within the judicial structures, although they continue to be the minority in the higher courts or in more powerful positions in the system. In the 1900s, women were only 25% of judges. Meanwhile, in 2018, they represented 38% of judges (44% on the first Courts and 16% of higher courts) (CNJ 2018). The research demonstrates an accelerated and recent transition towards a more gender-egalitarian judiciary system. Still, the majority of judges are men, and in agreement with those percentages, the six court of appeal judges deciding over the occurrence of feminicide (studied in this research) are men.

In addition to the absence of women in important decision-making spaces, the silencing is also produced by the exclusion of knowledge produced by women: scholars, activists and survivors. Along these lines, it is relevant mentioning that despite the fact that feminist have long been producing theoretical contributions on criminal law and especially on the topic of VAW, judges referred to the doctrine produced by male authors to justify their decision. Almost all of the cases I analyzed here cited the contributions of a renowned jurist who produces criminal doctrine in Brazil. In his book commenting on the criminal code, Nucci defines feminicide as the elimination of women's lives, because they are fragile sex, physically and culturally (Nucci 2018). The theorization demonstrates that despite his contributions, there is a lack of dialogue with feminists theorizations that led to a homogenizing understanding of women when addressing feminicide.

The definition understands women as necessarily more fragile physically compared to men, which might be true in the majority of cases, but definitely not all of them. Besides, the cultural disadvantage does not transform women into 'more fragile', it rather reveals how cultural conceptions are constructed to undermine women so that we cannot fully express our

voices/strength. Taking the idea of a fragility culturally and physically without locating it with time, space and history contribute to its static position rather than questioning it. These judicial excerpts could become a place for critical dialogue with those few women in positions of power, and with knowledge produced by women on different instances, however, it is not yet possible to affirm such critical exchange happens; unfortunately.

The judiciary is a product as much as it (re)produces a new model of colonization. It is entitled to the authority to decide over 'other' people's conflicts and bodies. As a part of the state, the judiciary system reproduces distinct oppressions. It supposes it has the best answer and it gives the final word on private and public conflicts. It is like the judiciary is the authorized 'I' who speaks on behalf of the 'vulnerable' other. By exploring the deliberate creation of the subaltern within the oppressed "other" (Said 1978), I use Spivak's text 'Can the Subaltern Speak?'(Spivak 1988) to problematize that while in a context of naturalization of gender-based violence, where women as the subaltern cannot speak, or, even if they speak, they are not listened to in a system created in the context of colonization. The disidentification of women whose demands come into the judiciary after a violation relates to gender and also with the agency. On a clear disparagement between 'victims' with no agency to intervene on the legal procedures, professionals from the system do not only hold agency about their own lives, but also the power to decide over other people's lives and bodies. Meanwhile, these women are either absent because their lives were eliminated by violence or the space relegated to their voice is resumed to their perception about the crime. As survivors, the system allows them to speak if their position reproduces a passive role. If not disenfranchised, these 'others' might not be able to prove their need for state's assistance, dangerously dislocating the imaginary lines between those supposed to be the 'others' and those making judicial decisions. Borrowing Spivak's metaphor of white British men praised

for saving brown women from brown men, the judiciary seeks this role as the white male savior of these 'perfect victims'. In cases of feminicide, the image of a perfect victim gets materialized on a body that no longer can speak or on a vulnerable victim with a limited space to talk: if the victim speaks they can only do so regarding the violation. The idea of a woman who comes lifeless into the judiciary as a criminal procedure gives the state two different opportunities, one is to reinforce the silences and the other is building a trajectory that might honor these women's lives through its narratives.

Feminist theorization has questioned the supposed objectivity and neutrality of knowledge production, inviting us into practices of self-reflexivity. As an activist and professional who assisted survivors and participated in the process of mobilization for the law, I struggle(d) to find my voice as a researcher. I realized I had to ethically reflect on my own positionality to avoid reproducing the 'othering' that I problematize. At first, many theorizations seemed far from practical discussions and reinforced rather than confronted some dichotomies: theories and praxis, victim and abuser, 'I' from the 'other'. On an exercise of navigating through these identities and reflecting on my own questions, I realize that there is much of myself I have to face as I investigate the topic. By reflecting on different spaces where I became silent either because of violence/exclusions or lack of self-reflexivity, I perceived the limitations of the systems to build new alternatives. When analyzing opportunities where I could not speak and I was not heard, I realized the importance of articulating my own narrative which contributes to addressing my issues rather than accepting someone else's (the state's) prescription of an (homogenous) answer. In cases where I spoke, both politically, academically or analytically, it transformed the experience into a possibility of resistance and movement from within. Along these lines, the dialogue with survivors and with women in general is an instrument to take women's individuality into account, therefore,

honoring these women's memories. My reflection about my own silences made me aware of the difficulties –and importance– to transverse these internal and external lines.

Incorporating this feminist demand does not necessarily mean creating a dialogue that listens to women's voices on these non-intimate feminicides. The incorporation of a feminist demand into the judiciary does not transform it all of sudden. However, it bridges possible new dialogues. There is a need to continue to dispute spaces among the theoretical legal studies to consider and incorporate feminists' theorizations, inasmuch as they embody knowledge of the victims (MacDowel Santos 2018). Meanwhile, the feminicide law was mainly produced by feminists and many of them had spoken about it and produced new formulations on the topic, the judges have mainly consulted and referred back to discourses, testimonies and doctrine produced by men. On Mara's murder, for instance, there is a long and detailed narrative of the crime and its investigation. It is described as a concatenated discovery of evidence (such as the missing piece of the defendant's car, the victim's belongings and body in different places) with a heroic outcome that found out about the authorship not only of the crime but of many other similar crimes committed by the defendant. The case was the only among the six to name the professionals involved and praise them for successfully untangling the case, singling out investigators and police chief –all men– on the space usually relegated to describe the crime or elements of the investigation. It also narrated aspects of the defendant's life unrelated to the crime (such as that he had been divorced previously, that he had a son who passed away). Meanwhile, we do not hear about Mara, the other victims, nor from the defendant's wife at the time of the crime, with whom the police found him. The voice of women directly affected by the crime does not appear on the decision. Conversely, in the only two cases that women survived, we do not hear their voices on the criminal process beyond aspects related to the event that almost killed them.

