

# TRANSFORMING STATE RESPONSES TO FEMINICIDE

# PERSPECTIVES ON CRIME, LAW AND JUSTICE IN THE GLOBAL SOUTH

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# TRANSFORMING STATE RESPONSES TO FEMINICIDE

Women's Movements,  
Law and Criminal Justice  
Institutions in Brazil

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## GLOSSARY OF TERMS AND ABBREVIATIONS USED

<i>bancada feminina</i>	cross-party women’s caucus in Brazilian legislatures
Belém do Pará Convention	Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women
BO	Police incident report ( <i>boletim de ocorrência</i> )
CCJ	Standing Committee on Constitution, Justice and Citizenship ( <i>Comissão de Constituição, Justiça e Cidadania</i> )
CEDAW	UN Convention for the Elimination of all Forms of Discrimination Against Women
CEVID	Committee on Women and Domestic Violence ( <i>Coordenadoria Estadual das Mulheres em Situação de Violência Doméstica e Familiar</i> )
CIM	Inter-American Commission of Women ( <i>Comisión Interamericana de Mujeres</i> )
CNDM	National Council for Women’s Rights ( <i>Conselho Nacional dos Direitos da Mulher</i> )
CNJ	National Justice Council ( <i>Conselho Nacional de Justiça</i> )
CNMP	National Prosecutor’s Office Council ( <i>Conselho Nacional do Ministério Público</i> )
DEAMs	Women’s police stations ( <i>Delegacias Especializadas no Atendimento à Mulher</i> )
<i>delegacia</i>	Police precinct (run by the civil police, for the investigation of crimes)
FBSP	Brazilian Forum on Public Safety ( <i>Fórum Brasileiro de Segurança Pública</i> )
femicide	the intentional killing of a girl or woman for reasons related to social norms around gender roles

<i>homicídio privilegiado</i>	mitigated homicide, voluntary manslaughter
<i>homicídio qualificado</i>	aggravated homicide
IACHR	Inter-American Commission on Human Rights
JECrims	Criminal misdemeanour courts ( <i>Juizados Especiais Criminais</i> )
MESECVI	Follow-up Mechanism to the Belém do Pará Convention ( <i>Mecanismo de Seguimiento de la Convención de Belém do Pará</i> )
Model Protocol	Latin American Model Protocol for the Investigation of Gender-related Killings of Women (femicide/feminicide)
MP	Public Prosecutor's office ( <i>Ministério Público</i> )
MPU	urgent protection measure ( <i>medida protetiva urgente</i> )
NGO	Non-governmental organisation
OAS	Organization of American States
<i>Procuradoria da Mulher</i>	Women's Advocacy Office in Congress
PT	Workers' Party ( <i>Partido dos Trabalhadores</i> )
SPM	Special Secretariat for Policies for Women ( <i>Secretaria Especial de Políticas para as Mulheres</i> )
STF	Federal Supreme Court ( <i>Supremo Tribunal Federal</i> )
STJ	Supreme Court of Justice ( <i>Superior Tribunal de Justiça</i> )
TJ	State-level appellate court ( <i>Tribunal de Justiça</i> )
UN	United Nations
UNSR	United Nations Special Rapporteur on Violence against Women
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women

# MAP OF BRAZIL



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# Chapter One

## FEMINICIDE AS A LATIN AMERICAN ISSUE

### INTRODUCTION

‘A woman has been found stabbed to death.’ A headline, repeated, word for word, almost daily, in local newspapers right across Brazil, from north to south, from small towns in the interior to the largest cities.<sup>1</sup> Of all the forms of lethal violence, femicide – that is, the intentional killing of a girl or woman, most often by a partner or member of her family and for reasons specifically related to social norms around gender roles – is one of the most persistent. It is a ‘sticky’ problem, resistant to all kinds of other violence- and crime-reduction measures, even in countries that pride themselves on gender equality, democracy, and social stability. In the United Kingdom, for instance, on average two women a week are killed by current or former intimate partners, a figure unchanged for a decade.<sup>2</sup> In contexts of violent conflict, high crime, and deep social and gender inequality the victimisation of women can skyrocket. Due to its size, Brazil has the greatest absolute number of femicides in Latin America. In 2019, 3,730 women were murdered, of which 1,326 were registered by the police as femicides (FBSP, 2020a, p. 116).

