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Critical analysis of the crime of femicide attributed to trans people from a gender and human rights perspective

Análisis crítico del delito de feminicidio imputado a personas trans desde una perspectiva de género y derechos humanos

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Abstract

This article presents a qualitative systematic review on the attribution of the crime of femicide to trans people, approached from an intersectional perspective of gender and human rights. Using the PRISMA methodology, a corpus of 28 documents was analyzed, including case law, doctrine, and regulations from Latin America. The results reveal a marked legal ambiguity, supported by biological approaches that exclude trans people from the protective criminal framework, generating contradictory rulings and regulatory gaps. Through a comparative study of ten rulings in countries such as Argentina, Colombia, Mexico, Peru, and Brazil, disparate criteria were identified regarding the applicability of femicide to trans women, as well as five thematic categories that illustrate the limitations of traditional criminal law in the face of transphobic violence. Consequently, the article argues for the need to rethink the criminal definition of femicide from an intersectional and transfeminist perspective, recognizing that structural violence based on gender identity can constitute femicide. Finally, legislative and educational reforms are proposed to guarantee an effective, inclusive, and non-binary criminal justice system capable of comprehensively protecting transgender victims of violence.

Keywords: human rights, femicide, intersectionality, criminal justice, transgender people.

Resumen

Este artículo presenta una revisión sistemática cualitativa sobre la imputación del delito de feminicidio a personas trans, abordada desde una perspectiva interseccional de género y derechos humanos. Empleando la metodología PRISMA, se analizó un corpus de 28 documentos que incluye jurisprudencia, doctrina y normativa de América Latina. Los resultados evidencian una marcada ambigüedad jurídica, sustentada en enfoques biologicistas que excluyen a las personas trans del marco penal protector, lo que genera fallos contradictorios y vacíos normativos. Mediante el estudio comparado de diez sentencias en países como Argentina, Colombia, México, Perú y Brasil, se identificaron criterios dispares sobre la aplicabilidad del feminicidio a mujeres trans, así como cinco categorías temáticas que ilustran las limitaciones del derecho penal tradicional frente a la violencia transfóbica. En consecuencia, el artículo sostiene la necesidad de repensar el tipo penal del feminicidio desde un enfoque interseccional y transfeminista, reconociendo que la violencia estructural basada en la identidad de género puede constituir feminicidio. Finalmente, se proponen reformas legislativas y educativas orientadas a garantizar una justicia penal efectiva, inclusiva y no binaria, capaz de proteger de manera integral a las personas trans víctimas de violencia.

Palabras clave: derechos humanos, feminicidio, interseccionalidad, justicia penal, personas trans.

Introduction

In recent decades, Latin America has recorded significant advancements in the normative recognition of femicide as an extreme form of gender-based violence, categorizing it as an autonomous crime within various legal systems (Lagarde, 2008; ONU Mujeres, 2022). However, this progress has not been accompanied by a deep reflection on its application in cases involving individuals whose gender identity challenges the traditional male/female binary, particularly with transgender individuals. In this regard, the present article critically addresses

the legal treatment of femicide when the accused or the victim is a transgender person, highlighting the existing tensions between the principles of legality, equality, and non-discrimination (Deus & Gonzalez, 2018).

The research problem focuses on the conceptual and practical ambiguity surrounding the prosecution of femicide for transgender individuals, particularly transgender women, whose gender identity is often rendered invisible by traditional criminal law (López-Téllez & Fernández-Cuevas, 2022). This lack of normative and jurisprudential clarity not only creates legal uncertainty but also reproduces structural patterns of exclusion and discrimination, contravening international human rights standards (CIDH, 2015).

The relevance of this study lies in the need to construct a penal law with a gender and intersectional approach, capable of recognizing the diverse forms of violence that affect transgender individuals (Crenshaw, 1991; Consejo de Derechos Humanos de las Naciones Unidas, 2017). The systematic exclusion of these individuals from the realm of criminal protection, or their limited inclusion under biologistic logics, constitutes an urgent challenge for contemporary justice systems (Alegría Ruiz, 2023).

