

The influence of feminist mobilization on legal consciousness and the practices of femicide prosecutors in Mexico at the subnational level

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Abstract: Over the last two decades, some feminist organizations in Mexico have applied principles of transnational women’s rights through the use of concepts such as femicide (*feminicidio*) and also promoted both the pretrial preventive detention for these crimes, and the implementation of “gender-based violence alerts” by the Mexican federal government. The article aims to understand how these federal policies have influenced the legal consciousness and practices of prosecutors in the state of Nuevo León, Mexico, from 2009 to 2021. I argue that feminist discourses have been inspired by federal-level policies based on penal populism and, although they have encouraged prosecutors to defend the rights of femicide victims, they have also promoted violations of defendants’ and victims’ rights. A qualitative methodology based on documental analysis and interviews with prosecutors, defense attorneys, and human rights defenders has been applied. The article compares narratives and practices of femicide prosecutors during two historical periods and claims that feminist discourses have helped to raise consciousness of women’s rights for prosecutors but have also helped to justify some probable violations of human rights.

Keywords: feminism, femicide, public prosecutorial offices, legal consciousness, pretrial detention.

Resumen: Durante las primeras dos décadas de este siglo, algunas organizaciones feministas en México han traducido los derechos de las mujeres reconocidos internacionalmente en conceptos como “feminicidio” y han promovido la prisión preventiva oficiosa para estos probables delitos, así como que el gobierno federal declare Alertas de Violencia de Género. Al respecto, el artículo tiene el objetivo de comprender el impacto de estas políticas federales en la conciencia legal y las prácticas de fiscales en la entidad federativa de Nuevo León, México, de 2009 a 2021. Se argumenta que los

discursos feministas han estado ligados a políticas federales basadas en el populismo penal y han incentivado que los fiscales defiendan los derechos de las víctimas de feminicidio, pero al mismo tiempo han promovido algunas violaciones de derechos de las personas imputadas y víctimas. Se emplea una metodología cualitativa basada en análisis documental y entrevistas a profundidad dirigidas a fiscales, abogadas/os defensores y personas defensoras de derechos humanos. El artículo compara las narrativas y las prácticas de fiscales especializados en feminicidios durante dos periodos y argumenta que los discursos feministas han permitido el avance de la conciencia sobre los derechos de las mujeres entre las y los fiscales, pero al mismo tiempo han ayudado a justificar algunas probables violaciones de derechos humanos.

Palabras clave: feminismo, feminicidio, procuración de justicia, conciencia legal, prisión preventiva oficiosa.

Summary: I. *Introduction*. II. *Legal Consciousness, Practices and Human Rights Studies*. III. *Methodological considerations*. IV. *Penal Populism Discourses*. V. *First Period: De Facto State of Exception*. VI. *Feminist Discourses on Femicide Violence*. VII. *Second period: Women's Rights as Justification to Strengthen Penal Measures*. VIII. *Conclusion*. IX. *References*.

I. Introduction

Over the last two decades, a sector of Mexican feminism has applied the principles of transnational women's rights to the national context through the conceptualization of femicide (feminicidio) and femicidal violence (violencia feminicida),¹ the promotion of pretrial detention for defendants accused of femicide² and attempted femicide, and a federal measure to control subnational politics called "alerts for gender-based violence against women" (alertas de violencia de género contra las mujeres). These feminist discourses and demands have encouraged new policies with regard to how to prosecute violence against women at the national and local level in Mexico. However, it is unknown how these feminist discourses and their institutional effects have influenced the ideas and practices of local prosecutors who investigate and prosecute femicidal violence.

This article seeks to fill this hole by answering the following question: How have the narratives and policies promoted by a sector of Mexican feminism influenced the legal consciousness and performance of prosecutors who investigate violence against women in local contexts? Previous works about consciousness of rights can be classified into three groups: the first one embraces a vertical perspective of rights consciousness.³ It assumes that spreading discours-

¹ Marcela Lagarde, *Claves feministas en torno al feminicidio. Construcción teórica, política y jurídica*, in FEMINICIDIO EN AMÉRICA LATINA (Rosa L. Fregoso coord., 2011).

² Cámara de Diputados, *Mesa de Trabajo "Feminicidio y Prisión Preventiva Oficiosa"*, YOUTUBE CÁMARA DE DIPUTADOS (Jan. 19, 2019), https://www.youtube.com/watch?v=01PZGM3b_Pw.