The phenomenon of femicide (or femicide, as it is also known) grabbed global attention as millions of women poured out onto the streets in countries as diverse as France, Argentina, Peru, India, Mexico, and El Salvador protesting at state inaction (Heinrich Böll Stiftung, 2017). The display in public places of thousands of pairs of blood-red shoes symbolising the many victims, the circulation of hashtags on social media – *#NiUnaMenos* (‘Not one fewer’), *#VivaNosQueremos* (‘We want to stay alive’), and *#NoEstamosSolos* (‘We are not alone’) – and the placards held aloft with enlarged pictures of sisters, daughters, and friends lost to misogynistic violence prompted international organisations to move this issue up their list of priorities.<sup>3</sup> In particular, the

murder of women was reframed as a human security concern, not just as a 'women's issue' or a human rights matter.

A number of regional and international security and development organisations, such as the Council of Europe, Organization for Security and Co-operation in Europe, and the United Nations (UN) Office on Drugs and Crime, recognised femicide, and violence against women more broadly, as 'a global health problem of epidemic proportions',<sup>4</sup> and issued declarations, protocols, and even new hard law in the form of the 2011 Istanbul Convention.<sup>5</sup> They were following the lead of Latin America, which two decades earlier had produced the 1994 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (known as the Belém do Pará Convention), the world's first legally binding regional instrument on this issue.

Although declarations and treaties are one thing, effective implementation is something else altogether. After Latin American women's groups and researchers mobilised and lobbied, highlighting persistent government negligence, in 2013, the UN issued the Vienna Declaration on Femicide. In 2014, UN Women and the Office of the High Commissioner for Human Rights launched the Latin American Model Protocol for the Investigation of Gender-related Killings of Women (femicide/feminicide) – hereafter 'Model Protocol' – in a bid to enhance the performance of the hemisphere's justice agencies in tackling a crime that appeared to be out of control.<sup>6</sup> They chose Brazil as the country in which to test this, not just due to its high number of feminicides, but also because of the actual and potential capacity of its justice system to devise constructive responses to this crime.

To date, the literature on femicide in Latin America has focussed mainly on Mexico, especially Ciudad Juárez, and Central America and their contexts of chronic violence linked to gangs and organised crime, human trafficking, legacies of armed conflict, poor governance, and impunity (Carcedo, 2010; Monárrez, 2009; Rodríguez, Montané, & Pulitzer, 2008). However, Brazil's situation is very different. Its female homicide rate is lower than in Central America (4.7 per 100,000 in 2017 compared to 13.8 in El Salvador the same year).<sup>7</sup> Its feminicides are more ordinary than extraordinary, committed overwhelmingly by current or former intimate partners, and thus much of this book focusses on domestic violence. As such, the story told here of how Brazil's criminal justice agencies built new institutional architecture and devised better practices and procedures for addressing gender-based violence offers transferable lessons for countries facing similar challenges.

The major contribution of this book is its focus on the factors and processes that have induced different parts of the Brazilian state to act more

effectively to secure justice for femicide victims and reduce its incidence. This study examines a number of inter-locking drivers of institutional innovation and capacity building: legislation (content and process), political environment, strategic action by feminist activists, executive branch investment, leadership and entrepreneurship in the police and in justice agencies, horizontal policy transfer, and collaboration between the agencies of the justice system and with local women's networks. It also traces the multi-layered and multi-dimensional process by which this ensemble of elements came together, inside and outside the Brazilian criminal justice system, to transform approaches to understanding, detecting, prosecuting, and preventing femicide. Transformation occurs, in this story, through informal alliances of interest involving feminist academics, non-governmental organisations (NGOs), local campaigners, bureaucrats within the state machineries for women, politicians, journalists, and criminal justice professionals. This study traces the process by which the practical building blocks for tackling both domestic violence and femicide were put in place by many actors, local, national, and international, how spaces for change were identified or created, and how individuals and networks worked within those spaces to push forward legal, policy, and procedural changes.

