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The Making and Unmaking of *Feminicidio/Femicidio* Laws in Mexico and Nicaragua

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This article examines the contested process of law-making related to the killing of women which resulted in the criminalization of feminicide (*feminicidio*) and femicide (*femicidio*) in Mexico and Nicaragua, two countries in which feminists engaged in legal activism to increase state accountability for gendered violence. Through comparative analysis, we demonstrate the importance of (1) the interaction between shifting local political conditions and supranational opportunities and (2) the position of feminist actors vis-à-vis the state and its gender regime in shaping regional variation in the making of laws concerning gendered violence. In Mexico, the criminalization of *feminicidio* resulted from a successful naming and shaming campaign by local feminist actors linked to litigation in various supranational arenas, and the intervention of feminist federal legislators. In Nicaragua, the codification of *femicidio* resulted from the state's selective responsiveness to feminist demands in a moment of narrow political opportunity within an otherwise highly consolidated regime. We also examine the unmaking of these laws through their perversion in practice (Mexico) and their intentional undermining (Nicaragua) at the hands of the state. Our analysis demonstrates how states' decisions to enact legislation against gendered violence does not occur solely because they are invested in international legitimacy, but also in response to states' shifting acceptance of the legitimacy of supranational authority itself.

Since 2010, Latin America has witnessed a wave of new laws to address the murders of women, known as femicide (*femicidio*) or feminicide (*feminicidio*) (MESECVI 2017). Although sometimes used interchangeably, the terms *femicidio* and *feminicidio* are conceptually distinct, with potentially different legal implications. *Femicidio* is generally understood as the killing of women by men based on misogyny (Russell and Radford 1992). *Feminicidio* extends this definition emphasizing the state's complicity in perpetuating violence against women and its impunity (Fregoso and Bejarano 2010; Lagarde 2010).

These legal changes can be partly attributed to the diffusion of human rights norms enshrined in international instruments like the 1994 Inter-American Convention on the Prevention,

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Punishment and Eradication of Violence against Women (Belém Do Pará Convention), which define state responsibility for gendered violence.[1] The Inter-American human rights system has propelled this process by opening up new opportunities for social movement challenges (Friedman 2009; Htun and Weldon 2012; Santos 2007). However, the process by and degree to which international legal norms concerning gendered violence are integrated into national contexts varies considerably, even within Latin America. Because international human rights instruments do not stipulate *how* states should implement their terms, they have been incorporated through various mechanisms, including constitutional recognition, legislative reform, policy development, or judicial decisions (Heyns and Viljoen 2002 in Alston and Goodman 2013: 1049–53), resulting in regional variation in states' compliance with international treaties (Montoya 2013).

Because human rights have become a symbolic marker of the "modern" state, both liberal democratic and repressive states ratify international human rights instruments without necessarily intending to fully comply with them (Hafner-Burton and Tsutsui 2005; Tsutsui et al. 2012). Given these instruments' weak enforcement, states make this "empty promise" in pursuit of legitimacy, which inadvertently opens avenues for social movement actors to pressure states into complying with them, such as through "naming and shaming" campaigns (Hafner-Burton and Tsutsui 2005; Keck and Sikkink 1998). This may be especially so for international norms on gender equality, which have become a yardstick for measuring states' "modern" status (Merry 2003, 2006; Towns 2010). Therefore, the "paradox of empty promises" associated with the ratification of and compliance with human rights instruments is premised on the assumption that states' investment in being perceived as legitimate in the international community can provide leverage to social movements (Hafner-Burton and Tsutsui 2005).

Yet, we posit that state responsiveness to legal activism/advocacy may also depend on the inverse – that is, how state actors view the international/regional human rights systems' legitimacy as arbiters of justice for gendered violence-related claims. Consequently, the use of similar legal tools and arguments may yield different results under different political conditions. To more fully understand this variation, we examine the contested lawmaking process related to the killing of women in Mexico and Nicaragua and their legislation on *feminicidio/femicidio*. Our comparative approach focuses on two analytical factors: (1) the interaction between

[1] "Gendered violence" are acts of violence (physical, psychological, or sexual) committed against women due to their gender, while the structural conditions that disadvantage women constitute "gender violence" (Walsh and Menjívar 2016: 7).

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shifting local political conditions and supranational opportunities and (2) the position of feminist actors vis-à-vis the state and its gender regime. Building on the literature on human rights law and feminist activism, we argue that these two dimensions can explain how and why laws addressing *feminicidio/femicidio* are made and at times unmade in different Latin American countries.

Like Boyle (2002; Boyle and Preves 2000), we contend that the regional diffusion of gendered violence laws occurs via a complex interplay between supranational and local factors. However, we suggest that global forces do not necessarily outweigh local factors (Boyle 2002: 8). Paradoxically, our analysis reveals that depending on local gendered configurations of power, smaller less powerful states (like Nicaragua) may be more effective than larger or more powerful ones (like Mexico) in resisting external pressure to pass *feminicidio/femicidio* laws. It is not only, as some scholars suggest, about states' interest in maintaining their legitimacy within the international community, but also how the perceived legitimacy and authority of supranational bodies shapes state action (or inaction) on *feminicidio/femicidio* legislation.

Our findings can be summarized thusly: in Mexico, the criminalization of *feminicidio* resulted from a successful naming and shaming campaign by local feminist actors linked to litigation in various supranational arenas, and the intervention of feminist legislators. Yet, the law's transformative potential has been perverted in practice. In Nicaragua, the codification of *femicidio* resulted from the state's selective responsiveness to pressure from feminists and supranational actors. Nevertheless, this legislative achievement was undone by a conservative religious backlash and the increased centralization of political power, which rendered feminist and supranational pressure insufficient to preserve the law. Thus, we argue for a more nuanced understanding of the relationship between state legitimacy and human rights that considers evolving sociopolitical conditions and the position of feminists within and outside state institutions. We go beyond the state's pursuit of legitimacy as an explanatory factor by interrogating how international norms on women's human rights translate into different kinds of legal change at the local level, focusing on the understudied Inter-American system.

Gender, Violence, and Juridical Power

The state is a critical actor in maintaining gender regimes, the institutionalized mechanisms by which gender inequality and violence are upheld and perpetuated (Walby 2004). We conceive the state as a historically contingent and fragmented set of actors and

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institutions with multiple and sometimes conflicting interests and priorities shaped by national, regional, and transnational dynamics (Haney 2000; Kim-Puri et al. 2005). The state is "a significantly unbounded terrain of powers and techniques, an ensemble of discourses, rules and practices, cohabiting in limited, tension-ridden, often contradictory relation to one another" (Brown 1995: 174). The contradictions within the state stem in part from its dual functions as both a punitive preserver of order and a guarantor of social protection.

Laws – or "juridical power" (Brown 1995) – are one of the key "techniques of governance" (Foucault 1991) that uphold existing gender regimes. Laws have been used to define men and women's roles in society, regulate sexual identities and expression, and legitimate violence against women (MacKinnon 1989). The legal differentiation between public and private spheres has historically failed to recognize the family as a gendered site of domination, leading to the depoliticization and normalization of violence against women. Legal statutes ostensibly intended to "protect" women frequently produce gendered, racialized, and class-based hierarchies of "good"/"deserving" and "bad"/"-undeserving" women, compounding differently situated women's experiences of violence (Crenshaw 1991). This dynamic is especially apparent in the exacting legal standards imposed upon women to demonstrate the veracity of their accounts of sexual violence. The state's complicity in perpetuating gendered violence has generated vigorous scholarly debate about the potential and limitations of feminist state-centered legal advocacy to advance gender equality (Brush 2003; Staudt and Méndez 2015).

Laws are especially ineffective in contexts of high impunity, as is the case in many Latin American countries (Menjívar and Walsh 2016; Neumann 2017). In a study on the sociolegal determinants of impunity in Guatemala, Menjívar and Walsh (2016) conclude that progressive laws on gendered violence are unlikely to reduce crimes against women when passed in a sociolegal environment characterized by "multisided violence," discriminatory laws, and widespread gender inequality.[2] Feminist legal advocacy has certainly produced important juridical and institutional changes, including laws against domestic violence, specialized institutions like women's police stations (all-female commissariats staffed with police, social workers, and psychologists), and gendered violence tribunals in various countries (Macauley 2006). Nevertheless, political and bureaucratic resistances within conservative gender

[2] As an analytical framework, multisided violence integrates structural violence, political violence, everyday violence, symbolic violence, and gender and gendered violence (Walsh and Menjívar 2016).