³ David M. Engel, *Vertical and Horizontal Perspectives on Rights Consciousness*, 19 INDIANA J. GLOB. LEG. STUD. 423-455 (2012).

es on transnational human rights raises rights consciousness at the grassroots. A second approach considers that formal rights are just one type of discourse that competes with others⁴ for the power to lead the meanings and practices of grassroots. The third perspective argues that when human rights discourses are linked to punitive strategies, the human rights of defendants and victims could be violated.⁵

In the framework of these research concerns, I argue that feminist discourses on femicidal violence have an ambiguity because they advocate women's human rights but, at the same time, they sustain a dichotomous and essentialist gender perspective that encourages disrespect to human rights. These discourses have promoted new prosecutorial policies and a paradigmatic change in the legal consciousness of prosecutors. On the one hand, prosecutors have developed awareness about violence against women, and they have tried to protect women's lives and dignity. On the other hand, they maintain a perspective of the female plaintiff as passive victims who should be protected by the State, even if that transgresses the victims' desires. Meanwhile defendants are represented as potential women killers who should be controlled regardless of their rights.

To test this argument, a qualitative methodology based on the analysis of social discourses is applied. The units of study are not individuals but rather regularities and distance between different discourses.⁶ This analysis aims to distinguish how gender, human rights, and justice representations of feminist discourses and "tough on crime" discourses are adopted, questioned, and translated by prosecutors who were interviewed. The Mexican state of Nuevo León from 2009 to 2021 was selected as a case study.

The article is organized into five sections. The first one presents a discussion regarding different theories about legal and rights consciousness, and argues that advocating for human rights can have as an unintended consequence several human rights violations. Then some considerations about the applied qualitative methodology are included. The period from 2009 to 2015 is analyzed, when penal populism and federal tough-on-crime discourses helped to shape prosecutors' narratives and practices. The next section examines the national and local feminist discourses and their impact on the consciousness and practices of prosecutors from 2016 to 2021. The final section provides the main findings of this research and suggests some topics for future research.

⁴ *Id.*

⁵ LUCÍA NÚÑEZ, EL GÉNERO EN LA LEY PENAL: CRÍTICA FEMINISTA DE LA ILUSIÓN PUNITIVA (2018); Lucía Núñez, *El giro punitivo, neoliberalismo, feminismos y violencia de género*, POLÍTICA Y CULT. 55-81. (2019); Tamar Pitch, *Feminismo punitivo*, in LOS FEMINISMOS EN LA ENCRUCIJADA DEL PUNITIVISMO (Deborah Daich & Cecilia Varela eds., 2020); Thiago Rodrigues & Erika Rodríguez-Pinzón, «Mano dura» and Democracy in Latin America: Public Security, Violence and Rule of Law, 84 AM. LAT. HOY 89-113 (2020).

⁶ CRISTINA HERRERA, INVISIBLE AL OJO CLÍNICO: VIOLENCIA DE PAREJA Y POLÍTICAS DE SALUD EN MÉXICO (2009).

II. Legal Consciousness, Practices and Human Rights Studies

Legal consciousness refers to

the ways in which people experience, understand, and act in relation to law. Legal consciousness researchers study not just cognition but also behavior, the ideologies and the practices of people who are involved with situations in which law could play a role. They explore the absence as much as the presence of law in people's understanding of the social world and their place in it.⁷

According to Chua & Engel, the definitions of legal consciousness can be organized in a continuum that goes from a conception of this as an autonomous and independent phenomenon, to an approach of consciousness as a social and relational phenomenon where individuals do not matter.⁸ This debate about the nature of consciousness recreates the social theory discussion on how the nature of social phenomenon is defined by individual agency or by social structure. In this regard, I subscribe to the social constructivism of Herrera and Amuchástegui which advocates the study of consciousness through social discourses. In this framework the individual consciousness is shaped by a polyphony of discourses in society that compete for the power to define and rule social life.⁹ From this perspective, the study units are social discourses, the distance between them and their "ideology dimension,"¹⁰ which means the social conditions that produced them.

Social discourses are knowledge mechanisms because they are built with a specific perspective of social reality. They are also power mechanisms that intend to control people's behavior. The ability of social discourses to produce gender representations and gendered practices is of particular importance in this study. In that sense, discourses are also gender technologies¹¹ that create representations about sexual differences between bodies and the places where they circulate, i.e. gender narratives aiming to prescribe the meaning of being a man or a woman and how each one should be treated.