In documenting how the women's movement was able to engage police and justice institutions that had previously been impermeable to its influence, the book contributes to a very current debate, and a well-established literature, about how women's movements in Latin America, and around the world, engage with diverse spaces of the state. It also speaks to comparative literatures on struggles around gender rights and law, on socio-legal theory in Latin America and beyond, and on gender-sensitive approaches to security-sector and justice-sector reform. By giving voice to the policy entrepreneurs who have driven change within police and judicial institutions, the book contributes both to feminist institutionalism as well as to the incipient field of Southern criminology, which draws attention to knowledge and new, effective practices produced in the Global South (Carrington, Hogg, & Sozzo, 2016). This challenges assumptions about policy transfer from the Global North, whilst attention to policy innovations blossoming outside the dominant metropolitan centres in Brazil also decentres the narrative about knowledge production within the country.

Most studies of femicide have concentrated on explaining its causes and impacts. Few examine the responses of criminal justice agencies, which are assumed to be incompetent and to sustain impunity. Brazil's justice system is renowned for its slowness and inefficiency, and its police forces suffer from chronic problems of corruption, excessive use of force, poor

co-ordination, lack of accountability, and a machista culture. But with over 600,000 state-level officers across the country, they are also diverse, especially now that more women than ever are joining their ranks. Whilst their priorities and approaches vary enormously, one of their most routine duties is dealing with domestic violence. Back in the 1980s, under women's movement pressure on gender-based violence, the civil police instituted the pioneering women's police stations (*Delegacias Especializadas no Atendimento à Mulher* – DEAMs). These generated global interest and emulation, and studies of their origins and functioning (Hautzinger, 2007; Nelson, 1996; Santos, 2005), and they undoubtedly reshaped the institutional landscape in regard to policing and gender (Carrington, Guala, Puyol, & Sozzo, 2020). In order to staff them, the police recruited more women, initiating a shift in institutional culture. As these female officers rose up the ranks, they often led on further initiatives to tackle domestic violence and femicide, as Chapter Three will demonstrate. The DEAMs offered victims of gender-based violence access to justice and, in the large metropolitan areas where they operate, they have acted as a catalyst for the formation of local victim-support networks. They also play a key role in femicide prevention as they enforce the protection orders brought in by the 2006 law on domestic violence. This law, which gave the DEAMs and other law enforcement actors much more comprehensive and specific powers to protect and assist victims, then gave another major impetus to the judicial system to develop new structures, practices, and procedures, analysed mainly by Brazilian researchers. Yet, police innovations in response to this and the 2015 femicide law have not attracted the attention they merit. This book updates the literature on how Brazil's police and justice agencies have reacted to social pressure to improve their responses to violence against women.

## GENESIS, METHODOLOGY, AND SOURCES

Since the early 1990s, I have been researching how women's movements in Latin America influence the policymaking process, especially in relation to violence against women, through strategic engagement with political parties and legislative arenas, state bureaucracies, and local as well as national levels of government. My work at Amnesty International as its Brazil researcher in the late 1990s immersed me in the dynamics of that country's criminal justice system and alerted me to the importance of understanding how reform attempts succeed, not just how they fail. It gave me the opportunity to talk to many law enforcement professionals across the country, and to observe the complex, and bumpy, processes by which new policies and approaches to violence reduction were developed by local researchers, academics, policymakers, and criminal

justice-sector professionals, and how these related to the absence, or presence, of national reform initiatives.

One national thinktank, the Brazilian Forum on Public Safety (*Fórum Brasileiro de Segurança Pública* – FBSP), has provided a unique space for these communities of practice to work together, produce data, and analyse their own policy experiences around reducing crime, violence, and insecurity. It has prioritised research into gender-based violence and runs an annual competition to recognise good policy and practice in this area. For several years I have worked with the FBSP to develop materials for training law enforcement personnel (FBSP, 2020b). Piloting these materials across the country gave me further opportunity to learn about local initiatives for combatting domestic violence and femicide from the police and justice professionals we were training.