The theoretical framework is grounded in the contributions of legal feminism, queer theory, and an intersectional perspective on human rights. In this context, the ideas of Butler (2003) regarding the performativity of gender, as well as Crenshaw's (1991) developments on intersectionality, are revisited to understand how penal norms can reproduce structural violence if not critically contextualized. Additionally, the normative standards established by the Inter-American Court of Human Rights (Corte Interamericana de Derechos Humanos, 2020) and international bodies such as the IACHR and the UN on gender identity and access to justice (ONU, 2017) are taken into account. Miranda (2022) argues that femicide, as a legal category, does not always adequately encompass the specific forms of violence faced by transgender women, thus prompting the development of the concept of transfemicide. Complementarily, Heinrich-Böll-Stiftung (2022) emphasizes that this category arises as a political and legal necessity in response to the institutional invisibility of hate crimes against transgender individuals.

Among the most relevant backgrounds are contradictory research findings and judicial pronouncements in countries such as Peru, Mexico, Argentina, and Colombia, where the prosecution of femicide in cases involving transgender individuals has generated doctrinal debates and divergent rulings. While some judgments recognize the self-identified gender of the accused or the victim (Bahamón Jara et al., 2022), others rely exclusively on biological criteria, resulting in unequal treatment under the law (Ministerio Público de Argentina, 2022). The case of Diana Sacayán in Argentina, judged in 2018 as a travesticide through an expansive interpretation of femicide, is emblematic (Parlatore, 2020).

This study is situated within a regional context marked by alarming structural violence against transgender individuals, particularly transgender women, in Latin America, a region that records one of the highest rates of gender identity-motivated murders (Transrespect, 2023). This harsh reality coexists with legal systems that, although they have advanced in gender-based violence legislation, still do not fully incorporate the diversity of gender identities and expressions into their protective mechanisms (Cortés, 2020). A comparative analysis of the legal figure of femicide in countries such as Argentina, Brazil, and Colombia highlights both the possibilities and challenges for transgender women to be recognized as passive subjects (victims) of femicide. Through a theoretical-jurisprudential approach, it is demonstrated how self-identified gender challenges the traditional biological view of the concept of woman. Although the legal figure of femicide may provide an immediate punitive response to gender-based violence, controversy remains in doctrine and law regarding its applicability in cases involving transgender women (Guerrero & Alegría, 2022).

In Latin America, the classification of femicide as an autonomous crime represents a milestone in criminal protection against gender-based violence (Lagarde, 2008; ONU Mujeres, 2022). However, this normative evolution frequently renders the existence and vulnerability of transgender individuals invisible, whose gender identities transcend traditional binary classifications, perpetuating institutional revictimization in criminal processes (Deus & Gonzalez, 2018; López-Téllez & Fernández-Cuevas, 2022).

Recent studies in sociology and criminology show that many Latin American laws still operate under a biologistic logic that restricts the definition of “female victim” to the sex assigned at birth, thereby excluding transgender women from adequate criminal protection (Pasínato & Pierobom, 2022). Furthermore, transdisciplinary research has evidenced that violence against transgender women is a form of structural violence, with a transfeminicidal face, which is not recognized by traditional legal systems (Rodríguez, 2020).

On the other hand, approaches that combine queer theory and intersectional perspective argue that femicide must be reinterpreted from a transfeminist lens, where self-identified gender constitutes a central element in the motivations for violence (Garriga-López & Martínez, 2023). In the field of public health, empirical studies highlight the alarming incidence of lethal violence against transgender individuals in Latin America: approximately 78% of reported murders of transgender individuals worldwide occur in this region, alongside a life expectancy of

less than 40 years (Brito da Silva et al., 2022). Finally, comparative legal research indicates that without an inclusive penal definition of transfemicide, current legislation remains insufficient to address these manifestations of violence (Pasínato & Pierobom, 2022).

Therefore, the present study aims to examine the prosecution of the crime of femicide in cases involving transgender individuals, through a critical analysis of the relationship between the current penal framework and international human rights standards, as well as the formulation of interpretive criteria grounded in legal gender and intersectional approaches.