Through theoretical discussions about the shift on the concepts of 'victim' to adopt 'survivor' in instead, I realized that these discussions came late for most of the cases I analyzed, considering that these women did not survive to claim their agency. If on one hand survivor's voice is one essential aspect of feminist decolonial practice, on the other, on cases where these are fatal victims, the narratives and live stories become a relevant instrument for collective grieving, honoring those lives. Ramona who survived a murder attempt and lost her daughter in the same incident spoke on the procedure solely by answering questions about the crime and about her relationship with the perpetrator. There is no reference on the case about how she articulated her emotions after what happened to her or to her 36-year-old-disabled daughter killed on that day or to how she articulated or perceived the crimes from her worldview. Similarly, Jéssica narrated thoroughly the episode that attempted against her life, reproducing specific details of these painful memories in order to provide the state with as much information as possible to address the extent of each defendants' participation on the crime, repeating the words they used threatening her life and discriminating her because of her gender identity as a trans woman. Women's biography disappears on criminal procedures that only reveals information about the circumstances of their (attempted) murders. Their life-stories remain untold. Numbers, procedures, papers recreating deaths create distance from life. A life that could be any, and that somehow is on this bridge between us and the others. On the judge's inquiries, there is not a single question about women's need for assistance, desires or feelings before it all occurred. This is yet another sign of the silencing women are put through when their cases are considered. Feminist's attempt to regain of women's agency through multiple voices problematizes this unidimensional understanding of women as passive victims seeking judicial assistance. Speaking about our stories (as ourselves, as survivors, or in the name of those

who can no longer speak) represents a trajectory that transforms these spaces to honor women's memories and existences.

Feminists contributed to criminology studies, among other things, by paying attention to the victims, particularly in the area of interpersonal violence, denouncing practices that re-victimized women who sought justice. (Daly and Chesney-Lind 1988). One of these practices is the use of language as an instrument to reproduce oppressions through a sexist and patronizing language. The shift from the words 'offender' and 'victim' to 'perpetrator' and 'survivor' represented a change that recognizes VAW as something that is surmountable through the recognition of women's agency and a reflection over perpetrator's behavior. These discussions revolve around an articulation that goes beyond the semantic aspect but relates to an understanding of the situation as a transitory one, one where women can receive the adequate support and leave a violent relationship and men can reflect and cease reproducing violent relations. These theoretical contributions are crucial reflections to the daily praxis of assistance on cases of VAW, moving past the patriarchal idea of 'protection' for capable adults to walk towards a humanized assistance to confront VAW.

Accordingly, I related to Benita Parry's materialistic criticism of Spivak's work, that understands that the subaltern has agency (2005). Parry suggests a joint remembrance of the material past with a critique of the contemporary condition, remaining unreconciled to the past and unconsoled by the present. By considering women's agency in the perspective of non-victimization, it conceives a position that is not static as the one that can never speak, but rather recognizes the limitations while 'inconsolably' engaging with existing structures at the moment. Even though recognizing the limitation of hearing certain women's voices, especially the more you add layers of oppression, these women are heard (in a model that does not value their voice) and they contribute to produce

a new model of legality - with their embodied knowledge and with political activism. Even recognizing that some voices are underestimated compared to others, they still contribute to producing a new model of legality. Perry argues that by rejecting the agency of the subaltern groups, Spivak actively denies their capacity to reclaim their space in history. It is through the recognition of women's agency when they can still speak that new possible responses can be constructed on the judiciary, academia and beyond it. The multiplicity of women's voices that cannot speak (either because of individual violence or state's patronizing responses) represent the possibility to build multiple judicial responses, not only to the cases, but to reformulate the system as a whole, from

e margins, through strengthening women's voices in the judiciary system.

The homogenization of the state's response silences women while imposing a model that might not contemplate them. There resides a need to listen to these voices to build new spaces within the system. I could only look at these issues once I started questioning my own silences and these distances I created between theory and practice, 'I' and the 'others'. After working with VAW for years, I could not see myself recognized on these grave violations of women's rights I assisted. I did approach them through feminist ethics and care, but I was for long unable to perceive how the 'I' is connected to these women who are silenced and, once there is this openness, there is space for building new responses in instead of using those that, even though they sound feminist and progressive, they become colonial when assuming that all women could perceive and need the same strategies from the state. What seems like a rather small change, represents a crucial shift into listening to women's voice in every individual case while recognizing the structural conjuncture. It represents building new collective strategies but applying them individually and accordingly. When reflecting about my own silences as a feminist activist, professional and a

researcher under constant analysis, I assume the challenge of using my voice to honor these women whose voices can no longer be heard and to reflect about opportunities where, despite the fact that women are speaking, they are not heard. When women are speaking, it does not necessarily mean that they are heard. The incorporation of a feminist demand into the judiciary does not transform it out of sudden. However, it bridges possible new dialogues. There is a need to continue to dispute spaces among the theoretical legal studies to consider and incorporate feminists' theorizations, inasmuch as the embodied knowledge of the survivors (MacDowel Santos 2018) transform not only the narratives but also the responses from a more plural place within the judiciary system.

Conclusion

The same system that quite recently authorized VAW and women's murder on certain cases (such as for a husband to defend his honor in relation to his wife's behavior) had to adjust to incorporate a feminist instrument that confronts gender-based killing of women. Feminicide law brought important innovation for the judiciary to engage with these avoidable killing of women. Throughout this work, I addressed the question of how the judiciary system can contribute to confronting gender-based violence whilst judging feminicide cases. Using a feminist decolonial framework, I problematized essentialist dichotomic classifications [such as theory and praxis, men and women, European and the others (Said 1978)] to demonstrate how, in reality, they represent categories created to maintain power relations and hierarchies. As a counterpoint, my research focused on the exclusions produced by the system and on the multiple voices –heard and unheard– contributing to confront VAW and preventing these avoidable deaths.