Encouraging these professionals to recount their triumphs and challenges was consciously rooted in the methodological principles of appreciative enquiry, an approach that focusses on institutional strengths and capacities, rather than on weaknesses. Appreciative enquiry has been adopted from the area of management studies into many different policy fields, yet relatively little into criminal justice studies. This approach forms part of the book's mixed methods which combine process tracing with qualitative case study analysis. The book draws on those conversations with law enforcement officials and reformers, as well as on databases created by civil society organisations and government data and documents. It also foregrounds knowledge produced by law enforcement officials themselves. This unpublished 'pracademic' research conducted fuses academic methods with professional practice-based observation and has, in many cases, informed policy changes. By appreciating what *has* been achieved, even if many challenges and institutional deficits remain, this book demonstrates that sticky problems like femicide *can* be tackled with enough social pressure, political will, and institutional responsiveness.

The rest of this chapter sets out how and why femicide emerged as a concept and came to be regarded as a serious global issue affecting women's human security, why it is particularly associated with Latin America, how international and regional norms developed in relation to gender-based violence, and how criminal justice systems are being asked to respond to it. It also sets the scene for understanding how Brazil began to tackle femicide.

## FEMICIDE: THE EMERGENCE OF A CONCEPT

Murder is not just murder. All acts of violence have a social context and hold a set of meanings for the perpetrator, the victims, and those who observe the violence. The intentional killing of another human being can occur for a

multitude of motivations. The degree of societal disapproval, or approval, of the killing hinges on a number of variables – who is killed, by whom, and for what reason. These variables underpin the classifications in law of different forms of lethal violence such as self-defence, manslaughter, homicide, infanticide, and honour killings.

Activist and feminist Diana Russell was instrumental in bringing into usage the term femicide to mean not the homicide of women in general terms but rather ‘the misogynous killing of women by men’ (Radford & Russell, 1992, p. 3).<sup>8</sup> The targeted mass killing of 14 women, mainly female engineering students, at the University of Montréal in December 1989 by a man who made explicit his hatred and resentment towards women *in general* (he did not personally know the victims) opened up global debate about how women could be the victims of a category-based hate crime analogous to those motivated by racial or religious intolerance. In 1991, the White Ribbon campaign, a movement of men pledging their active opposition to violence against women, was founded in Canada (Kaufman, 2001), whilst a conference at Rutgers University kicked off the ‘16 Days of Activism against Gender-based Violence’ campaign that has been taken up around the globe and is now an annual event every November (Roche, Biron, & Reilly, 1995).

The 1990s also saw a new focus for concern emerge around the extraordinary number of murders of women in Ciudad Juárez, in the northern border Mexican state of Chihuahua. Between 1993 and 2003, at least 370 young women were murdered by persons apparently unknown (Amnesty International, 2003). Around one-third of them had been brutally sexually assaulted, often following abduction, and their bodies dumped on the roadside, in vacant lots, or in the countryside.<sup>9</sup> The majority of victims were young, working class, mixed race women, and many employed by the local assembly factories (*maquiladoras*). From 2000 onwards, the phenomenon began to be recognised in the neighbouring countries of Central America, where exceptionally high levels of lethal violence against women were driven by weak rule of law, poverty, gangs, and violent masculinities created by that region’s preceding civil wars (Fregoso & Bejarano, 2010).