Methodology

This study is framed as a qualitative systematic documentary review, aimed at analyzing the prosecution of femicide against transgender individuals from an intersectional perspective of gender and human rights. To this end, the research relied on the guidelines of the PRISMA model (Preferred Reporting Items for Systematic Reviews and Meta-Analyses), adapted to the context of socio-legal sciences (Moher et al., 2009; Page et al., 2021).

Design and approach

The adopted design was documentary-analytical, with a qualitative and descriptive focus that allowed for an in-depth examination of normative frameworks, national and international jurisprudence, criminal doctrine, and reports from human rights organizations (Creswell, 2014; Hernández et al., 2018). Material selection was conducted through theoretical-intentional sampling, appropriate for studies whose corpus is delimited according to thematic criteria, until achieving what is known as analytical saturation (Flick, 2015).

Search strategy

The documentary search was conducted between October 2023 and May 2025, exploring academic databases such as Scielo, RedALyC, Dialnet, JSTOR, SSRN, Google Scholar, and Scopus, as well as institutional repositories belonging to the IACHR, UN Women 2022, the Inter-American Court of Human Rights, Human Rights Watch, and public ministries. Combined descriptors in both Spanish and English were employed, including terms such as *femicide, transfemicide, transgender, criminal law, gender identity*, and *gender-based violence* (Guerrero & Alegría, 2022; Miranda, 2022).

Inclusion and exclusion criteria

Peer-reviewed academic articles, technical and legal reports, judicial rulings, and international instruments published between 2015 and 2025 were included, provided they addressed the relationship between femicide and transgender individuals from a legal, doctrinal, or human rights perspective. Conversely, documents without academic backing, opinion articles, and texts prior to 2015 lacking updated normative value were excluded (ONU Mujeres, 2022; CIDH, 2015).