The studies about the influence of human rights discourses on legal consciousness of grassroots have been classified in two types according to Engel: first, there is a vertical approach to rights consciousness that assumes a normative perspective in favor of human rights and holds "the inevitability of a

⁷ Lynette J. Chua & David M. Engel, *Legal Consciousness*, in ROUTLEDGE HANDBOOK OF LAW AND SOCIETY 187, 187 (Mariana Valverde et al. eds., 2021).

⁸ *Id.* at 190.

⁹ ANA AMUCHÁSTEGUI, VIRGINIDAD E INICIACIÓN SEXUAL EN MÉXICO. EXPERIENCIAS Y SIGNIFICADOS (2000).

¹⁰ HERRERA, *supra*, at 19.

¹¹ Teresa de Lauretis, *Technologies of Gender*, in TECHNOLOGIES OF GENDER. ESSAYS ON THEORY, FILM AND FICTION 1 (1989).

growth in rights consciousness.”¹² Merry’s research on raising awareness of women’s rights at the grassroots can be considered part of this group.

A second group of investigations, based on Law and Society studies, holds “that legal rights are very often either unfamiliar to or deliberately rejected by their intended beneficiaries; that other value systems or normative arrangements tend to be prized more highly than the law; that potential claimants often view the pursuit of legal rights and remedies as destructive of important relationships.”¹³ According to this perspective, human rights are only one kind of discourse that disputes with others the capacity to influence the consciousness and performance at the grassroots.

Engel’s classification can be complemented with a third kind of study which criticizes the dichotomy between human rights and antidemocratic discourses. Some human rights discourses hold representations of identities and practices as opposed to human dignity. Additionally, discourses that link the defense of human rights with the application of the criminal justice system can bring about the violation of human rights from other social sectors as an undesired consequence.¹⁴

Taking into account the previous studies, I argue that feminist discourses about femicidal violence in Mexico at the federal level during the 21st century set an ambiguous defense of women’s human rights. They are based on a dichotomous gender perspective which represents women as victims and demands the criminal justice system to protect them. These discourses have been linked to penal populism discourses, a fact that has promoted legal amendments and public policies that have encouraged a paradigmatic change in the legal consciousness of local prosecutors. The prosecutors raise awareness on the importance of making visible the violence committed against women and respecting their rights. Nevertheless, not only do the prosecutors reproduce dichotomous notions of gender that impose limits on the autonomy of female victims, but they also maintain a behavior that disrespects the defendants’ human rights.

III. Methodological Considerations

The Mexican state of Nuevo León from 2009 to 2021 was selected as a case study because it is one of the states with the highest rates of judicialization of homicide and femicide in Mexico.¹⁵ Furthermore, its contemporary history allows us to study the influence of feminist mobilization and punitive populism

¹² Engel, *supra*, at 442.

¹³ *Id.* at 449.

¹⁴ NÚÑEZ, *supra*; Pitch, *supra*; Rodrigues and Rodríguez-Pinzón, *supra*.

¹⁵ MARÍA DE LOURDES VELASCO, *JUDICIALIZACIÓN ESTRATÉGICA DE HOMICIDIOS Y FEMINICIDIOS EN MÉXICO* (2023).

discourses in the criminal justice system and its agents. From 2009 to 2011, Nuevo León experienced an unprecedented rise in homicidal violence, which has been associated with drug cartels' disputes to control trafficking routes to the United States. This violence has also been related to the "iron-fisted" security policies, including the militarization of the state during Rodrigo Medina's government (from 2009 to 2015).

In 2016, the local feminist mobilization urged the federal government to issue a gender-based violence alert for five municipalities in the state. That same year, femicide was included as an autonomous crime in the local penal code. In 2018 the local prosecutorial office was constituted as an autonomous institution and the prosecutorial office specialized in femicide and felonies against women was created. These historical facts are key to understand the process of shaping the legal consciousness of prosecutors in the state.

This work does not study legal consciousness of specific individuals. Instead, it studies regularities and differences in the discourses and practices of prosecutors. The objective is to find prevalent social discourses, such as feminist discourses, penal populism ideas or arguments in favor of human rights, and the kind of practices related to these. The research is based on a qualitative methodology that aims to analyze the conditions of production of the social discourses and practices that shape the consciousness of prosecutors. Moreover, the work examines gender representation and the performance of prosecutors. The techniques used for data collection were interviews with key actors and document analysis.