The analysis of the process of naming and criminalizing feminicide demonstrated, first of all, the potency of feminist mobilization in bringing awareness to gender-based murders of women. Furthermore, it contributed to the reflections about the meaning-making of the term as an unfinished project, modified within time, space and different political perspectives. The interpretations of feminicide are continuously recreated by different feminist theorizations and by its practical application. Along these lines, the analysis of the term feminicide demonstrated the interchangeably theoretical and practical contributions from the meaning-making sphere into the legal sphere. The concept contributes to organizing strategies that confront the gender-based murder of women, criminalization being one of them. The contributions from the legal categorization transforms the term in the judiciary, and likewise different theorizations enable more reflection upon its criminal aspects.

The mobilizations around feminicide shed light into the protagonist role played by Latin American feminists that denounced VAW. The discussions in the region contribute not only to critical thinking about gender-based violence, inasmuch as about the correlation between the process of colonization in Latin American countries and the violence reproduced against black, indigenous, disabled, non-normative and poor people's bodies. Therefore, the discussion about naming and criminalizing feminicides strengthened a common front in Latin American strategizing at the local level, as much they contributed to the problematization of the topic internationally, through participation and advocacy on the human rights systems.

The incorporation of feminicide as a criminal law composes a recent stage of the transition on the legal systems to incorporate gender-sensitive legislation. After approving the law 13.104/2015, Brazil became the 16th country in Latin American to adopt criminalization as one of the strategies to confront VAW. The law highlighted the topic of women's death in the country from the initial

collective discussions about the approval of the law to a constant mobilization to maintain the state accountable by enforcing the law and articulating new responses to prevent feminicides. In a slow transition from legislations that discriminated against women to ones that recognize and address it, feminicide law benefited from the trajectory of approximately ten years of implementation of Maria da Penha's law, the first to confront domestic and family VAW. Nonetheless, because feminicide differentiates intimate and non-intimate feminicide, it represented an innovative aspect for the judicial analysis of women's murder. The incorporation of non-intimate feminicides represented a new dialogue which brought up the need to adjust the system accordingly (named organizing training, discussions, protocols and databases), beyond the discussions solely related to the case-decision. It reveals that there is a trajectory yet to be traversed to better address the cases, especially for women who do not comply with a homogenous idea of white, heterosexual, cisgender, abled womanhood that is, in reality, a product of the process of exclusion in the country. Nonetheless, as these feminicide cases that come from diverse places get into the system, as aforementioned, it contributes to remake the conceptualizations of the term and to reflect on the necessary adjustments into the system to consider the cases' multiple axes of intersecting vulnerabilities.

One of the stages of the methodological procedure consisted of the research for jurisprudence cases of non-intimate feminicides on the courts of appeals. Among the findings, there were only six decisions of non-intimate feminicides for the first four years of law enforcement. When compared to hundreds of intimate feminicides cases, the results revealed the smaller occurrence of non-intimate feminicides, inasmuch as the need to maintain the judiciary accountable for possible mistakes identifying and typifying the latter. The data collection also evidenced the need for better and unified databases in the country that can provide separate data for each of the clauses, in

addition to important sociodemographic data such as race. The current absence of such information hinders the formulation of preventive policies to confront VAW.

Considering the number of cases from the initial jurisprudence, we cannot claim that they represent a pattern of judicial contributions on non-intimate feminicide decisions. Nonetheless, they provide relevant elements to evaluate the possibilities and limitations of judicial contributions. The cases among the sample portrayed feminicides committed against indigenous women, disabled women, prostitutes, rural women, poor women and trans women. All the cases correspond to those listed on the Latin American and Brazilian guidelines to confront feminicides. Despite the orientation on the guidelines, the decisions either did not address the intersecting vulnerabilities (such as the absence of anthropological evidence on the indigenous feminicide) or did not disclose information that would support its analysis. Along these lines, when the state failed to address them such as in the case of the indigenous women, it reinforced violence against women and the colonial project by reproducing 'coloniality of gender'(Lugones 2010) over women's bodies.

Five out of six decisions confirmed the feminicide, although some of them did not extensively –or at all– justify its reasons hindering an analysis. The confirmation of the feminicide circumstance from the first court decision did not automatically represent a sensibility to address the gender element on non-intimate feminicides. Among the decisions that engaged with the newly incorporated instrument, some of them reinforced women's inferior position compared to men on its reasonings, while others offered not only a criminal response but also contributed with relevant elements as a precedent for future cases, inasmuch with the theorization of feminicide.

While acknowledging the importance of a decolonial research to reflect about feminicide court decisions, I recognize its limitations. Engaging with discourses that reproduce homogenizing

practices such as law and academia represent a limited but important contribution from a decolonial perspective. Considering legal disputes over the right to narrate (Said 1978; Bhabha 1994), the process of implementing the law represents a continuity of the struggles that preceded the criminalization. Therefore, there is an ongoing dispute on the enforcement of this feminist instrument. If the judiciary system tends to reproduce the erasure of certain bodies, I use decolonial feminist approach to problematize the absence of women on spaces of power and on the systematic silencing of women's voices: professionals, activists and survivor's voices are muffled in the system. In the six-decisions, the judges –all men– mainly referenced back to other men as a doctrine to base their decision. Women's voices are erased from the criminal procedure either because of individual violence that exterminates their/our lives or because of the limited space relegated on the criminal procedures to narrate their life stories, desires and perspective. The technical aspects of the investigations and legal procedure tend to erase women's life story. There is no space in legal procedures for these women's life stories, no space to understand their projects or which dreams were interrupted with their homicide. The tendency to universalize a response to VAW erases the multiple existences of women. It does not consider women's subjectivity, nor social categories such as race, colonization, class, body, sexual orientation, gender identity, among others into consideration. These cases illustrate the ongoing dispute over the narration of this recently incorporated feminist instrument.