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regimes, as well as inadequate resources, have often rendered these changes insufficient to address the rampant impunity in gendered violence cases (Staudt 2014; Walsh 2008). As Menjívar and Walsh (2016) write, "those who interpret the law, those who suffer from violence and those who commit these acts are all living in the same social milieu." Laws cannot be separated from the context in and for which they are written.

The skyrocketing murders of women in Mexico (particularly in Ciudad Juárez) and Central America brought unprecedented national and international attention to extreme acts of gendered violence in the region (Fregoso and Bejarano 2010; Staudt 2008). Mexican feminist scholar-activist-politician Marcela Lagarde led feminist efforts to demand state accountability for these killings. Lagarde proposed the concept of *feminicidio*, a term encompassing the murder of women as gendered violence *and* the complicity of the state in it. *Feminicidio* extended the term femicide, defined as the misogynous murder of women (Russell and Radford 1992). As a concept and a frame, it quickly spread throughout Latin America. As of 2017, the crime of *femicidio* or *feminicidio* has been codified into law in 18 countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela (MESECVI 2017).

The existing gray literature on *feminicidio/femicidio* in Latin America highlights similarities and differences in the laws' provisions, which can inform policymaking on gendered violence (Chiarotti 2011; MESECVI 2017; Toledo Vásquez 2009).[3] Yet they contain only tangential references to the sociopolitical conditions scaffolding the criminalization of *feminicidio/femicidio*. Drawing on feminist approaches to gendered violence, the state, and transnational activism, our analysis of the sociopolitical conditions shaping the trajectories of *feminicidio/femicidio* laws in Mexico and Nicaragua provides a more textured account of how and why states enact such legislation.[4]

Transnational Feminist Activism and the International Human Rights Regime

At the turn of the century, human rights emerged as a "global script" that states increasingly follow to gain international legitimacy (Hafner-Burton and Tsutsui 2005: 1382). Organized

[3] Gray literature refers to reports/research materials generated by organizations outside of the peer-reviewed academic process of knowledge production.

[4] Feminist activists in Nicaragua and Mexico consider *feminicidio/femicidio* to include trans women, although the law does not explicitly specify this.

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transnationally, feminist activists contributed to this development in the early 1990s by utilizing a human rights framework to demand state action on violence against women (Bunch and Reilly 1994; Keck and Sikkink 1998), although the 1980 United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) originally lacked provisions on violence. The 1992 General Recommendation 19 to CEDAW and the 1993 UN Declaration on the Elimination of Violence against Women (DEVAW), which formally recognize violence against women as a human rights violation, are a product of their efforts (Bunch and Reilly 1994; Ferree and Tripp 2006). Under these mechanisms, states can be held accountable for failing to act with due diligence to prevent, effectively investigate, and punish violence against women, whether committed by state or non-state actors in the private or public spheres (Benninger-Budel 2008; García-Del Moral and Dersnah 2014). Nevertheless, these obligations are considered "soft law" in international human rights law because they are not legally binding, unlike CEDAW itself.

The CEDAW Committee, the UN body monitoring state compliance with these treaties, has become an important forum for feminist activists to "name and shame" states for failing to address violence against women as part of a "boomerang" strategy of advocacy (Keck and Sikkink 1998; Merry 2003). This strategy relies on the systematic documentation of violations and their framing by transnational advocacy networks (TANs) involving coalitions of domestic and international actors/organizations (Ferree 2006). For Merry (2003: 943), naming and shaming matters more than the actual enforcement of CEDAW/DEVAW. After all, the CEDAW Committee's enforcement mechanisms, which include the evaluation of country reports and complaints by individuals against member states under the Optional Protocol to CEDAW (OP-CEDAW), also result in *non-binding* communications.

Although this research positions the UN as a supranational opportunity structure for feminist claimsmaking (Ferree 2006), Merry (2003: 969) points out that not all UN bodies are equally receptive to feminist input. Nor are all states equally vulnerable to external pressure. As Boyle and Preves (2000) show in their analysis of the impact of international pressure on Egypt to ban female genital cutting, states' dependence on foreign aid that is conditional upon the acceptance of women's human rights can render them vulnerable, despite local acceptance of the practice. Other scholars have identified states' desire to "project a liberal image" involving a commitment to human rights as another factor shaping their vulnerability to naming and shaming (Aikin Araluce 2009: 166; Risse and Sikkink 1999). Thus, Montoya (2013) argues that the success of local activists' "boomerang" strategy depends not only on their

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capacity for advocacy and connection to TANs, but also on the targeted state's openness to the international community and its capacity to respond. Our analysis extends Montoya's work by focusing on the conditions under which states enact legislation in response to the transnationalization of local feminist activism involving UN and regional human rights systems.

Nevertheless, how *regional* human rights systems operate as opportunity structures for transnational feminist activism and their domestic implications has received less attention (but see Friedman 2009; García-Del Moral and Dersnah 2014; Meyer 1999; Santos 2007). Friedman (2009) identifies different modalities through which Latin American feminists have engaged with the political and judicial bodies of the Organization of American States (OAS) to institutionalize the Belém Do Pará Convention, the first legally binding international treaty on violence against women. This convention was ratified by most Latin American states by the late 1990s. However, the first wave of domestic policies on gendered violence that were ostensibly meant to incorporate it was produced by conservative gender regimes, undermining its feminist principles (Friedman 2009: 371). Subsequent corrective reforms were contingent upon changes in states' gender regimes and sustained pressure by feminist movements, the Inter-American Commission on Women (CIM, after its Spanish acronym), and the Follow-Up Mechanism to the Belém Do Pará Convention (MESECVI) (see also Htun and Weldon 2012).

Transnational feminist activists have also pursued the judicialization of the Belém Do Pará Convention through supranational litigation in the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) (Santos 2007).[5] Although some feminist legal scholars have argued against such judicialization (e.g., Palacios Zuloaga 2007), it has contributed to an Inter-American feminist jurisprudence, including the landmark case of *González and Others "Cotton Field" v. Mexico* on the *feminicidios* in Ciudad Juárez (Celorio 2010/2011). Such cases have strengthened the enforcement of the Belém Do Pará Convention as a state accountability mechanism superior to OP-CEDAW (Friedman 2009: 362).

Through our comparison of the trajectories of *feminicidio/femicidio* laws in Mexico and Nicaragua, we argue against a

[5] The IACHR is a quasi-judicial body with contentious and political functions. In its contentious role, it receives and adjudicates petitions against states parties to the OAS Charter, the 1948 American Declaration on the Rights and Duties of Man and other Inter-American treaties, and submits cases to the IACtHR. The Commission's decisions are not legally binding; the judgments issued by the IACtHR are. In its political role, the Commission presides over thematic hearings and produces thematic or country-specific reports on human rights issues.

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homogeneous conceptualization of the domestic impact of the supranational opportunities and litigation described above. Like Friedman, we draw attention to how national contexts shape regional variation in the institutionalization of *feminicidio/femicidio*, despite the seeming uniformity of policies on this issue across Latin America. We contend that the creation of domestic legislation on gendered violence in the context of external pressure is not an exclusively "top-down" process to which weaker states are more vulnerable (Boyle 2002; Boyle and Preves 2000). Indeed, our analysis shows that states' decision to enact such legislation is contingent on their acceptance of supranational authority as legitimate, which can vary at distinct moments in time given evolving domestic political and legal conditions. A critical component of such conditions is "resistance to feminist perspectives and gender equality" within the masculinist state apparatus (Staudt 2014: 166). Our analysis highlights how this resistance manifests itself in distinct ways within each gender regime, such that, in Nicaragua, the feminist struggle remains tied to contestation over the definition of *femicidio*, whereas in Mexico the challenges for addressing *feminicidio* concern implementation.[6]

Legitimacy, the State, and Supranational Authority

Recent scholarship on state legitimacy and how it operates in different political and legal arenas informs our analysis (Conti 2016; Loveman 2005; Nousiainen et al. 2013). Although state legitimacy is commonly conceptualized in Weberian terms, Loveman (2005), drawing on Bourdieu, notes that it is also a "symbolic accomplishment" which must be continually negotiated. This negotiation process takes place *within* the nation-state, as well as at the regional and international levels.