The key actors interviewed were five leaders of non-governmental organizations, two public defense attorneys, two private defense attorneys, two prosecutors from the attorney's office specialized in femicides and felonies against women, two prosecutors belonging to the attorney's office specialized in homicides, and a control judge. The document analysis involved the study of three types of documents: 1) reports from civil organizations; 2) statistical reports from Mexico's Instituto Nacional de Estadística y Geografía (INEGI); 3) governmental documents such as human rights recommendations and governmental policies and programs (these documents allow us to recognize quantitative and qualitative patterns in the femicide prosecutor's practices), and 4) governmental documents regarding violence against women and femicide violence, which show different types of discourses that influence prosecutor's behavior. The analysis of these interviews and documents has allowed us to identify several types of prevalent discourses: punitive feminist discourses,¹⁶ punitive

¹⁶ Pitch, *supra*.

populism discourses or “iron-fisted” measures,¹⁷ and discourses on criminal guarantee.¹⁸

IV. Penal Populism Discourses

Drug banning policies along with the fight against drug trafficking and terrorism policies promoted by the United States¹⁹ are the framework that influenced penal populism discourses in the Mexican federal government. These discourses have helped to develop security policies in Nuevo León and to shape legal consciousness and performance of prosecutors. Iron-fisted discourses have been characterized by shaping “the image of organized crime as a danger that is rising, omnipresent and out of control in consequence, the unique option to successfully tackle it is a repressive policy.”²⁰ Media coverage of atrocities perpetrated by alleged dangerous criminals generates fear and terror at the grassroots. It justifies popular support for the use of armed forces in public security and the strengthening of punitive measures to tackle crime without confronting the structural causes of crime.

In 2008, a set of federal security measures criticized for giving rise to a *de facto* state of exception included: 1) pretrial detention (arraigo) for organized crime, 2) mandatory preventive detention (*oficiosa* preventive prison) for homicide and femicide, 3) fewer requirements to execute mandatory preventive arrest in the new accusatory criminal system than in the former inquisitive-mixed system,²¹ 4) Informal mechanisms to preserve the leadership of the executive branch over autonomous attorney’s offices in subnational level,²² and 5) predominance of efficiency over due process in procedural policies.²³

From 2009 to 2015, prosecutors in charge of homicides developed discourses and practices related to punitive populism. They carried out systematic and generalized violations of the rights of the defendants and worked without a gender perspective. In the period from 2016 to 2021, the national and local discourses of punitive feminism promoted the criminalization of violence against

¹⁷ Máximo Sozzo, *Inequality, welfare and punishment. Comparative notes between the Global North and South*, 19 EUR. J. CRIMINOL. 368 (2022); Brenda Focás & Amparo Marroquin-Parducci, *Presentación. Revisitando la agenda de la seguridad en América Latina*, 31 REV. CS 13 (2020).

¹⁸ LUIGI FERRAJOLI, *GARANTISMO PENAL* (2006).

¹⁹ FERNANDO ESCALANTE, *EL CRIMEN COMO REALIDAD Y REPRESENTACIÓN. CONTRIBUCIÓN PARA UNA HISTORIA DEL PRESENTE* (2012).

²⁰ Marco Estrada, *Fernando Escalante Gonzalbo, El crimen como realidad y representación*, XXXI ESTUD. SOCIOLOGICOS, EL COL. MÉXICO 204 (2013).

²¹ CENTRO PRODH, *Perpetuar el fallido modelo de seguridad: La Ley de Seguridad Interior y el legado de una década de políticas de seguridad en México contrarias a los derechos humanos*, (2017).

²² VELASCO, *supra* note 15.

²³ Máximo Langer & David Slansky, *Epilogue: Prosecutors and Democracy – Themes and Counter-themes*, en *PROSECUTORS AND DEMOCRACY A CROSS-NATIONAL STUDY* 300–339 (Máximo Langer & David Slansky eds., 2017).

women. However, at the same time, they encouraged new punitive discourses and practices that affected the rights both of the defendants and the victims.

V. First Period: De Facto State of Exception

From 2009 to 2015, Nuevo León's Public Attorney's Office worked with the inquisitorial-mixed system dependent on the executive branch lead by Rodrigo Medina. The government promoted punitive populism discourses and efficiency to bring to trial violent murderers in order to appease popular demands of security. This policy entails systematic and massive violations of the rights of the defendants.²⁴ That period was also characterized by the absence of gender perspective in the handling of female murders, and the lack of punishment of violence against women, thus encouraging murders against women.

The prosecutors perceived homicide violence as the result of a war hard to control, which justified the cooperation of armed forces and the implementation of punitive measures. A prosecutor interviewed expressed that: "The time was very difficult. We experienced a war among cartels disputing territorial control over the state. It was too ugly, critical [...]. We made a huge effort, with a lot of communication and support from the Army Secretary. The Navy Secretary strongly helped to contain the violence in the state" (4th prosecutor interviewed, 2021).