The legal sphere proves to be one out of many that attempts to confront VAW and prevent feminicides. The criminal system usually tends to reproduce the exclusion of bodies that fall out of the colonial project, bodies that are black, poor and non-normative. When Dulcinéia, Jéssica, Vaneci, Marília, Edenir, Ramona and Mara cases get into the judiciary, state and society as a whole had failed with them and with women, in general. It failed to build a counter-hegemonic project

where women's lives are not threatened because of their gender. Adequately addressing these cases when they get into the judiciary represents a contribution to confronting VAW on the particular cases, but also as a whole, honoring women's lives and voices when the crimes already happened. Despite recognizing the limitations of existing structures, from a decolonial feminist perspective, we dispute this space and maintain the judiciary accountable for addressing and preventing feminicides.

Many questions that emerged from this work remain as potential future investigations considering my primary choices for this research, as much as the limitations of time and scope. Among them, I point to the correlation between the construction of evidence during investigation and prosecution and the decision about the occurrence of feminicide. A possible analysis that scrutinizes the elements from the investigation might establish the weight of evidence and inform the best instruments to support judicial decisions. Furthermore, I assert that it is relevant to discuss a possible correlation between the sociodemographic profile of professionals within the system and its influence on the outcome of the decision, considering the hypothesis that a more plural embodied presence on the judiciary might influence the decision to take more intersectional vulnerabilities into consideration. Ultimately, continuous analysis of the upcoming decisions might provide elements for comparative analysis and a broader overview of judicial contributions while judging non-intimate feminicides.

The history narrated by the Brazilian justice system reproduces those of the colonizers' point of view. The walk towards incorporating the plurality of women's voice into the judiciary recognizing their individuality, but also the socio-political context that can make them more vulnerable consists of a daily practice to transform not only judicial theories, but practices within the system. Effectively listening to women's voice, live-stories and desires offers a more effective

response for individual cases that also contributes to create alternatives to prevent VAW and transform the system into a more just, democratic and plural space. Even though the existing structures are limited and representative of the existing inequalities, the incorporation of a feminist discussion provides not only space for the reformulation of the state's responses, inasmuch as the reformulation of the structures themselves. The gender element provided by the feminicide law poses new challenges that can, in turn, be addressed by constant dialogue and an ongoing educational process for all people involved in the debate. These first cases of non-intimate feminicides revealed both the limitations and the possible contributions the judiciary system has to offer; among those, some yet-to-be-built contributions were highlighted in the process of disputing the term feminicide itself. Considering the historical processes in Brazil that marginalized bodies through the 'coloniality of gender', these dialogues must be built from the margins, with the contributions of women and feminisms in the plural.

Bibliography

Almeida, Suely Souza de. 1998. Femicídio algemas (in)visíveis do público-privado. [Feminicide and the (in)visible cuffs from public-private]. Rio de Janeiro, RJ: Revinter.

American Convention on Human Rights - "Pact of San Jose, Costa Rica." 1969. http://books.google.com/books?id=4KtAAAAAIAAJ.

Ballestrin, Luciana. 2013. "América Latina e o giro decolonial." Rev. Bras. Ciênc. Polít. Revista Brasileira de Ciência Política, no. 11: 89–117.

Barcaglione, Gabriela, Silvia Chejter, and Centro de Encuentros Cultura y Mujer. 2005. Femicidios e impunidad. [Femicides and impunity]. Buenos Aires: Centro de Encuentros Cultura y Mujer. http://books.google.com/books?id=aIHaAAAAMAAJ.

Bhabha, Homi K. 1994. The Location of Culture. London; New York: Routledge.

Bobbio, Norberto. 1996. The Age of Rights. Cambridge: Polity Press.

Bobbio, Norberto, and David Archard. 1996. "The Age of Rights." Radical Philosophy., no. 80: 42.

Bott, Sarah, Alessandra Guedes, Jennifer Adams Mendoza, and Ana Ruiz-Celis. 2012. Violence against Women in Latin America and the Caribbean: A Comparative Analysis of Population-Based Data from 12 Countries. Washington, D.C.: Pan American Health Organization.

BRASIL, Presidência da República. 1916. Lei nº 3.071, de 1º de janeiro de 1916. Código Civil dos Estados Unidos do Brasil. [Law 3071. Brazilian Civil Code]. http://www.planalto.gov.br/ccivil_03/LEIS/L3071.htm.

Brasil, Presidência da República. 1940. Código Penal. [Criminal Code]. DECRETO-LEI. Vol. No 2.848. http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm.

———. 2006. Lei nº 11.340 - Lei Maria da Penha. Cria mecanismos para coibir a violência doméstica e familiar contra a mulher, nos termos do § 8º do art. 226 da Constituição Federal, da Convenção sobre a Eliminação de Todas as Formas de Discriminação contra as Mulheres e da Convenção Interamericana para Prevenir, Punir e Erradicar a Violência contra a Mulher; dispõe sobre a criação dos Juizados de Violência Doméstica e Familiar contra a Mulher; altera o Código de Processo Penal, o Código Penal e a Lei de Execução Penal; e dá outras providências. [Law 11.340/2006 - Maria da Penha's Law. It creates mechanisms to confront domestic and family violence against women]. Lei nº 11.340 - Lei Maria da Penha. http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm.

———. 2015. Lei 13.104/2015 - Lei do Feminicídio. Altera o art. 121 do Decreto-Lei nº 2.848, de 7 de dezembro de 1940 - Código Penal, para prever o feminicídio como circunstância qualificadora do crime de homicídio, e o art. 1º da Lei nº 8.072, de 25 de julho de 1990, para incluir o feminicídio no rol dos crimes hediondos. [Law 13.104/2015 - Feminicide Law. It changes article 121 from the Decree-Law 2.848, to include feminicide as a qualifying circumstance of homicide crime]. Lei nº 13.104. www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13104.htm.