State actors face countervailing pressures concerning if, when, and how to codify human rights norms. As Merry (2006) argues, the localized adoption of such norms depends upon "vernacularizers" or translators, who make human rights legitimate and culturally salient. These translators are necessary within civil society to generate pressure on the state "from below." Yet the pressure "from above" that supranational institutions exercise on states as a threat to their legitimacy also requires translation (Conti 2016).

Using a Bourdieusian framework, Conti (2016) develops the concept of "legitimacy chains" to analyze the specific conditions under which states accept the legitimacy of supranational authority.

[6] Our main focus is law-making, not implementation. We include some discussion of implementation because creating laws is a necessary but not sufficient condition for institutional or social change.

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He employs this concept to explain why the United States complied with a ruling of the World Trade Organization (WTO) on a policy adverse to its economic interests. Legitimacy chains serve to "unpack" legitimation as a multi-scalar process involving distinct yet intersecting domestic and supranational social fields with different rules for defining legitimate action, like the emphasis on legal formalism in the WTO legal field and national interests in the American political field. A "chain" refers to the construction of discursive links between the rules for legitimacy of supranational and domestic fields through the cultural work of institutionally situated interlocutors, or vernacularizers. This contested process is contingent on these actors' ability to understand and justify action in one field as consistent with the requirements of legitimacy in the other (Conti 2016: 158–59). Vernacularization, therefore, also takes place within specific state entities (e.g., the legislature, the courts, and the executive) that constitute the relevant domestic legal and political fields. Here, state officials must "broker" claims based on supranational legitimate action by discursively "chaining" them to the domestic fields' different "legitimacy vernaculars" in ways that will be accepted by relevant audiences (Conti 2016: 156, 157). This is how legitimacy chains are "forged." Conversely, weak and broken links or competing efforts to deny legitimacy claims could result in a legitimacy "deficit" or the creation of "de-legitimacy chains" (Conti 2016: 158, 164). The stronger the "legitimacy chain" connecting relevant state entities to a given supranational body, the more likely it is that the authority of that body will be perceived as legitimate and practically impact state decisionmaking.

Conti's concept of "legitimacy chains" (and its corollary, delegitimacy) is useful for analyzing how differently situated actors like judges, legislators, and feminists shaped the trajectories of *feminicidio/femicidio* laws in Mexico and Nicaragua. In Mexico, feminist actors occupied key positions in multiple social fields (e.g., the legislature and civil society) that allowed them to legitimate supranational authority by linking compliance with human rights as consistent with national interests. In Nicaragua, feminist actors' political influence was highly constricted and other legitimating interlocutors within the legislature and Supreme Court were pressured to abandon their initial defense of the *femicidio* law, positioning it as inconsistent with national interests. We show how state actors may accept the legitimacy of supranational authority on gendered violence at one moment, but not another, depending on the position and relative influence of particular actors within local political configurations of power. Our analysis adds greater theoretical specificity to the concept of "legitimacy" by showing that it is neither static nor linear, but rather the product of the dynamic *interaction* between civil society, states, and supranational institutions.

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"Legitimacy" cannot be taken for granted as an a priori condition that predicts state responsiveness to external pressure.

Comparative Analytical Approach and Data Sources

Our comparative analysis takes a feminist institutionalist approach to historical process tracing that recognizes that "gender relations play out differently within and across particular institutions over time" (Kenny 2014: 682). We are therefore sensitive to Latin America's shared history and culture while also not dismissing the importance of national differences. Tracing the criminalization of *feminicidio/femicidio* in Mexico and Nicaragua is a productive comparison because of the similarities and differences between their sociopolitical and legal contexts.

Mexico is a federal state, whereas Nicaragua has a centralized government. Mexico's federal structure means that the codification of *feminicidio* as a federal crime does not necessarily entail subnational legal uniformity.[7] We consider the comparison between a federal and a central state appropriate, since the countries that have criminalized *feminicidio/femicidio* include a mixture of such states. Mexico and Nicaragua have vibrant feminist movements with strong transnational ties and a well-developed capacity for advocacy. Both movements actively draw upon international/regional women's rights instruments to argue that gendered violence is a human rights violation. However, Mexican feminists have greater institutional presence compared with Nicaraguan feminists, who maintain an oppositional relationship with the state. Also, Nicaragua codified *femicidio* while Mexico criminalized *feminicidio*, although no consensus exists as to which may better serve to punish the killing of women and reduce impunity (Chiarotti 2011; Toledo Vásquez 2009).

Mexico's Legal-Political Context

The criminalization of *feminicidio* was a contested process that happened between 2004 and 2012, in the context of important changes in the Mexican legal-political landscape. In the 2000 presidential elections, Vicente Fox, candidate of the right-leaning National Action Party (PAN), won, ending the 70-year rule of the Institutional Revolutionary Party (PRI).[8] As part of this regime change, Fox pursued a commitment to human rights linked to a "greater anchorage in inter-governmental organizations" and the

[7] Analysis of subnational law-making processes is outside the scope of this article.

[8] Mexican Presidents serve for 6 years and cannot be re-elected.

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creation of institutionalized spaces of dialogue with Mexican civil society as "a necessary factor for democratic governance" (Aikin Araluce 2012: 32). Although consistent with the "rights-oriented rhetoric" through which Mexico has historically situated itself "as part of the 'modern' world" (Staudt 2014: 166), this discourse also created the conditions for the "entrapment" of Fox's administration (Aikin Araluce 2012: 32). That is, his administration would later find it difficult to reject the domestic and international scrutiny to which he had appealed to legitimate the regime change. Thus, despite the "meager results" to curb *feminicidio* in Ciudad Juárez during this period, Fox's administration eventually pursued the "institutionalization and practice" of human rights norms, albeit in an "incipient" way (Aikin Araluce 2009: 152, 166).

During the presidency of Felipe Calderón (PAN) (2006–2012), the "war on drugs" led to numerous human rights violations that contravened the practice of human rights norms (Staudt and Méndez 2015). Nevertheless, their federal institutionalization continued, culminating in the 2011 constitutional reform that placed international human rights treaties on equal legal footing with the Constitution. Yet subnational resistance to the "harmonization" of these provisions and their implementation persists (Olamendi 2017b; Staudt 2014).

A shift in the country's gender regime took place following the First UN World Conference on Women in Mexico in 1975. Both the autonomous feminist movement and state feminism have grown since then, but especially over the last two decades (Incháustegui and Ugalde 2006). Gender-related concerns have been institutionalized through the Equity & Gender Commissions established in 1997 in the bicameral Federal Congress, and the creation of national and state-level women's institutes during the Fox administration. These and other institutional spaces have provided feminist state actors with opportunities to incorporate a gender perspective consistent with international norms on gendered violence in the legislative process (Piscopo 2011). Importantly, these institutional spaces were part of the TAN against *feminicidio* in Ciudad Juárez (Aikin Araluce 2011). Against this backdrop, feminist legislators were able to operate as links in the chain to legitimate supranational authority and push for the criminalization of *feminicidio*.

Nicaragua's Legal-Political Context

The codification of *femicidio* in Nicaragua took place in a context of highly concentrated political power dominated by current president Daniel Ortega (2007-present) of the *Frente Sandinista de*

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Liberación Nacional (FSLN).[9] Over the last 10 years, President Ortega and his wife Rosario Murillo (Vice-President since January 2017) have gained control over all major institutions (the National Assembly, the Supreme Court, the Electoral Council, and the National Police), as well as a majority of municipal governments (Puig 2010). Practically speaking, this means that there is no separation of powers in Nicaragua; legislators and judges must abide by Ortega's directives or face harassment, threats, and sometimes even removal from office (*Confidencial*, 5 Nov 2016b). Ortega also forged a critical alliance with Venezuela's leftist government, which has provided Nicaragua with substantial financial support since 2007. By guaranteeing its relative economic stability, the Venezuelan government has insulated Nicaragua from some forms by external pressure, enabling Ortega to reject international norms that he deems illegitimate (Rogers 2012).