During this period the participation of armed forces in public prosecution in Nuevo León²⁵ included arresting individuals who allegedly committed flagrant homicides, or arresting individuals with a judicial order, and, as one prosecutor said: "When we arrived at a crime scene we were frequently accompanied by soldiers. Investigations and arrests of high-status criminals were always made with the collaboration of militaries" (4th prosecutor interviewed, 2021).

Not only did prosecutors justify the cooperation of the armed forces, but also they recognized that in homicide investigations: "The most important tool was pretrial detention of individuals (arraigo), and during that time we used to end the case investigation. Moreover, forced confession (*confesión forzada*) prevailed in investigations. Almost all defendants gave their testimony accepting their participation in crimes" (4th prosecutor interviewed, 2021).

Even though pretrial detention was used exclusively for defendants accused of organized crime, according to the Federal Constitution in that period, the Superior Court of Justice in Nuevo León informed that 558 pretrial detention orders for intentional homicide were accepted between 2011 and 2014. In addi-

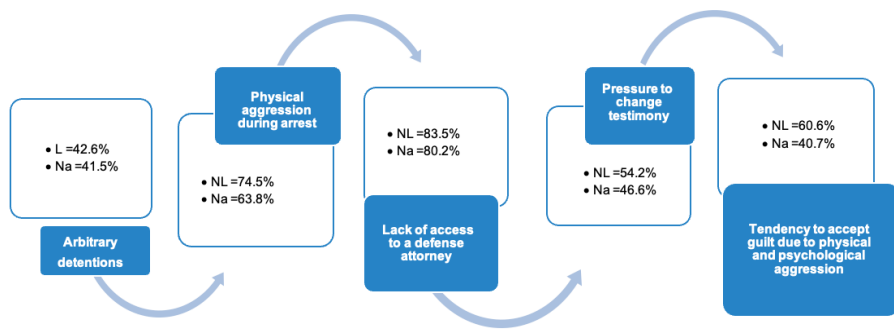
²⁴ VELASCO, *supra* note 15.

²⁵ CARLOS TREVIÑO & JESUS ADALID, *Militarización en Nuevo León*, (2017).

tion, the detention time exceeded the 60 days maximum period, reaching 1280 days in 39 cases.²⁶

According to the National Survey of Detained Population (ENPOL, INEGI, 2016), the incidence of due process violations committed by prosecutors in Nuevo León was higher than the national average. The main violations of the rights of the defendants were: 1) arbitrary detentions; 2) physical aggression during arrest; 3) lack of access to a defense attorney; 4) pressure to change testimony; 5) tendency to accept guilt due to physical and psychological aggression suffered (See Diagram 1).

Diagram 1. Percentage of inmates who declared some violation of rights during arrest and detention at Public Prosecutorial Offices in Nuevo León (NL) and National (Na) average



Source: Information obtained from the ENPOL (INEGI, 2016).

In 2013 femicide was included in Nuevo León's Penal Code. Nevertheless, according to the Public Human Rights Office in the state, prosecutors applied neither gender perspective nor femicide charges in their investigations of violent murders against women during this period. A human rights recommendation established that:

Measures implemented by the District Attorney's Office in the state, through prosecutors, have not tended to completely guarantee respect to human rights and gender perspective in the attention of facts where women have been victims of murders in Nuevo León and, consequently, impunity and vulnerability of victims and their families have been promoted.²⁷

²⁶ OBSERVATORIO CIUDADANO DEL SISTEMA DE JUSTICIA, *Observatorio Ciudadano del Sistema de Justicia: arraigo, medidas cautelares y ejecución penal. El uso del arraigo a nivel federal, en el estado de Nuevo León y el Distrito Federal. Análisis de constitucionalidad, legislación y práctica*, (2015).

²⁷ COMISIÓN ESTATAL DE DERECHOS HUMANOS DE NUEVO LEÓN, *Recomendación 18-2018*, 9 (2018).

Domestic violence was another felony in which prosecutors neither applied gender perspective nor assessed femicide risks to prevent murders against women. In this respect, the Public Human Rights Office addressed some recommendations to the local District Attorney's Office because it did not give adequate attention to intimate partner violence and, as a result, in some cases the violence turned into femicides.²⁸

To sum up, from 2009 to 2016, punitive discourses expressed by prosecutors justified efficiency in bringing to trial homicides and the risks of violations of the rights of defendants. After femicide was included in the local Penal Code in 2013, neither this normative nor gender perspective were applied. Additionally, omissions in addressing extreme violence against women prevented prosecutors from fulfilling their obligation to prevent femicidal violence.