BRASIL, Presidência da República. 2016. Diretrizes para investigar, processar e julgar com perspectiva de gênero as mortes violentas de mulheres [Guidelines to investigate, process and judge women's death with gender perspective]. http://www.onumulheres.org.br/wp-content/uploads/2016/04/diretrizes_feminicidio.pdf.

Brazil, Orçamento e Gestão Ministério do Planejamento, and Instituto Brasileiro de Geografia e Estatística. 2000. Censo demográfico 2000: características gerais da população : resultados da amostra. Rio de Janeiro: IBGE. http://catalog.hathitrust.org/api/volumes/oclc/61709213.html.

Cabrera García and Montiel Flores vs Mexico. 2010 131. Inter-American Court of Human Rights.

Carcedo, Ana. 2000. Femicidio en Costa Rica 1990-1999. [Feminicide in Costa Rica 1990-1999]. Costa Rica, San José: Organización Panamericana de la Salud Programa Mujer, Salud y Desarrollo. https://www.researchgate.net/publication/272505545_Femicidio_en_Costa_Rica_1990-1999?channel=doi&linkId=54e765920cf2b199060c32c4&showFulltext=true.

Carcedo, Ana, and Montserrat Sagot. 2002. Femicidio en Costa Rica: 1990-1999. [Feminicide in Costa Rica: 1990-1999]. San José, Costa Rica: Consejo Directivo de Violencia Intrafamiliar del Sector Salud.

Carneiro, Sueli. 2011. Racismo, sexismo e desigualdade no Brasil. [Racism, sexism and inequality in Brazil]. São Paulo: Selo Negro.

Cavasin, Sylvia. 2015. Entenda a polêmica sobre a discussão de gênero nos planos de educação.[Understand the controversy about the gender discussion in education plans].

https://www.ebc.com.br/educacao/2015/07/entenda-por-que-e-importante-discutir-igualdade-de-genero-nas-escolas.
Chakian, Silvia. 2016. “O crime de feminicídio e as perspectivas de seu enfrentamento pelo Ministério Público. [Feminicide crime and the prospects to confront it through Prosecutor’s Office].” In Ministério público: pensamento crítico e práticas transformadoras, edited by Tiago Cintra Essado and William Terra de Oliveira, 283–308.
CNJ, Conselho Nacional de Justiça. 2018. “Perfil Sociodemográfico Dos Magistrados Brasileiros. [Sociodemographic Profile of Brazilian Judges].” Brasília. https://www.cnj.jus.br/wp-content/uploads/2011/02/5d6083ecf7b311a56eb12a6d9b79c625.pdf.
Connell, Raewyn. 2018. Masculinities.
Conselho Nacional do Ministério Público. 2012. “Relatório Nacional da execução da meta 2: um diagnóstico da investigação de homicídios no país. [National report on the goal number 2: a diagnostic of homicide investigation in the country].” Brasília. https://www.cnmp.mp.br/portal/images/stories/Enasp/relatorio_enasp_FINAL.pdf.
Council of Europe. 2014. Convention on Preventing and Combating Violence against Women and Domestic Violence - Istanbul Convention. ISBN 978-92-871-7990-6. https://www.coe.int/en/web/conventions/full-list.
Crenshaw, Kimberle. 1991. “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics.” Feminist Legal Theory : Readings in Law and Gender / Edited by Katharine T. Bartlett and Rosanne Kennedy.
Cunningham, Myrna. 2006. “Indigenous Women’s Visions of an Inclusive Feminism.” Development 49 (1): 55–59.
Daltoé, Camila Mafioletti, and Mariana Seifert Bazzo. 2018. “Primeiro ano de vigência da Lei do Feminicídio: casos concretos analisados pelo Ministério Público do Estado do Paraná. [First years of feminicide law enforcement: concrete cases analyzed by Paraná’s Prosecutor Service].” In Violência contra a mulher : um olhar do Ministério Público brasileiro. [Violence against women: a perspective from Brazilian Public Prosecutor Organization / Conselho Nacional do Ministério Público. – Brasília: CNMP, 2018. 244 p. il., by Conselho Nacional do Ministério Público, 104–17. Brasília. https://www.cnmp.mp.br/portal/images/FEMINICIDIO_WEB_1_1.pdf.
Daly, Kathleen, and Meda Chesney-Lind. 1988. “Feminism and Criminology.” Justice Quarterly Justice Quarterly 5 (4): 497–538.
Data Popular, and Instituto Patrícia Galvão. 2013. “Percepção da Sociedade sobre Violência e Assassinatos de Mulheres. [Society’s perception about violence against women and women’s murders].” https://assets-institucional-ipg.sfo2.cdn.digitaloceanspaces.com/2013/08/livro_pesquisa_violencia.pdf.
Federal Senate. 2013. “Relatório final da Comissão Parlamentar Mista de Inquérito sobre a violência contra as mulheres. [Final report from the Joint Parliamentary Commission of Inquiry on Violence against Women].” Brasília. https://www12.senado.leg.br/institucional/omv/entenda-a-violencia/pdfs/relatorio-final-da-comissao-parlamentar-mista-de-inquerito-sobre-a-violencia-contra-as-mulheres.
Flauzina, Ana Luiza Pinheiro. 2008. Corpo negro caído no chão: o sistema penal e o projeto genocida do Estado brasileiro. Rio de Janeiro, RJ, Brasil: Contraponto.
Flores, Rocío Villanueva. 2012. “Tipificar o feminicídio: a ‘fuga’ simplista ao direito penal? [Typify feminicide: a simplistic ‘scape’ to criminal law?].” In Contribuições ao debate sobre a tipificação penal do feminicídio/femicídio. [Contributions to the debate of typification of feminicide/femicide]., by CLADEM, 143–66. Peru: Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer. https://assets-compromissoeatitude-ipg.sfo2.digitaloceanspaces.com/2013/10/CLADEM_TipificacaoFeminicidio2012.pdf.
Galanti, Valeria, and Emanuela Borzacchiello. 2013. “IACrtHR’s Influence on the Convergence of National Legislations on Women’s Rights: Legitimation through Permeability.” International Journal of Social Sciences II (1): 7–28.
Gomes, Nilma Lino, Eleonora Menicucci, and Dilma Rousseff. 2016. Diretrizes nacionais feminicídio: Investigar, processar e julgar Com perspectiva de gênero as mortes violentas de mulheres. Brasília: ONU Mulheres. http://www.onumulheres.org.br/wp-content/uploads/2016/04/diretrizes_feminicidio.pdf.
Góngora-Mera, Manuel Eduardo. 2013. “Interacciones y convergencias entre la corte interamericana de derechos humanos y los tribunales constitucionales nacionales: un enfoque coevolutivo.” In Estudos avançados de direitos humanos: Democracia e integração Jurídica: Emergência de um novo Direito Público, by Flávia Piovesan, Armin von Bogdandy, Mariela Morales Antoniazzi, and Christian Tomuschat, 312–37. http://www.sciencedirect.com/science/book/9788535268812.
González et al. (“Cotton Field”) v.Mexico. 2009, 205 Corte IDH 1. Inter-American Court of Human Rights.