Domestically, the most important alliance shaping Nicaragua's gender regime is the one Ortega has established with conservative religious groups (Neumann, forthcoming). To maintain their support, Ortega has publicly opposed abortion (illegal since 2006), employed family-centric rhetoric (Jubb 2014), and used public resources to support religious groups (Lara 2014). Ortega's 2011 presidential campaign slogan was "Christian, Socialist, Solidarity" and both Ortega and Murillo often reference the government's goal of "strengthening the unity of the Nicaraguan family" (*El 19 Digital* 2015).

Ortega and his conservative religious allies have discredited local feminists as outsiders peddling a suspicious agenda (Kampwirth 2011). Most feminist organizations have maintained an autonomous position vis-à-vis the state since the early 1990s and remain highly critical of Ortega. Although equal political representation of women is now legally required (*Ley de Derechos y Oportunidades* 2008), in practice political loyalty to Ortega has become a prerequisite for elected and appointed positions (*Confidencial* 2016a). Since 2012, Ortega's party has controlled 134 out of 153 total municipalities. Most feminists have been excluded from the formal political process, relying primarily on social mobilization to pressure authorities (Kampwirth 2011). Such was the case of Law 779.

Data

Consistent with a key principle of process tracing (Bennett and Checkel 2014), we collected data guided by our theoretical

[9] The Nicaraguan Constitution establishes 5-year presidential terms and no consecutive re-election. The Supreme Court overturned this provision in 2009, enabling Ortega's indefinite re-election.

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focus on the role of legitimacy chains in the trajectories of *feminicidio/femicidio* laws in Mexico and Nicaragua over time. Our data sources correspond to the specific political and legal fields involved in this process, allowing us to disaggregate some – though by no means all – of the mechanisms at play, including gendered institutional dynamics. In this sense, we engage in what Bennett and Checkel (2014: 8) call the "inductive theory development side of process tracing," focusing more on theoretical specification through analytical comparison rather than hypothesis development or testing. Through this inductive approach, our two main analytical dimensions emerged: domestic and supranational political and legal configurations and the positionality of feminists within and outside of the state.

Discussion of the Mexican case is grounded in García-Del Moral's analysis of Mexican legislation on *feminicidio* and debates in the bicameral Federal Congress, made up of the Chamber of Deputies (CD) and the Chamber of Senators (CS), between 1997 and 2012. This timeframe spans five legislative periods in which the transnational movement against *feminicidio* emerged and began to socialize the Mexican government into institutionalizing international human rights norms (Aikin Araluce 2011, 2012): LVII (1997–2000), LVIII (2000–2003), LIX (2003–2006), LX (2006–2009), and LXI (2009–2012). We also review documents on the codification of *feminicidio* issued by feminist civil society organizations related to the decisions against Mexico by the IACHR, the IACtHR, and the CEDAW Committee, since they reflect how key audiences assessed the consistency of legislators' actions with supranational and domestic legitimacy rules. Participant observation and in-depth semi-structured interviews with feminist activists and former or current state actors, conducted during three field visits to Mexico between 2013 and 2017, provided further insights into the vernacularization process at play in the construction of legitimacy chains underlying the criminalization of *feminicidio*.

Data for the Nicaraguan case gathered by Neumann includes ethnographic fieldwork, in-depth interviews, media coverage of gendered violence law, and legal documents, which highlight the contestation over the legitimacy of supranational authority and feminists' marginalization within the state. Between 2012 and 2014, Neumann engaged in participant observation at events organized by feminist organizations related to gendered violence law and in a women's police station in Managua, Nicaragua's capital; in-depth interviews were conducted with state officials, feminist activists, and women victims of gendered violence. Documents reviewed included: speeches and letters written by Supreme Court Justices; the text of the Integral Law against

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Table 1. Indicators of State Acceptance of Supranational Legitimacy

Indicator	Mexico	Nicaragua
Ratification of human rights instruments/protocols related to gendered violence		
• CEDAW	• ✓	• ✓
• OP-CEDAW	• ✓	• ×
• Belém do Pará	• ✓	• ✓
Laws on *feminicidio/femicidio* utilize HR instruments	✓	✓ (2012)× (2014)
State collects data on *feminicidio/femicidio* in accordance with HR protocols	×	×
State submits reports to IACHR or other supranational entities regarding gendered violence	✓	×
State officials accept funding/training on HR protocols related to gendered violence	✓	✓
State representatives attend IACHR hearings on gendered violence	✓	×
State allows IACHR, CEDAW and other UN representatives to enter the country to conduct investigations related to gendered violence	✓	×
State Supreme Court incorporates/draws on treaties and rulings from IACtHR	✓	×
State abides by IACtHR rulings	✓ but not fully	N/A

Time period analyzed: Mexico 2004–2015; Nicaragua 2010–2016 (MESECVI 2017).

Violence Toward Women (Law 779) and its subsequent reforms; and statements by elected officials, feminist organizations, and opponents of Law 779 culled from more than 250 newspaper articles published between 2012 and 2015.

In what follows, we provide a narrative description of each case followed by an analysis of two dimensions which emerged from our comparative process tracing. We also show how these dimensions are connected to states' acceptance (or not) of the legitimacy of supranational authority, which we operationalize using a series of indicators summarized in Table 1.[10]

Criminalizing *Feminicidio* in Mexico

Mexico was the first country to propose the criminalization of *feminicidio* (*tipificación del feminicidio*), but not the first to legislate the offense (Toledo Vásquez 2009). Mexico had seven federal initiatives addressing *feminicidio* between 2004 and 2011. It was only in June 2012, as per the reform to Article 325 of the Federal Criminal Code, that *feminicidio* became a crime. The article reads as follows: "The crime of *feminicidio* is committed where a person deprives a woman of her life for gender reasons." Gender reasons exist under any of the following circumstances: if the victim presents signs of sexual violence of any kind; if the victim was

[10] We do not speculate on criteria that states may use to determine the legitimacy of supranational bodies. Rather our aim is to identify the conditions under which states actually do or do not accept the legitimacy of such authority.

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subjected to "shameful or degrading injuries or mutilations before or after being deprived of life, including acts of necrophilia"; if there is information about any kind of violence against the victim in the family, work, or school environment by the perpetrator; if a sentimental, affective, or trusting relationship existed between the victim and the perpetrator; if there is information indicating that there were threats linked to the crime, harassment or injuries by the perpetrator against the victim; if the victim "was left without means of communicating with anyone else (*incomunicada*), for however long a time period prior to the deprivation of life"; if the victim's body is exposed or exhibited in a public place. Article 325 establishes a 40–60-year prison term and 500–1000 days of fines as penalties for this crime.[11] Article 325 further includes a provision to punish public servants "who hinder or delay the administration of justice, whether maliciously or because of negligence" with a penalty of a 3–8-year prison term and 500–1500 days of fines, as well as a 3–10-year ban from performing any other public position or charge and being dismissed from their current position.

This section describes the long and contested process of the making of the law that criminalized *feminicidio*, focusing on the actions of feminist legislators and changes in Mexico's gender regime. We show how feminist legislators' position in key gendered institutional spaces with ties to the transnational mobilization against *feminicidio* in Ciudad Juárez allowed them to present the codification of *feminicidio* as a necessary step toward restoring the state's international legitimacy. As part of this process, they simultaneously legitimated the authority of supranational human rights bodies and the claims of local feminist activists that had resorted to them. Nevertheless, the subsequent weak enforcement of the law constitutes its unmaking.

Since the 1990s, feminist grassroots activists began to organize transnationally against the disappearance and brutal murder of hundreds of young women in Ciudad Juárez (Aikin Araluce 2009, 2011, 2012; Anaya Muñoz 2011). Through the feminist scholarship and activism of Marcela Lagarde and Julia Monárrez, these murders and the impunity that characterized them were framed as *feminicidio* (Aikin Araluce 2011; García-Del Moral 2016). Activists aimed not only to name and shame the state for its impunity, but also to hold it responsible for violating its obligations under the Belém Do Pará Convention and the CEDAW using legal

[11] The Federal Criminal Code calculates a day of fines based on either the established daily minimum wage or the offender's net worth when the crime was committed (Book One, Second Title, Chapter V, Pecuniary Sanctions, Art. 29).

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strategies involving the Inter-American system and the CEDAW Committee under OP-CEDAW (García-Del Moral 2016).