VI. Feminist Discourses on Femicide Violence

During the first decade of the 21st century, a feminist movement sector in México contributed to transform transnational discourses on women's rights into federal legal amendments. The feminist sector has advocated for increased punitive measures in order to guarantee the right of women to a life free from violence, so it can be conceptualized as punitive feminism.²⁹ The concepts of femicide and femicidal violence emerged from the application of transnational women's rights discourses to the Mexican context of the 21st century. This context was characterized by an increase of violent murders of women in the border town of Juárez and other cities. The feminist anthropologist and federal congresswoman Marcela Lagarde adopted the notion of "femicide" addressed by Diana Russell in the United States and proposed the concept of femicide to refer to violent murders of women due to a continued violation of women's rights, which constitute a crime of State:

Femicide occurs because authorities are careless, neglectful, colluded with aggressors. In consequence, they execute institutional violence against women when they obstruct women's access to justice and contribute to impunity. Femicide implies a partial break on the rule of law and the State incompetence to guarantee women's lives, respect their rights, enforce the law, prosecute, and achieve a fair trial and prevent and eradicate the violence that causes femicides. Femicide is a crime of State (Lagarde, 2011, p. 38).

According to Núñez (2009), the incorporation of the crime of femicide into the federal Penal Code arose from feminist demands. However, there are three main problems in that: the State's responsibility upon systematic impunity over

²⁸ COMISIÓN ESTATAL DE DERECHOS HUMANOS DE NUEVO LEÓN (CEDHNL), *Recomendación 05-2019*, 7 (2019).

²⁹ Pitch, *supra*, at 10.

violence against women was reduced to punishing public officials that obstruct access to justice in specific cases. Gendered reasons were limited to specific behaviors without a sociological or anthropological analysis of what a femicide entails, and the main responsibility for these crimes was attributed to deviant individuals instead of to institutional and social structures that encouraged their behavior.³⁰ In summary, the criminalization of femicide and violence against women “universalizes the problem but privatizes its causes” (Pitch, 2003, p. 138).

Another federal punitive measure promoted by feminist organizations such as the National Observatory of Femicide (Observatorio Nacional del Femicidio) and Pro Persona Justice (Justicia Pro Persona) was the use of pretrial preventive detention for femicide through an amendment to article 19 of the federal Constitution.³¹ Some attorneys have claimed that this measure violates the principle of presumption of innocence and puts the rights of the defendants at risk.³² In 2012, the civil organization *Artemisas por la Equidad A.C.* (Artemisas for equity), with the collaboration of other organizations, asked the federal government to declare a gender-based violence alert in Nuevo León. This policy is a mechanism of accountability through which the federal government and civil society monitor and encourage local governments to prevent, punish and eradicate femicidal violence.³³ After four years of litigation before courts advocating for this request, in November 2016, the federal secretary of government issued the declaration of gender-based violence alert for five of Nuevo León municipalities: Monterrey, Juárez, Cadereyta, Apodaca and Guadalupe.

Half of all the measures established by the Declaration are related to justice, although their objective is to: “prevent, give attention, punish and eradicate violence against women.”³⁴ The measures aim to achieve an efficient prosecution of crimes and victims’ access to justice by means of an increased budget for specialized prosecution offices, training for prosecutors, technical resources for investigation, promotion of supervision and punishment of public officials, and improved attention to victims. Briefly, Nuevo León Declaration focuses on increasing the resources and capabilities of specialized prosecution offices. To sum up, feminist punitive discourses in Mexico contributed to bringing transnational discourses on women’s rights to the national context through the concepts of femicide and femicidal violence. They have also promoted the criminalization of violence against women, pretrial preventive detention for

³⁰ Núñez, *supra* note 5 at 209.

³¹ DIARIO OFICIAL DE LA FEDERACIÓN, *DECRETO por el que se declara reformado el Artículo 19 de la Constitución Política de los Estados Unidos Mexicanos, en materia de prisión preventiva oficiosa*, (2019); Cámara de Diputados, *supra*.

³² Miguel Carbonell, *Presentación. La teoría garantista de Luigi Ferrajoli*, in *GARANTISMO PENAL* 3–9 (2006); CENTRO PRODH, *supra* note 21.