Grewal Kiran. 2012. “Reclaiming the Voice of the Third World Woman.” Interventions: International Journal of Postcolonial Studies 14 (4): 569–90.

Guidon, Niéde. 1992. “As ocupações pré-históricas do Brasil (excetuando a Amazônia). [Pre-historical Brazilian occupation (except Amazon)].” In História dos índios no Brasil. [Indigenous history in Brazil]., by Manuela Carneiro da Cunha, 37–52. São Paulo: Companhia das Letras. http://www.etnolinguistica.org/hist:p37-52.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women - “Belém Do Pará Convention.” 1994. https://doi.org/10.9783/9780812205381.711.

Jackson, Margaret. 1994. “Jill Radford Diana E.H. Russell Femicide: The Politics of Woman Killing 1992 Open University Press.” Women’s Studies International Forum 17 (4): 449–449. https://doi.org/10.1016/S0277-5395(05)80052-4.

Karam, Maria Lucia. 2015. “Os paradoxais desejos punitivos de ativistas e movimentos feministas.” Justificando, March 13, 2015. http://www.justificando.com/2015/03/13/os-paradoxais-desejos-punitivos-de-ativistas-e-movimentos-feministas/.

Keck, Margaret E, and Kathryn Sikkink. 1998. Transnational Networks on Violence against Women. Ithaca, N.Y.: Cornell University Press.

Kumpulanian, Justin D. 2016. “How the Colonial Doctrine of Vacuum Domicilium Continues to Influence American Foreign Policy.” Blog: JDK (blog). November 23, 2016. https://blogjdk.wordpress.com/2016/11/23/how-the-colonial-doctrine-of-vacuum-domicilium-continues-to-influence-american-foreign-policy/.

Lagarde, Marcela. 2006. Feminicidio: conferência pronunciada en la Universidad de Oviedo, el 12 de enero de 2006. [Feminicide - Conference at Oviedo University, 12 of January 2006]. Oviedo: Asociación Feminista de Asturias.

Levitt, Peggy, and Sally Merry. 2009. “Vernacularization on the Ground: Local Uses of Global Women’s Rights in Peru, China, India and the United States.” Global Networks 9 (4): 441–61.

Linda Carty, and Chandra Talpade Mohanty. 2015. “Mapping Transnational Feminist Engagements: Neoliberalism and the Politics of Solidarity.” In The Oxford Handbook of Transnational Feminist Movements, by Rawwida Baksh and Wendy Harcourt.

Lugones, María. 2010. “The Coloniality of Gender.” Globalization and the Decolonial Option /., 369–90.

MacDowell Santos, Cecília. 2018. “Women’s Human Rights, Legal Mobilization, and Epistemologies of the South.” In O Pluriverso Do Humano: Lutas Pela Dignidade e Direitos Humanos. [The Pluriverse of the Human: Struggles for Dignity and Human Rights]., edited by Boaventura de Sousa Santos and Bruno Sena Martins. https://www.researchgate.net/publication/313204992_Women's_Human_Rights_Legal_Mobilization_and_Epistemologies_of_the_South.

Maitrayee Mukhopadhyay. 2015. “Gendered Citizenship in the Postcolony: The Challenge for Transnational Feminist Politics.” In: The Oxford Handbook of Transnational Feminist Movements, by Rawwida Baksh and Wendy Harcourt.

Maldonado-Torres, Nelson. 2007. “Sobre la colonialidad del ser: contribuciones al desarrollo de un concepto. [On decoloniality: About coloniality: contributions to the development of a concept].” In El Giro decolonial: reflexiones para una diversidad epistémica más allá del capitalismo global, by Ramón Grosfoguel and Santiago Castro-Gómez, 127–68. Bogotá: Siglo del Hombre.

Maria da Penha v. Brazil. Case 12.051. Report No. 54/01. 2001. Inter-American Commission on Human Rights.

Martins, Fernanda, and Ruth M. C. Gauer. 2020. “Poder Punitivo e Feminismo: percursos da criminologia feminista no Brasil. [Punitive Power and Feminism: paths from feminist criminology in Brazil].” Revista Direito e Práxis 11 (1): 145–78. https://doi.org/10.1590/2179-8966/2019/37925.

Mazzieiro, João Batista. 1998. “Sexualidade Criminalizada: Prostituição, Lenocínio e Outros Delitos - São Paulo 1870/1920. [Criminalized sexuality: prostitution, pimping and other offenses - São Paulo 1870/1920].” Rev. Bras. Hist. Revista Brasileira de História 18 (35): 247–85.

Mazzuoli, Valerio de Oliveira. 2018. Curso de direito internacional público. [Public international law course]. São Paulo: Revista dos Tribunais.