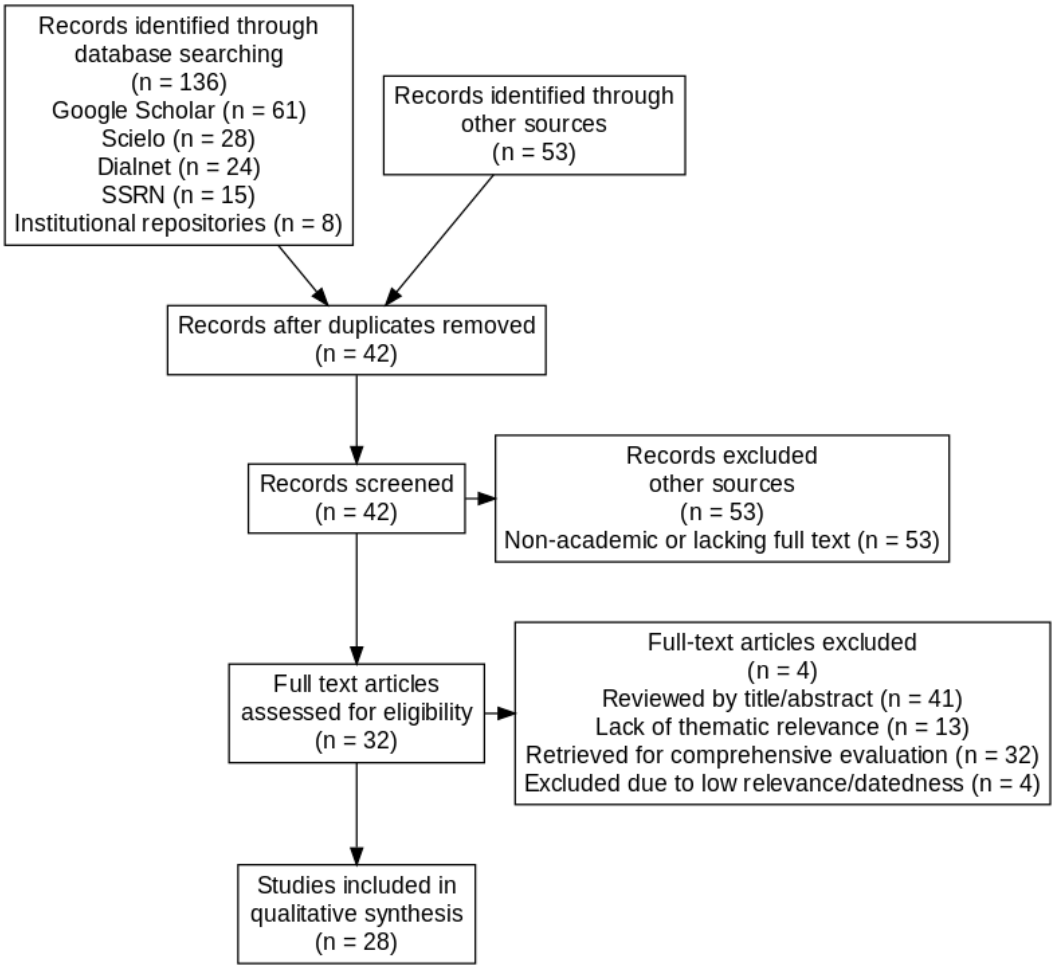
Corpus and analysis

From an initial total of 136 identified documents, 42 were discarded due to duplication and 53 for not meeting the inclusion criteria. Subsequently, 41 documents were reviewed in full text, leading to the selection of 28 relevant documents based on their thematic relevance and legal density (Page et al., 2021). The analysis was conducted using qualitative thematic coding, allowing for the grouping of contents into five emerging categories (Crenshaw, 1991; Butler, 2003).

Ethical considerations

This research was conducted exclusively using publicly available and open-access academic sources, without handling personal data or conducting interviews. Ethical principles of confidentiality, identity recognition, and the dignity of vulnerable populations were rigorously respected, in accordance with the standards established by the Social Research Ethics Committee (ONU, 2019; Human Rights Watch, 2020).

Figure 1
PRISMA diagram



Results and discussions

1. Legal ambiguity and biologistic approach in the prosecution of femicide

The analysis of the corpus reveals that, in much of Latin America, femicide is interpreted from a binary and biologistic approach. This perspective generates ambiguity when prosecuting the crime if the transgender individual involved—whether victim or accused—does not fit traditional legal categories, thus limiting their criminal protection (Cortés, 2020; Deus & Gonzalez, 2018; López-Téllez & Fernández-Cuevas, 2022; Guerrero & Alegría, 2022; ONU Mujeres, 2022; Pasínato & Pierobom, 2022; Bahamón Jara et al., 2022). As a consequence, both the normative design and its judicial interpretation leave significant gaps in access to justice for transgender women (Amnistía Internacional, 2023; Human Rights Watch, 2020; Miranda, 2022).

2. Judicial cases analyzed: divergences in legal treatment

The comparative study of ten rulings in Argentina, Colombia, Mexico, Peru, and Brazil reflects divergent legal criteria. In Argentina, the Diana Sacayán case marked significant progress by recognizing structural violence against a transgender woman and applying an appropriate penal classification; furthermore, the inter-American system, through the case of Vicky Hernández vs. Honduras and Advisory Opinion OC-24/17, consolidated gender identity as a protected right (Corte IDH, 2017; Corte IDH, 2017; Ministerio Público de Argentina, 2022; Parlatore, 2020). In contrast, rulings in Peru and Mexico denied the application of femicide to transgender women based on restrictive interpretations of the legal type, generating legal insecurity and perpetuating institutional revictimization

(López-Téllez & Fernández-Cuevas, 2022; Heinrich-Böll-Stiftung, 2022; Human Rights Watch, 2020; Bahamón Jara et al., 2022).

3. Thematic analysis of the corpus: patterns and emerging categories

From the qualitative analysis of the 28 selected documents, five key categories emerged:

- **Self-identified gender as a penal criterion**: Most studies agree that self-identified gender should be the determining factor in defining the passive or active subject, as well as the gender motivation in the crime (Guerrero & Alegría, 2022; Alegría Ruiz, 2023; Bahamón Jara et al., 2022).
- **Absence of explicit transfemicide classification**: The lack of an autonomous and operational figure in the region is evident, although there are proposals suggesting an expansive interpretation of femicide or the creation of specific types (CIDH, 2015; Miranda, 2022; Pasínato & Pierobom, 2022; Redlactrans, 2017).
- **Critical penal doctrine with transfeminist and intersectional focus**: Some literature advocates for interpretations that incorporate the structural dynamics of subordination and the multiple axes of oppression present (Butler, 2003; Crenshaw, 1991; Heinrich-Böll-Stiftung, 2022).
- **Structural risk factors**: Conditions that increase the vulnerability of transgender individuals are documented, such as socioeconomic exclusion, school and labor expulsion, forced sex work, and police violence (Consejo de Derechos Humanos de las Naciones Unidas, 2017; Human Rights Watch, 2022; ONU, 2019; Transrespect, 2023).
- **Institutional deficits and unequal application**: Obstacles persist in police, prosecutor's offices, and courts in incorporating gender identity and the context of gender-based violence in investigation and adjudication processes (Amnistía Internacional, 2023; CIDH, 2015; Defensoría del Pueblo del Perú, 2022; ONU Mujeres, 2022).

4. Jurisprudence and international standards

Inter-American standards demand the recognition of gender identity and the sanctioning of violence based on gender identity or expression. At the universal level, legislative measures and public policies are recommended to ensure access to justice and reparation for victims (CIDH, 2015; Corte IDH, 2017; ONU, 2019; ONU Mujeres, 2022). In this context, the Inter-American Court of Human Rights, through Advisory Opinion OC-24/17 and the case of Vicky Hernández vs. Honduras (2021), declared that gender identity is a protected right, requiring States to adopt penal policies that punish violence based on gender identity or expression (Corte IDH, 2017; ONU, 2019). However, the practical implementation of these standards in domestic judicial systems remains fragmented and intermittent in the region (Redlactrans, 2017; Transrespect, 2023).

5. Penal invisibility of trans victims

A recurring finding in the corpus is the tendency to classify the homicides of transgender women as common homicides, omitting the gender component, which limits both the symbolic and preventive efficacy of criminal law. In this sense, the consulted documents support the need for normative and interpretative adjustments that include the explicit recognition of gender identity in the legal types of gender-based violence, as well as establishing clear evidentiary criteria regarding gender motivation and promoting mandatory training for justice operators (Guerrero & Alegría, 2022; Parlatore, 2020; Pasínato & Pierobom, 2022). These actions must align with inter-American and universal standards to ensure effective and inclusive protection (Corte IDH, 2017; ONU, 2019).

Conclusions

The analysis conducted has revealed that the prosecution of femicide against transgender individuals, whether as victims or accused, faces significant normative and practical limitations stemming from the persistence of a binary gender approach in Latin American penal systems. This exclusionary perspective prevents criminal legislation from fully fulfilling its protective function against the structural violence affecting transgender individuals, especially transgender women (Deus & Gonzalez, 2018; ONU Mujeres, 2022).

A fundamental conclusion is that current criminal law reproduces the invisibility and marginalization of non-normative gender identities by failing to integrate an intersectional lens that considers gender alongside other variables of oppression (Cortés, 2020; Crenshaw, 1991). This absence perpetuates impunity and hinders access to justice for transgender individuals who are victims of femicide, additionally generating legal uncertainty when

prosecuting the crime if the active subject does not conform to traditional binary categories (Bahamón Jara et al., 2022).

From a legal perspective, it is urgent to rethink the classification of femicide based on international human rights standards, which demand the recognition of self-identified gender and effective protection against violence motivated by that identity (Corte IDH, 2017; ONU, 2019). This implies not only normative reforms but also a profound cultural and formative transformation among justice operators.

In this sense, this work proposes that an interpretation of the penal type of femicide consistent with human rights must recognize that violence directed towards transgender individuals, particularly transgender women, can and should be understood as an extreme manifestation of gender-based violence, as long as a structural and symbolic context of discrimination is established (López-Téllez & Fernández-Cuevas, 2022; Alegría Ruiz, 2023). To deny this possibility means perpetuating exclusion and leaving one of the most vulnerable populations unprotected.

Finally, this research opens an agenda for future studies aimed at systematizing empirical data on transgender femicides, advancing doctrinal development from transfeminist perspectives, and strengthening the intersectional approach in the analysis of gender-based violence in Latin America.

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