The discovery of the bodies of eight young women in a cotton field in Ciudad Juárez in November 2001 became a catalyst for this transnational mobilization (Aikin Araluce 2011). The uproar following the "cotton field" murders generated enough external pressure for feminist Deputies belonging to the Equity & Gender Commission during the LVIII Legislature (2000–2003) to create a Special Commission to inquire into the faulty investigations of the homicides of women in Ciudad Juárez.[12] In subsequent legislative periods, this new institutional space became the Special Commission to Make Known and Monitor *Feminicidios* in Mexico and Efforts to Secure Justice in Such Cases (hereafter Special Commission on *Feminicidios*), an important part of the TAN against *feminicidios* in Ciudad Juárez (Aikin Araluce 2011). The Senate created a similar Special Commission. Not only had *feminicidio* replaced the word "homicides," but its recognition as a national problem facilitated the incorporation of its criminalization in the legislative agenda.

Salient here was the role of Marcela Lagarde, who, as part of her activism, became a Deputy through her affiliation with the left-leaning Party of the Democratic Revolution (PRD) during the LIX Legislature (2003–2006). As President of the Special Commission on *Feminicidios*, she worked with other feminist legislators to institutionalize her conceptualization of *feminicidio* as a "state crime" and the related term *violencia feminicida* (feminicidal violence) as a modality of gendered violence that violates women's human rights (CD 25.11.03). In part, Lagarde did so by commissioning a study to investigate *violencia feminicida* in 10 Mexican states, revealing its widespread prevalence. The study allowed feminist legislators to push for the criminalization of *feminicidio* and the *Ley General de Acceso de las Mujeres a Una Vida Libre de Violencia* (General Law on Women's Access to a Life Free of Violence, LGAMVLV) as a national legal framework that integrates the CEDAW, DEVAW, and the Belém Do Pará Convention.

Lagarde worked with the Equity & Gender Commission to present two initiatives in 2004 and 2006 to codify *feminicidio* using the language of the international crimes of genocide and crimes against humanity (CD 07.12.04; CD 26.04.06). Although approved by Deputies, the Senate did not discuss them until 2012, when they approved newer proposals instead. Another initiative to criminalize *feminicidio* on the basis of misogyny and gender inequality was part of the initial draft of the LGAMVLV proposed in February 2006. Lagarde argued that criminalizing

[12] Special Commissions are re-instituted in each new legislative period and lack the power to introduce, evaluate, and review (*dictaminar*) bills (Piscopo 2011).

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feminicidio would "allow women to access their fundamental rights while punishing those that transgress them, even if it is the state itself that does so" (CD 02.02.06). The LGAMVLV was approved, but the codification of *feminicidio* was removed, integrating instead the concept of *violencia feminicida*. This law entered into force in 2007.

Subsequent proposals emerged in a context of new political opportunities, particularly: (1) the judgment of the IACtHR in the case of *González and Others "Cotton Field" v. Mexico* of November 2009; (2) three European Parliament pronouncements condemning Mexico for its ongoing resistance to address *feminicidio*; (3) the 2005 CEDAW Committee inquiry and the 2006 CEDAW Country Report, which explicitly urged the Mexican government to criminalize *feminicidio*; and (4) the MESECVI admonishment of state parties to criminalize *feminicidio* (CD 26.11.09; CD 03.03.11; CD 08.03.11; CD 17.03.11; CD 13.12.11; Olamendi 2017a: 34; UN CEDAW Committee, 2006). The "*Cotton Field*" judgment is emblematic of the transnationalization of local feminist activism against *feminicidio* and its importance cannot be underestimated. In this landmark judgment, the IACtHR ruled that Mexico's failure to act with due diligence to prevent, effectively investigate, and punish the brutal sexual murder of three "cotton field" victims constituted gender discrimination. Lagarde and Monárrez were expert witnesses *against* the Mexican state.

Using this momentum, Deputies Diva Gástelum Bajo (PRI), Dr. Teresa Incháustegui (PRD), and Laura Elena Estrada (PAN) issued three initiatives focused on misogyny and "gender reasons" as the factors underlying the killing of women in the public or private spheres (CD 03.03.11; CD 08.03.11; CD 17.03.11; CD 13.12.11). The first proposed to criminalize *feminicidio* as aggravated homicide; the second constructed *feminicidio* as an autonomous crime; and the third criminalized *feminicidio* as part of the LGAMVLV. For them and the feminist Deputies that supported them, criminalizing *feminicidio* would be a means of complying with the "*Cotton Field*" judgment. For example, Deputy Mary Telma Guajardo (PRD) and Deputy Incháustegui (PRD) had previously argued that "compliance with the judgment is fundamental to guarantee Mexican women's right to a life free of violence" (CD 27.01.10). Deputy Rosi Orozco (PAN) expressed a similar view: "It is the duty of the Legislative Power to ensure the compliance with the '*Cotton Field*' judgment, since it exposed at an international level the systematic violation of women's human rights in the national territory" (CD 22.04.10). Importantly, the Deputies' words echoed Lagarde's arguments as Deputy and as expert witness during the litigation of the "*Cotton Field*" case (see IACtHR 2009: 21, 29, 40).

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The Senate approved the second proposal by Deputy Incháustegui (constructing *feminicidio* as an autonomous crime), adding elements from the other two proposals, although not without resistance. According to Dr. Incháustegui, a feminist sociologist and now president of the Women's Institute of Mexico City, getting the Senate's approval was "a tough bone to crack" (interview, July 7, 2017). However, Senators could not ignore updated statistical information that she, as President of the Special Commission on *Feminicidios*, had compiled on the ongoing pervasiveness of *violencia feminicida* and *feminicidio* in Mexico (see ONU Mujeres, INMUJERES and LXI *Legislatura Cámara de Diputados* 2011, 2012). Importantly, her proposal was supported by over 120 civil society organizations, including the network National Citizen *Feminicidio* Observatory (OCNF) (CD 08.03.11). The Senate sent back to the Chamber of Deputies a modified initiative that codified *feminicidio* as a federal crime under Article 325 of the Federal Criminal Code (CS 24.04.12). Deputies approved it with 304 votes in favor and four abstentions (CD 30.04.12).

Although considered a feminist victory, several institutional obstacles have prevented the prosecution of the murder of women as *feminicidio*. While *feminicidio* has now been codified as a crime in all 32 Mexican states, discrepancies remain between the legal definition of *feminicidio* in the federal and local criminal codes (Olamendi 2017b). Moreover, although officials in the justice system have been trained to operate with "a gender perspective," discriminatory attitudes, and gender stereotypes still permeate investigations into the murder of women (Olamendi 2017b). The killing of women and systemic impunity thus prevail. Between 1993 and 2014, more than 36,000 women were murdered, with 16,187 cases alone from 2008 to 2014 (SEGOB, INMUJERES, and ONU Mujeres 2016: 11). Based on information requested by the OCNF from State Prosecutors in 25 states, there were 6297 women murdered from 2014 to 2017, with 1886 (30 percent) investigated as *feminicidios*. The other seven states did not provide information and/or argued that no *feminicidios* had taken place; this despite the 2015 Mexican Supreme Court of Justice's ruling that all violent deaths of women must be investigated as *feminicidio* (554/2013). Dr. Incháustegui linked this failure to investigate the failure to prosecute *feminicidios*, and thus to impunity (interview, July 7, 2017).

Although this points to the law's unmaking, there have been some successful prosecutions of *feminicidios* in response to sustained local feminist activist involvement, as the OCNF's (2016) latest report reveals. These have occurred primarily in states that codified *feminicidio* as an autonomous crime. Regardless, the

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OCNF points to contradictions in how State Prosecutors record and investigate *feminicidios*, further contributing to the lack of accurate data on this crime's impunity rate.

Codifying *Femicidio* in Nicaragua

The codification of *femicidio* in 2012 as part of Law 779 *Ley Integral contra La Violencia hacia las Mujeres* was a victory for Nicaraguan feminists, albeit a short-lived one. Article IX of Law 779 defined *femicidio* as follows: "The crime of *femicidio* is committed by the man that, in the framework of unequal power relations between men and women, causes the death of a woman in the public or private sphere." It also delineated the specific circumstances that judges should take into consideration for sentencing in such cases: if the woman's death was connected to "[an] unsuccessful attempt to establish or re-establish intimacy with the victim," if there were any kind of familial, work, intimate, educational, or guardianship relationship with the victim, if the woman's death occurred as a result of repeated violence, if the death involved the sexual degradation of the women's body (e.g., genital mutilation), if the woman's death demonstrated evidence of misogyny, if the woman's death was a result of a group ritual/gang activity, or if the act was committed in the presence of the victim's children. The penalty for *femicidio* committed in the "public sphere" was 15–20 years in prison; for *femicidio* committed in the "private sphere," the penalty was 20–25 years in prison. If the *femicidio* occurred with two or more of the aforementioned conditions, the maximum penalty would apply (30 years in prison).