Merry, Sally Engle. 2006. Human Rights & Gender Violence: Translating International Law into Local Justice. Vol. 21. Berkeley, Calif.: University of California, Boalt Hall School of Law.

———. 2011. Gender Violence a Cultural Perspective. Malden, Mass: Wiley-Blackwell.

Mignolo, Walter D. 2003. Histórias locales / diseños globales: colonialidad, conocimientos subalternos y pensamiento fronterizo. [Local Histories/ global lessons: coloniality, subaltern knowledges and frontier thinking]. Madrid: Ediciones Akal.

Mohanty, Chandra Talpade. 1991. “Under Western Eyes: Feminist Scholarship and Colonial Discourses.” Dangerous Liaisons: Gender, Nation, and Postcolonial Perspectives Colonial Discourse and Post-Colonial Theory: A Reader.

Nowak, Matthias. 2012. “Femicide: A Global Problem.” Small Arms Survey Research Notes, February 2012.

Nucci, Guilherme de Souza. 2018. Código penal comentado. [Commented criminal code]. 18th edition. Rio de Janeiro: Forense.

OACNUDH. 2014. “Protocolo latino-americano para investigação das mortes violentas de mulheres por razões de gênero - femicídio/feminicídio. [Protocol to investigate women’s violent death].” http://www.onumulheres.org.br/wp-content/uploads/2015/05/protocolo_feminicidio_publicacao.pdf.

OHCHR. 1993. Vienna Declaration and Programme of Action. https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx.

ONU Mulheres. 2015. “Nota Pública da ONU Mulheres Brasil: sanção presidencial da lei de tipificação do feminicídio. [Public note from UN Women Brazil: Presidential sanction of the feminicide law].” March 9, 2015. http://www.onumulheres.org.br/noticias/nota-publica-da-onu-mulheres-brasil-sancao-da-lei-de-tipificacao-do-feminicidio/.

Orlando, Evelyn de Almeida. 2017. “A retirada do termo ‘gênero’ dos Planos Estaduais e Municipais de Educação: algumas questões a pensar. [The withdrawal of the term ‘gender’ from State and Municipal Education Plans: some reflections].” Jornal Pensar a educação em pauta, October 23, 2017. https://pensaraeducacao.com.br/pensaraeducacaoempauta/a-retirada-do-termo-genero-dos-planos-estaduais-e-municipais-de-educacao-algumas-questoes-a-pensar-exclusivo/.

Palma-Solis, M, C Vives-Cases, and C Alvarez-Dardet. 2008. “Gender Progress and Government Expenditure as Determinants of Femicide.” ANNALS OF EPIDEMIOLOGY 18 (4): 322–29.

Parry, Benita. 2005. Postcolonial Studies: A Materialist Critique. London: Routledge.

Pasinato, Wânia. 2011. “‘Femicídios’ e as mortes de mulheres no Brasil. [Feminicides and women’s death in Brazil].” Cadernos Pagu, no. 37 (December): 219–46. https://doi.org/10.1590/S0104-83332011000200008.

Piovesan, Flávia. 2014. “Controle de Convencionalidade, Direitos Humanos e Diálogo entre Jurisdições. [Conventionality control, human rights and dialogue among jurisdictions].” In Controle de convencionalidade: um panorama latino-americano: Brasil, Argentina, Chile, México, Peru, Uruguai. [Conventionality control: a latin-american overview: Brazil, Argentina, Chile, Mexico, Peru, Uruguay]., by Luiz Guilherme Marinoni and Valerio de Oliveira Mazzuoli. Gazeta Jurídica. http://bdjur.stj.jus.br/dspace/handle/2011/71229.

Quijano, Aníbal. 2000. “Colonialidad del poder y clasificación social. [Coloniality of Power, Eurocentrism, and Latin America].” Journal of world-systems research 11 (n. 2): 342–86.

Reis, Toni, and Edla Eggert. 2017. “Ideologia de gênero: uma falácia construída sobre os Planos de Educação Brasieliros. [Gender ideology: a fallacy built around the brazilian Education Plans].” Educação & Sociedade 38 (138): 9–26. https://doi.org/10.1590/es0101-73302017165522.

Rifiotis, Theophilos. n.d. “Alice Do Outro Lado Do Espelho: Revisitando as Matrizes Das Violências e Dos Conflitos Sociais.” Revista de Ciências Sociais. Accessed July 31, 2020. https://www.academia.edu/3059019/Alice_do_outro_lado_do_espelho_revisitando_as_matrizes_das_viol%C3%AAncias_e_dos_conflitos_sociais.

Ríos, Marcela Lagarde. 2004. “¿Fin al feminicidio? Comisión Especial para Conocer y Dar Seguimiento a las Investigaciones sobre los Feminicidios en la República Mexicana y a la Procuración de Justicia Vinculada. [End of feminicide? Special Commission to articulate and follow up on the feminicide investigations in México].” Cámara de Diputados - México.

———. 2010. “Preface.” In Terrorizing Women: Feminicide in the Américas, edited by Rosa Linda Fregoso and Cynthia L Bejarano, xxv. Durham [NC: Duke University Press.

Russell, Diana E. H. 2011. “The Origin and Importance of the Term Femicide.” Personal website. December 2011. https://www.dianarussell.com/origin_of_femicide.html.

Russell, Diana E. H, and Roberta A Harmes. 2001. Femicide in Global Perspective. New York: Teachers College Press.

Saccomano, Celeste. 2015. “The Causes of Femicide in Latin America.” MA in International Relation., Barcelona: Institut Barcelona d’Estudis Internacionals. https://www.ibei.org/ibei_studentpaper24_71980.pdf.

Said, Edward W. 1978. Orientalism. New York: Pantheon Books.

1986. “Introdução à Sociologia da Administração da Justiça. [Introduction to the Sociology of Justice Administration].,” November. https://estudogeral.sib.uc.pt/handle/10316/10797.