³³ CÁMARA DE DIPUTADOS DEL H. CONGRESO DE LA UNIÓN, *Ley general de acceso de las mujeres a una vida libres de violencia*, DIARIO OFICIAL DE LA FEDERACIÓN (DOF) (2007).

³⁴ *Id.* at 1.

femicide, the efficient prosecution of these crimes, and an alert on gender-based violence against women.

VII. Second period: Women's Rights as Justification to Strengthen Penal Measures

Since 2016 a set of institutional changes in Nuevo León's Prosecution Offices promoted a transformation in the discourses and practices of prosecutors who investigate violent murders of women. That same year the Declaration of Gender Violence Alert allowed feminist organizations to implement justice measures in Prosecution Offices. The prosecution office specialized in violence against women was created. However, violent murders of women continued to be investigated by homicide departments. The classification of femicide in Nuevo León was homologated with the Federal Penal Code. In 2018, the District Attorney's Office was established as an autonomous institution, and in 2021 the District Attorney's Office for femicide and crimes against women was created. These political changes had a relevant influence on the discourses and practices of Nuevo León's prosecutors.

1. Denormalization of Violence against Women

The institutional changes advocated by feminist discourses produced a paradigmatic change on legal consciousness and practices of prosecutors. Firstly, they promoted the denormalization of violence against women and the evaluation of the risk of femicidal violence in order to prevent this crime. But at the same time, feminist organizations spread an essentialist and dichotomous conception of gender which has justified violent institutional practices against victims and defendants.

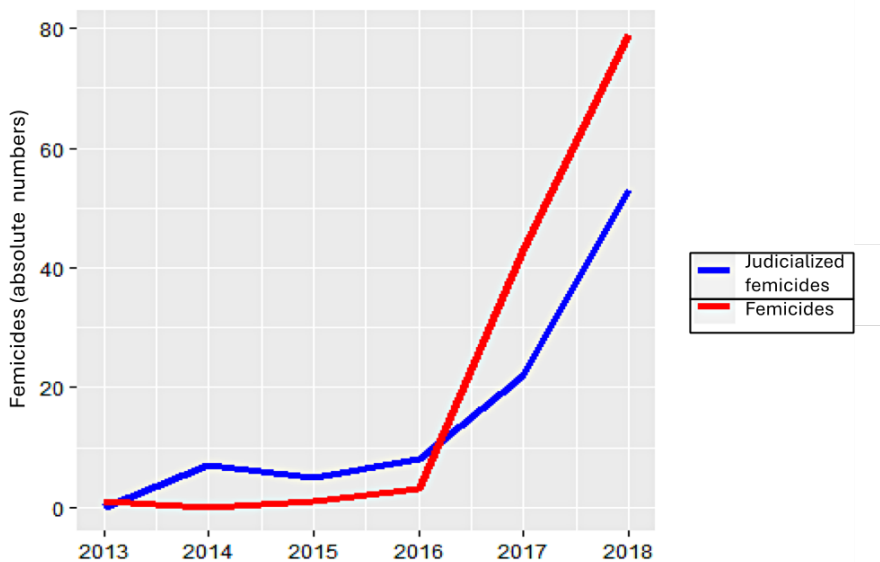
The training received by prosecutors aims at enabling them to apply gender perspective, international standards, and court precedents concerning violence against women, encouraging them to recognize the need to avoid assumptions that blame or attack women who have suffered violence. In this respect, a prosecutor stated: "Juárez is a municipality where organized crime has been present, then we used to think that a murdered woman 'was part of a criminal organization'." In the sexual crime department it was often heard: "She was likely a sex worker." So we must avoid these ideas, we should neither make immediate suppositions nor judge straight away" (Interviewed F1, 2021).

Prosecutors said that gender perspective avoids victims' feeling of "being ignored, judged, rejected, [because] all of these produce a feeling of impunity" (Interviewed F1, 2021). Therefore, gender perspective encouraged the participation of victims in the penal process and the implementation of a penal process. In summary, from the perspective of prosecutors, not only does the gender

perspective allows them to give a dignified treatment to victims, but it also contributes to solve cases efficiently (Interviewed F1, F2, F3, 2021).

In this context, prosecutors increased the registration and investigation of violent murders of women as femicides. In addition, prosecutors raised the classification of violent facts denounced by women to attempted femicides. In 2016, only five of these crimes (femicide and attempted femicide) were registered; in 2017, there were 40, and in 2018, 78. At the same time, the judicialization of both of them grew considerably: in 2016 only nine cases were prosecuted, in 2017 there were 21 and in 2018 there were 52 cases.³⁵

Graph 1. Femicides and attempted femicides registered by the Public Prosecutor Offices and prosecuted cases in Nuevo León from 2013 to 2018



Source: Own elaboration with data from the 2014 to 2019 State Prosecution and Justice Censuses, from INEGI.