However, reforms during 2013 and 2014 attacked and undermined this progressive law, culminating with an executive order (*Decreto 42-2014*) that severely restricted the original legal definition of *femicidio*. This section discusses the making and unmaking of Law 779, highlighting feminists' limited leverage in the lawmaking process, the conservative backlash to the law, and how Ortega's consolidation of power enabled him to disregard pressure from the UN and the Inter-American System.

Prior to 2012, the crime of *femicidio* was not explicitly codified in Nicaraguan law. Like feminists in Mexico, activists in Nicaragua were troubled by the rising numbers of women being murdered in Central America throughout the 2000s. Inspired partly by Mexican feminist activism, Nicaraguan feminist organizations began to advocate for comprehensive legislation addressing gendered violence, including the codification of *feminicidio/femicidio*. Virginia Meneses, a feminist lawyer affiliated with the Nicaraguan

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Women's Network against Violence explained *feminicidio* thusly: "There is a *feminicidio* State when it does not create secure conditions for the lives of women in the home, the community, at work, or in the street. Especially when authorities do not complete their responsibilities with efficiency. That's why *feminicidio* is a crime of the State" (*El Nuevo Diario* 2010).

In 2010, feminists initiated a 6-month consultation process involving more than 20 local women's organizations which culminated in a draft law strengthening protections for women victims of gendered violence and codifying *feminicidio/femicidio*.[13] Feminist organizations submitted their proposal and a petition with over 12,000 signatures to the National Assembly in September 2010 (Interview, July 2013). The UN Development Program and European cooperation agencies supported their efforts. Almost simultaneously, the Nicaraguan government formed its own interagency commission, underwritten by the Organization of Ibero-American States (OEI) and the Spanish Agency for International Cooperation for Development (AECID). The commission's stated goal was "to create a normative body [of law], which, in accordance with international legislation, would provide greater protection to women victims of violence."[14] The reference to "international legislation" indicates that the state's actions were motivated in part by other Latin American countries which had already codified either *femicidio* or *feminicidio*. For Supreme Court Justice Alba Luz Ramos, one of the early proponents of the law, such legislation constituted a logical next step, since Nicaragua is a signatory to the Belém Do Pará Convention and CEDAW (Ramos 2010), although not the OP-CEDAW.

The final text of Law 779 integrated the feminists' and government commission's proposed legislation, but the bill remained stalled in committee for several months.[15] Feminists took to the streets to demand that the National Assembly vote on Law 779. Notably, the law was not approved *en lo general* (in principle) until November 2011, following a questionable national election which drew sharp international criticism (Meyer 2011). It was later

[13] Because the codification of *femicidio* was part of a larger piece of legislation shifting Nicaraguan law from a framework of "intra-family violence" to "gender-based violence" for the first time, feminists mainly focused on the legislation as a whole, not the specific language used to codify *feminicidio/femicidio* per se. Nevertheless, their ultimate goal was the same as Mexican feminists: that these crimes be appropriately investigated, prosecuted, and prevented.

[14] See Nicaraguan National Assembly Database of Laws. Online. http://legislacion.asamblea.gob.ni/SILEG/Iniciativas.nsf/0/8f45bac34395458c062578320075bde4?OpenDocument&ExpandSection=1&TableRow=3.0#3.

[15] The passage of Law 779 took place in tandem with a reform of Nicaragua's Penal Code (Law 641) to maintain consistency with the crimes in Law 779.

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approved *en lo particular* (article by article) in January 2012 by a unanimous vote of the newly elected legislature and signed into law by President Ortega in February 2012. It officially went into effect on June 22, 2012. The law's content was noteworthy for its emphasis on the "unequal power relations between men and women" that lead to violence against women and the criminalization of *femicidio*. Like Mexico, Nicaragua's Law 779 echoes the language of Belém do Pará, clearly articulating the state's obligation to protect women's right to a life free of violence.

Unlike Mexico, Nicaragua's Law 779 immediately encountered strong social and legal opposition. Initially, this opposition was not directed at *femicidio* per se, but rather to the law's potential to undermine so-called "family unity" given its prohibition of mediation (informal arbitration). In July 2012, a local group of attorneys (ADANIC) challenged the constitutionality of Law 779 with the Supreme Court, arguing that it violated the constitutional principle of equality under the law (*La Prensa*, May 2, 2013). Evangelical leaders called the law an attack against men and marriage, urging its immediate reform (Alvarez 2013a). However, Justice Ramos and Sandinista Deputy Carlos Emilio López, a member of the legislative commission involved in the creation of the law, publicly defended its constitutionality. In Deputy López's words, not only was Law 779 "coherent with the Magna Carta," it was also "entirely consistent with international legal instruments" (Alvarez 2013b).

Protests both for and against Law 779 continued throughout 2013. In August 2013, the Supreme Court upheld Law 779 as constitutional, but ordered the National Assembly to reform it to re-introduce the option of mediation. Responding to pressure from conservative and religious groups, the National Assembly quickly passed the required reform, permitting mediation for first time and minor offenses (Picón 2013). Surprisingly, Justice Ramos and Deputy López defended the reforms, despite their support for the original law, suggesting increasing pressure to adhere to the Ortega administration's family-centric discourse and policies.

Feminists, supranational actors, and international human rights organizations publicly denounced the 2013 reform of the law (Miranda 2013). When the UN Human Rights Council (HRC) convened in May 2014, member States urged the Nicaraguan delegation to reconsider the amendments to Law 779 in order to comply with CEDAW (UNGA 2014).[16] Feminist organizations

[16] The Human Rights Council (HRC) is made up of 47 UN member states elected by the General Assembly. Its task is strengthening human rights worldwide. It is different from the UN Human Rights Committee, which monitors states' compliance with the Convention on Civil and Political Rights (CCPR).

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viewed these interventions positively because the state had arguably failed to meet its obligations to protect women's rights by amending Law 779. However, instead of heeding the HRC's concerns, the Ortega government further weakened Law 779 by delimiting the statutory definition of *femicidio*.

In July 2014, President Ortega issued *Decreto 42-2014* setting out new regulations concerning Law 779.[17] The decree redefined the law's objective as "to strengthen Nicaraguan families… [and] a culture of familial harmony" (*Decreto 42-2014*, Article I). It also reconceptualized *femicidio* as a "crime committed by a man in the framework of interpersonal relations that results in the death of a woman." The decree stipulated that "interpersonal relations" are limited to specific affective relationships: partner, husband, ex-husband, boyfriend, ex-boyfriend. The murder of a woman by a man who did not fall into one of those categories would no longer be considered a *femicidio* according to the law, thus depoliticizing the killing of women by relegating *femicidio* to the private sphere.

Subsequently, government statistics reported a decline in the number of crimes classified as *femicidios* based on its more limited definition (Membreño 2014). For example, in 2015 the Public Prosecutor's Office reported that out of 71 women murdered, 19 cases were charged as *femicidio*, 25 as murder (*asesinato*), 20 as homicide (*homicidio*), and 7 as parricide (*parricidio*). In 2016, it reported 49 women murdered; of these, 10 cases were charged as *femicidio*, 16 as murder, 21 as homicide, and 2 as parricide (Ministerio Público de Nicaragua 2016).[18] The number of *femicidios* committed in Nicaragua remains heavily disputed by feminist organizations.[19]

Feminists and human rights observers contended that President Ortega's executive order superseded his constitutionally granted authority because he sought to use a decree to *reform* Law 779, not merely to clarify its implementation. Women's organizations filed numerous petitions with the Supreme Court to annul Decree 42-2014, but as of this writing it has declined to rule on their appeals (Álvarez 2014). Despite local and international outcry

[17] The 2013 legislative reform of Law 779 (Article V, Law N°. 846) gave Ortega powers to issue new regulations.