Santos, Boaventura de Sousa. 2007. Another Knowledge Is Possible: Beyond Northern Epistemologies. London; New York: Verso.
Santos, Cecilia Macdowell, and Wania Pasinato Izumino. 2005. “Violencia contra as mulheres e violencia de genero: notas sobre estudos feministas no Brasil. [Violence against women and gender violence: remarks on feminist studies in Brazil].” Estudios Interdisciplinarios de América Latina y el Caribe (Israel) 16 (01): 147–64.
Sarlet, Ingo Wolfgang. 2011. “Notas sobre as relações entre a Constituição Federal de 1988 e os tratados internacionais de direitos humanos na perspectiva do assim chamado controle de convencionalidade. [Considerations on the relations between the 1988’s Constitution and human right treaties through the so-called conventionality control].” Revista do Tribunal Superior do Trabalho, December 2011.
Scales, Ann. 2006. Legal Feminism Activism, Lawyering, and Legal Theory. New York: New York University Press. http://site.ebrary.com/id/10172681.
Schulhofer, Stephen J. 1995. “The Feminist Challenge in Criminal Law.” Univpennlawrevi University of Pennsylvania Law Review 143 (6): 2151–2207.
Segato, Rita Laura. 2006. “Qué es un feminicidio: notas para un debate emergente. [What is a femicide: notes for an emerging debate].” o, Universidad de Buenos Aires. 12 (Universidad de Buenos Aires.).
———. 2010. “Femi-geno-cidio como crimen en el fuero internacional de los Derechos Humanos: el derecho a nombrar el sufrimiento en el derecho.” 2010. https://feminicidio.net/documento/rita-laura-segato-femigenocidio.
Shepherd, Laura J. 2008. Gender, Violence and Security: Discourse as Practice. London: Zed Books.
Sierra, María Teresa. 2008. “Mujeres indígenas, justicia y derechos: los retos de una justicia intercultural.” Íconos 12 (2): 15–26.
Souza Filho, Carlos Frederico Marés de. 2006. O renascer dos povos indígenas para o direito. [Legal rebirth of indigenous peoples]. Curitiba: Juruá Editora.
Spivak, Gayatri Chakravorty. 1988. “Can the Subaltern Speak?” 271–313.
Springborg, Patrícia. 2015. “Hobbes, Donne and the Virginia Company: Terra Nullius and ‘the Bulimia of Dominium.’” Hist. Polit. Thought History of Political Thought 36 (1): 113–64.
TJBA. 2019. Recurso em sentido estrito 0563953-67.2017.8.05.0001. [Strict Appeal 0563953-67.2017.8.05.0001]. 2nd Criminal Court of Appeal of Bahia. Des. Julio Cezar Lemos Travessa.
TJDFT. 2019. Acórdão 1184804. [Decision 1184804]. 20180710019530RSE. 3ª Turma Criminal - TJDFT. Des. Waldir Leôncio Lópes Junior.
TJMS. 2019. Apelação criminal Apelação Criminal 0001691-10.2017.8.12.0013. [Appeal Apelação Criminal - Nº 0001691-10.2017.8.12.0013]. 2nd Criminal Court of Appeal of Mato Grosso do Sul. Judge Juiz Waldir Marques.
TJPR. 2019. Recurso em Sentido Estrito 0018802-52.2015.8.16.0017. [Strict Appeal 0018802-52.2015.8.16.0017]. 1st Criminal Court of Appeal Paraná - Maringá. Des. Telmo Cherem.
TJRS. 2018. Recurso em sentido estrito 70078589777. [Strict Appeal 70078589777]. 3rd Criminal Court of Appeal of Rio Grande do Sul. Des. Diógenes Vicente Hassan Ribeiro.
TJSP. 2019. Recurso em Sentido Estrito 0002985-69.2018.8.26.0564. [Strict Appeal 0002985-69.2018.8.26.0564]. 3rd Criminal Court of Appeal of São Paulo. Des. Ruy Alberto Leme Cavalheiro.
Toledo, Patsili. 2017. “Criminalisation of femicide/feminicide in Latin American countries.” Rivista di Criminologia, Vittimologia e Sicurezza, no. XI, 2, 2017.
True, Jacqui. 2012. The Political Economy of Violence against Women. Oxford: Oxford University Press.
United Nations. 1948. Universal Declaration of Human Rights.
———. 1979a. Convention on the Elimination of All Forms of Discrimination against Women. https://search.ebscohost.com/direct.asp?db=aph&jid=26QS&scope=site.
———. 1979b. Convention on the Elimination of All Forms of Discrimination against Women.
———. 1993. Declaration on the Elimination of Violence against Women.
UNODC. 2019. “Global Study on Homicide: Gender-Related Killing of Women and Girls.” United Nations. https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf.
Vílchez, Ana Isabel Garita. 2012. “La regulación del delito de femicídio/feminicídio en América Latina y el Caribe.” Secretariado de la Campaña del Secretario General de las Naciones Unidas ÚNETE para poner fin a la violencia contra las mujeres. https://assets-compromissoeatitude-ipg.sfo2.digitaloceanspaces.com/2013/09/UN2013_regulacionfeminicidio_AnaIsabelGaritaVilchez.pdf.

Waiselfisz, Julio Jacobo. 2012. “Mapa da violência 2012: Os Novos Padrões da Violência Homicida no Brasil. [Map of Violence 2012: new patterns of homicidal violence in Brazil].” São Paulo: UNESCO Brasil. http://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=4557325.

Waiselfisz, Júlio Jacobo, FLACSO (Organization), and Sede Acadêmica--Brasil. 2015. Mapa da violência 2015: homicídio de mulheres no Brasil [Map of Violence 2015: Homicides of Women in Brazil].

World Health Organization. 2012. “Understanding and Addressing Violence against Women.” https://apps.who.int/iris/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf;jsessionid=098DFE01BA433511BD9966975AFE3378?sequence=1.