Mexican academic, activist, and politician Marcela Lagarde y de los Rios found in Radford and Russell’s (1992) work a useful concept for what was happening in Chihuahua and opted to translate ‘femicide’ as *feminicidio*. She felt that *femicidio* would be understood simply as female homicide, that is, the murder of a woman for any reason, and that this would fail to indicate the misogynistic motivations behind many killings (Lagarde, 2006). She also intended *feminicidio* to denote a situation where such murders were effectively condoned and encouraged by state indifference and inaction. However,

Russell found this usage problematic because, if the state *does* investigate and punish a killing, is it then disqualified as a femicide? The question of state accountability and responsibility to change the culture and practices of the criminal justice system in order to tackle lethal hate crime against women lies at the heart of this book.<sup>10</sup>

The term *feminicidio* became subsequently popularised around Latin America as women's networks in the region took up the issue, but without the supposed conceptual distinctions between the two possible terms.<sup>11</sup> This is further complicated by the issue of translation from English. In both Spanish and Portuguese, the word *femenina/feminina* means 'female'. It may also connote 'feminine', a marker term for the various ways that society expects women to behave and present themselves. Thus, the 2015 Brazilian definition of *feminicídio* refers to women being murdered based on their *condição de sexo feminino*, essentially a translation of Diana Russell's later definition of the killing of females by males *because they are females*. In this book, I use the term femicide to echo the terminology used in Brazil.

As the debate about femicide and impunity was taken up around the region and by international bodies within the UN and the inter-American system, the understanding of femicide became more sophisticated. Lethal gender-based violence can take many forms. It can be direct, inter-personal violence (a murder), or it can result indirectly from deep-rooted structures of discrimination against women and girls. Many different kinds of gender-based violence could be classified as femicide using Russell's definition. Direct and intentional forms of femicide include dowry-related killings of women in South Asia, female infanticide and foeticide in China and Central and South Asia, killings of women accused of sorcery or witchcraft, 'honour-based' killings, stoning to death of women for adultery under extremist interpretations of Sharia law, the murder of women trafficked into forced prostitution, and the targeting of women, often of specific ethnic and/or religious groups, in the context of armed and genocidal conflict. More indirect forms of violence encompass the deaths of women and girls due to denial of bodily autonomy, in the cases of female genital mutilation and infection with HIV by sexual partners who refuse to use protection. Women also die due to denial of healthcare and lack of access to contraception and safe termination of pregnancy. However, for reasons of space and scope this book restricts its analysis to direct and intentional femicide. It examines mainly domestic-related violence, which accounts for most killings of women and girls, as well as the smaller number of misogynistic killings committed by strangers, neighbours, or acquaintances, which includes lesbo- and transphobic femicides.

## THIRTY YEARS OF GLOBAL ACTIVISM AND POLICY DEVELOPMENT

As the new wave of the women's movement emerged in the 1970s, gender-based violence became a key pre-occupation. Through the 1970s and 1980s, feminists set up shelters to house women fleeing domestic violence, and Reclaim the Night marches highlighted women's fear of sexual violence, assault, and murder outside the home.<sup>12</sup> Governments responded slowly to the movement's demands, largely by putting in place further social safety nets for victims, and did not address prevention or improved criminal justice responses. It was not until the 1990s that violence against women was placed at the centre of international debates on human rights, women's rights and development.

The 1979 UN Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) laid important groundwork for later shifts in state policy and practice (Šimonović, 2014). However, it contained no explicit reference to violence against women and focussed chiefly on discrimination around employment and civil, political, and economic rights. Its statements on inter-personal relations, family structures, practices, and customs were generic in nature. It had been drafted at a time when abuse of women in the private sphere was seen as an agenda item pushed by Western feminists, a colonialist interference in tradition and custom, and an irrelevance to the 'real' priorities of women in developing countries: poverty and lack of access to basic services (Freeman, Chinkin, & Rudolf, 2012). Nonetheless, the Convention's concern with eliminating de facto as well as de jure discrimination and inequality led to the inclusion of some important enabling language that would oblige States Parties to take specific action to protect women from violence. Article 4.1 urged governments to adopt 'temporary special measures' that would not be considered discrimination as long as their objectives were the attainment of 'equality of opportunity and treatment' between men and women. Article 5.1(a) further advocated 'all appropriate measures' to

*modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.*

Countries such as Brazil that have brought in laws and policies addressing violence specifically against women are thus complying with international human rights law.

Through the 1980s, the women's movement lobbied the UN agencies dedicated to crime prevention and criminal justice. The watershed year was 1985, when the UN Committee on Crime Prevention and Control put