[18] Official sentencing data for *femicidios* is not publicly available in Nicaragua. One investigation found that there were 31 sentences for *femicidio* issued in 2013, but an unknown number of those sentences were for crimes committed in 2012. The Nicaraguan chapter of *Católicas por el Derecho de Decidir* (CDD) has developed a partial database of *femicidio* cases (www.voces.org.ni), but many judicial rulings are unknown.

[19] In 2012, the *Red de Mujeres contra la Violencia* claimed that there were 85 *femicidios*, whereas the police claimed there were 76 (Romero 2013). In 2016, the police's reported 11 *femicidios*, whereas CDD reported 49 (*El Nuevo Diario* 2017).

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Table 2. *Feminicidio/Femicidio* Laws in Mexico and Nicaragua

Indicator The Crime:	**Mexico** (2012) *Feminicidio*	**Nicaragua** (2012) *Femicidio*	**Nicaragua** (2014) *Femicidio*
Is committed for gender reasons related to power inequality	✓	✓	×
Is committed by any person	✓	×	×
Is committed by a man	✓	✓	×
Is committed by a male intimate partner	✓	✓	✓
Is committed in the public sphere	✓	✓	×
Is committed in the private sphere	✓	✓	✓
Is preceded by a history of violence by the perpetrator against the victim	✓	✓	✓
Occurs in context of a family, intimate or work, relationship between the perpetrator and the victim	✓	✓	× (couple only)
Is preceded by sexual violence	✓	✓	✓
Involves the mutilation of or denigrating injuries to the victim's body, before or after her death	✓	✓	✓
The victim's body is exhibited in a public space	✓	×	×
Involves group activity (e.g., gang rape)	×	✓	×
Is committed in front of the victim's children	×	✓	✓
Is preceded by a period of time (however long) in which the victim has no means of communicating (*incomunicada*)	✓	×	×
Minimum penalty (years in prison)	40 + fines	15, (if it occurs in "public" sphere) 25 (if it occurs in "private" sphere	15 (no public sphere distinction)
Maximum penalty (years in prison)	60 + fines		25
Aggravated penalty (years in prison)	60 + fines	30	30
Public officials can be punished for actions or omissions hindering the administration of justice	3–8 year prison term, removal from post, and 3–10 year ban from public service	200–500 day fine, suspension from post for 3–6 months	No change

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against the weakening of Law 779 (AWID 2014; UN Watch 2014), Nicaraguan authorities have repeatedly defended the changes to *femicidio* outlined in Decree 42-2014 (Membreño 2014). Remarkably, Chief Justice Ramos argued that altering the definition of *femicidio* was irrelevant because crimes not prosecuted as *femicidios* would proceed under the charge of murder, which carried just as severe of a penalty: "A dead woman is a dead woman. In the end it doesn't matter what it's called" (Poder Judicial 2014). Feminists like Juanita Jiménez vehemently disagreed; she said, "Yes, it matters [if it's murder, homicide, or *femicidio]*. Because *femicidio* highlights the violent way that the lives of women are extinguished because they are women" (field notes, August 2014). While feminists insisted on the importance of *femicidio*, state officials dismissed the killing of women as a matter of semantics.

Discussion

Nicaragua and Mexico criminalized *femicidio* and *feminicidio*, respectively, in 2012 in the context of the transnationalization of local feminist activism. Each state's domestic political conditions, including their gender regime, shaped the degree of "openness" (Montoya 2013) to pressure exerted by feminist actors and supranational institutions, resulting in starkly different makings and unmakings of the *feminicidio/femicidio* laws (see Table 2). In Mexico, this degree of openness expanded, though not without resistance (Aikin Araluce 2009), while in Nicaragua it shrank due to an increasingly consolidated regime that marginalized feminist actors and allies. At stake in both cases was the legitimacy of the authority of supranational institutions.

Mexico's federal structure, its investment in being perceived internationally as a modern liberal state, and the concomitant acceptance of the legitimate authority of supranational bodies constituted key political conditions for the successful criminalization of *feminicidio*. In contrast to Nicaragua's centralized regime, the decentralization of power within the Mexican state facilitated the introduction of a feminist legislative agenda focused on codifying *feminicidio* and drafting the LGAMVLV. Although the feminist agenda faced some resistance from the federal executive (see Aikin Araluce 2009, 2011, 2012; Staudt 2014), it proved harder to undermine as it became further institutionalized.

This success is partly linked to the unprecedented levels of international attention that the *feminicidios* in Ciudad Juárez received given the transnational feminist naming and shaming campaign (Aikin Araluce 2011; Anaya Muñoz 2011). Feminist activists were effective, however, *because* the Mexican state was

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already heavily invested in human rights as a measure of state legitimacy in the international community (Aikin Araluce 2009). Deputies and Senators, especially feminists, continuously remarked that the murders and the international scrutiny of Mexico's failure to address them were "a matter of national shame." By using the language of shame, they aligned the "rules for determining legitimacy" within the Mexican legal and political fields with those of the IACHR, IACtHR, and the CEDAW Committee (Conti 2016) and laid the groundwork to legitimate the claims that supranational bodies would make against Mexico.

Shaming was only part of the story, however. This strategy might have been less effective, had feminist activists not submitted petitions to the IACHR/IACtHR, and the CEDAW Committee to demand the enforcement of the Belém Do Pará Convention and CEDAW, among other human rights treaties. The "*Cotton Field*" judgment, which created legally binding obligations for the state, provided an additional political opportunity for feminist legislators and activists to push for the codification of *feminicidio* as an autonomous federal crime. Without these legally binding mechanisms in place, feminist legislators' argument that the criminalization of *feminicidio* was a necessary step for the state to address the killing of women nationally would likely have gained less traction, perhaps even despite being named and shamed.

Indeed, Lagarde's three federal initiatives to codify *feminicidio* presented during the "most intensive" naming and shaming period (2004–2006) (Aikin Araluce 2012: 39) failed to become law. Only after the 2007 LGAMVLV and the 2009 "*Cotton Field*" judgment was *feminicidio* successfully codified. Through Deputy Lagarde's work, the human rights framework became institutionalized in the LGAMVLV as the appropriate set of rules for determining the legitimate response of the state to gendered violence. As a scholar-activist, Lagarde's testimony as a witness *against* the Mexican state during the "*Cotton Field*" litigation also served to solidify the "legitimacy chain" (Conti 2016) linking the supranational legal field and the Mexican legal and political fields.[20]

Lagarde and other feminist legislators' ability to act as links in the chain to legitimate supranational authority and pursue the codification of *feminicidio* further hinged on their embeddedness in gendered institutional spaces, like the bicameral Equity & Gender Commissions and the Special Commissions on *Feminicidio*. As

[20] Like Lagarde, other feminists have simultaneously occupied positions within the state, supranational bodies like the CIM and MESECVI, and maintained ties to feminist civil society. An example is Patricia Olamendi, whose work on *feminicidio* in Mexico we cite here. Due to space limitations, we are unable to incorporate their actions into our analysis.

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Piscopo (2011: 168) illustrates, the Equity & Gender Commissions institutionalized a gender perspective linked to a doctrine of gender equality in the legislative process, often in collaboration with other institutions that are part of the domestic and supranational "women's policy machinery" (Ferree 2006), like the National Women's Institute (INMUJERES) and UN Women. These Commissions represent what McCammon et al. (2001: 53) identify as "gendered opportunity structures," or shifts in gender relations that can foster "successful social movement outcomes." The politicization of gendered violence, including feminicidal violence, through the LGAMVLV and its human rights framework captures how such gendered opportunity structures redefine women's relation to the polity (McCammon et al. 2001: 54).

In sum, these institutional spaces changed Mexico's gender regime over time, setting the stage for the criminalization of *feminicidio* in 2012 in the context of the transnationalization of feminist activism and the decisions of supranational bodies that not only shamed the state, but found that it had violated its international obligations. Feminist legislators were able to increase the state's "openness" to this pressure by legitimating the claims of supranational bodies, especially the IACtHR, and present the codification of *feminicidio* as a response consistent with the liberal image that Mexico sought to project internationally and with domestic and international frameworks on women's rights. Nevertheless, the law's unmaking rests in the inability to "transform perverse law enforcement institutions" despite the "targeted and efficacious" actions of transnational activism, or the efforts of feminist state actors to push for institutional and social change (Staudt 2014: 175).

In Nicaragua, the passage and later weakening of *femicidio* law took place in a domestic political and legal field characterized by a lack of independent and coequal branches of government, dominated by President Ortega. Nevertheless, when feminists initially submitted their legislative proposal to the National Assembly, the regime had yet to be fully consolidated; that is, the Sandinista government did not yet have a supermajority in the legislature, necessitating political compromise. At the time, the state was facing staunch international scrutiny over its upcoming presidential election, momentarily increasing its vulnerability to external pressure.

Even so, the effectiveness of feminist advocacy concerning the codification of *femicidio* was dependent upon sympathetic allies within the state apparatus to legitimate their efforts. In this respect, the involvement of the Supreme Court, and particularly Chief Justice Alba Luz Ramos, was vital. By adopting feminist arguments to support a new law on gendered violence in compliance with Belém do Pará, Justice Ramos became a key link in the

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"legitimacy chain" (Conti 2016) facilitating the state's initial acceptance of international norms concerning women's rights; her credibility stemmed from her historic loyalty to the FSLN and Ortega himself. Justice Ramos' advocacy was essential for the formation of the intragovernmental commission that drafted a bill to address *femicidio* and other forms of gendered violence in accordance with international treaties on women's rights. She also staunchly defended the constitutionality of the statute and encouraged feminist actors to demand its full implementation throughout 2012 and early 2013.

By mid-2013, the political calculus had changed dramatically. Law 779 faced increasing opposition from Ortega's conservative and religious allies, leading Justice Ramos and key deputies from Ortega's party to reverse their position. Without the vernacularizing work of Justice Ramos and other key interlocutors for the law, the legitimacy chain connecting the supranational field to the state was broken. In its stead emerged a "de-legitimacy chain" (Conti 2016) constituted by conservative and religious actors, who engaged in "competing efforts to deny [the] legitimacy claims [of feminists and supranational actors alike] and redefine dominant rules for legitimate action." Feminists' ability to restrain the Nicaraguan government from undermining Law 779 became severely limited, as conservative actors presented this law as an encroaching foreign "gender ideology" rather than a logical response to the state's prior commitment to address gendered violence.

On the one hand, the breakdown of this "legitimacy chain" (Conti 2016) points to Ortega's increased control of the state, which enabled him to resist feminist pressure, eschew international norms, and unilaterally weaken the legal definition of *femicidio*. Ortega's dismissive view of supranational authority on the issue of gendered violence is evident not only in his government's refusal to reconsider the 2013 reform to Law 779 as a matter of compliance with CEDAW as recommended by the HRC and the IACHR, but also in the efforts to distance Nicaragua from the Inter-American system. For example, the Ortega government has refused to allow any representatives of the IACHR into the country or to certify Nicaragua's agreement with a MESECVI report which mentions the weakening of the country's *femicidio* law (MESECVI 2017). On four consecutive occasions between 2014 and 2017, the government failed to send representatives to IACHR hearings in which feminist organizations sought to bring attention to violations of women and girls' rights (Romero 2017; Vásquez and Romero 2017). This stands in stark contrast to the Mexican case, where the state was more responsive to both the UN and the regional systems.

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On the other hand, the delegitimacy chain positioned "family values" over women's rights in accordance with Ortega's alliance with conservative religious groups. This resurgence of conservative tendencies in Nicaragua's gender regime left feminist actors discursively and institutionally marginalized. Although women now comprise more than half of Nicaragua's unicameral National Assembly, the imperative of partisan loyalty to President Ortega generally takes precedence over legislative initiatives on gender-related matters. Given these dynamics, feminists did not have access to gendered institutional spaces nor could they depend on the kind of women's policy machinery that proved so influential in Mexico by creating gendered opportunity structures (McCammon et al. 2001). Instead, they were reliant on the specific convergence of *narrow* political opportunities in their efforts to pressure the state to address *femicidio*. Initially, feminist organizations were able to leverage relationships with individual deputies as well as alliances with international cooperation agencies to generate momentum for the new legislation. However, after the law criminalizing *femicidio* was passed, feminists' lack of institutional power within the state left the law on precarious footing. Moreover, those narrow political opportunities were further constrained by Ortega's alliance with Venezuela, whose financial support simultaneously enabled him to resist international pressure while also reinforcing the delegitimation of supranational authority (Flores 2017).

Therefore, Nicaraguan feminist activists could not leverage the UN or the Inter-American System to improve state accountability for the killing of women and other forms of gendered violence in the same way that Mexican feminists had done. These different responses, nevertheless, also reflect divergent activist strategies. Although feminists in both countries named and shamed their respective states, Mexican activists simultaneously pursued supranational litigation in the Inter-American System resulting in the "*Cotton Field*" judgment and petitioned the CEDAW Committee to conduct an inquiry into the *feminicidios* in Ciudad Juárez under OP-CEDAW. While the latter enforcement mechanism is not available to Nicaraguan feminists, the former is, despite Ortega's efforts to distance his government from the regional system and undermine its legitimacy.[21] This suggests that triggering the formal legal enforcement of human rights instruments, whether at the UN or regional level *when* such avenues are available, may be a more significant factor shaping and/or

[21] For example, the case of *V.R.P. and V.P.C. v. Nicaragua* (IACHR 2016) concerning the state's failure to effectively investigate and punish the rape of a girl by her father is pending in the IACtHR.

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strengthening the institutionalization of international norms about gendered violence than previously acknowledged in the literature.

Conclusion

In this article, we have compared the contested sociolegal processes underlying the making of *feminicidio/femicidio* legislation in Mexico and Nicaragua. Cross-national research on gendered violence law suggests that grassroots pressure by autonomous feminist organizations is one of the most important factors in ensuring legal advances in the protection of women's rights (Htun and Weldon 2012). Other studies have demonstrated the importance of transnational feminist organizing as a way of increasing leverage on recalcitrant states, so that they will institutionalize international norms on women's rights (Ferree and Tripp 2006; Friedman 2009; Keck and Sikkink 1998). Our findings highlight the limitations of such pressure, particularly in gendered political contexts where (a) there is a high consolidation of political power and (b) feminist actors occupy a marginal position within and outside the state. The combination of these two factors can enable or constrain the ability of feminist state and non-state actors to legitimate the authority of supranational bodies as platforms for demanding state accountability for gendered violence.

States' acceptance of the legitimacy of supranational institutions cannot be taken for granted, nor should we assume that all states are necessarily invested in gaining legitimacy in the international community through a commitment to human rights. Contrary to assumptions in the literature (e.g., Hafner-Burton and Tsutsui 2005; Risse and Sikkink 1999; Tsutsui et al. 2012), in contrast to Mexico, Nicaragua has demonstrated that it is not invested in pursuing human rights as a means to gain international legitimacy, nor does it fully accept the legitimacy of supranational authority when it comes to gendered violence, making it less vulnerable to external pressure. Thus, an explanatory emphasis on states' investment in international legitimacy is insufficient to understand how and when legal change to combat gendered violence occurs. But the significance of formal legal enforcement, as seen in Mexico but not in Nicaragua, cannot be underestimated. Our analysis makes clear that civil society's power has limits and cannot be expected to serve as the "*de facto* enforcement mechanism" (Tsutsui et al. 2012: 375). Moreover, the unmaking of *feminicidio/femicidio* legislation in Mexico and Nicaragua suggests that feminists in both contexts continue to face a key dilemma: namely, that the very state which perpetuates gendered violence is expected to be the guarantor of justice.

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In sum, we have shown that the interaction of gendered domestic configurations of state power and supranational opportunities, and the position of feminists within and outside the state intersect in ways that shape whether, how, and to what degree states respond to external pressure to comply with their legal obligations in the context of transnational feminist activism.

We propose that future work on the emergence, institutionalization, and diffusion of law and policies on gendered violence considers three interrelated questions. First, how do states' acceptance of supranational authority on human rights affect the ability of social movement actors to push for legal changes that protect women's rights? Second, how do different supranational institutions like the UN, the IACHR, and the IACtHR influence activist strategies? Finally, how does the presence or absence of formal legal enforcement mechanisms impact the outcomes of such mobilization involving regional and/or UN institutions? Increased attention to these questions will provide sociolegal scholars with further insights into the circumstances under which legal change can lead to social change.

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