Briefly, institutional changes promoted by punitive feminists at the national and local levels have caused a paradigmatic shift in the legal consciousness and practices of Nuevo León prosecutors. This change includes the application of gender perspective in the investigations of all violent murders of women as femicides. However, these improvements have several limitations.

³⁵ INEGI, *Censo nacional de Procuración de justicia estatal*, INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA (2021), <https://www.inegi.org.mx/programas/cnpjje/2021/>; INEGI, *Censo Nacional de Impartición de Justicia Estatal*, INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA (2021), <https://www.inegi.org.mx/programas/cnije/2021/>.

2. The Violence of Dichotomous Gender Representation

Feminist punitive discourses have fostered the recognition and respect of women's rights in the criminal justice system. Nevertheless, they entail the embracing of an essentialist and dichotomous gender conception by criminal law and prosecutors. On the one hand, the prosecutors' gender perspective identifies women who report violence as passive victims who must be protected by public institutions, although this protection was opposite to women desires. On the other hand, men accused of violence against women are represented as active aggressors and potential murderers who must be controlled with punitive measures, without their rights being a priority.

In this logic, prosecutors have tried actively to prevent women from abandoning the criminal process, and they have pressured them to change their testimonies and exacerbate the accounts of the violence they have suffered. The strategies applied by prosecutors to prevent women from abandoning the criminal process are: 1) ordering police to search women and bring them to the District Attorney's office, and 2) asking civil organizations "to empower" women with legal and psychological advice. In this regard, a prosecutor said:

Currently, we were given automobiles to bring back victims who are unable to come. When we have a case in which the victim does not want to press charges, we ask authorities and "violet doors" (which are the legal and psychological consultancy service of the civil organization "Pacific Alternatives") to empower women. We have a shelter for female victims of violence. We have improved our service little by little (Prosecutor interviewed F1, 2021).

Prosecutors tend to classify domestic violence reports as attempted femicides, although they do not have enough evidence. The prosecutors promoted attempted femicide classification in order to execute pretrial preventive detention. This measure would prevent a defendant from perpetrating a femicide and a prosecutor from being responsible for the crime. With the justification of protecting women's lives, prosecutors have promoted the criminal process against the will of the victims, something that has had serious consequences for defendants.

A public defense attorney said that a woman victim of domestic violence asked him for his support after she testified that her husband had tried to kill her because the police told her to testify in that way. However, when her husband was arrested for attempted femicide, the woman tried to argue that her husband never tried to kill her. According to the defense attorney, prosecutors told women that if they did not exacerbate their testimony on their partner's violence, they would be punished. At an initial hearing, a prosecutor argued that the victim had not been able to attend. Nevertheless, he had not asked her to be present for fear that she would change her testimony. The defense attor-

ney said that the classification of domestic violence as attempted femicide is a behavioral pattern of the prosecutor that violates the rights of the defendant.

Prosecutors have recognized that the attribution of attempted femicide in some cases is based on a subjective assessment of the risk, which is biased by the risk of the prosecutors himself receiving a penalty. In this regard, a prosecutor stated that: “my boss keeps a strict eye on me and other prosecutors and he has told us: ‘Whatever happens to a victim whose case you handle is going to be your responsibility’” (Prosecutor interviewed F2, 2021). Through the attempted femicide classification, prosecutors have tried firstly to avoid being punished, and secondly, to protect the rights of victims. A prosecutor expressed that:

[Surveillance] forced us to make decisions like this classification [attempted femicide]. My boss watches over me and measures me. If a victim suffers more violence, it will be my responsibility. We propose the attempted femicide classification to a judge and if the victim is killed, it will be the judge’s responsibility. We measure the femicide risk, but I think it should not be very subjective, because it is defined by our ideas, by our more direct contact with victims than the judges’. Judges see cases as a formal judicial matter, while the attorney general, who watches over us personally, has all the control. Therefore, I will not allow a watched case to progress into a femicide. In this process, some objectivity is lost (Prosecutor interviewed F2, 2021).

Defense attorneys and feminist organizations have different perceptions about these measures. On the one hand, defense attorneys consider that these accusations have grave consequences for defendants. A person accused of general femicide cannot request a conditional suspension of the criminal process, whereas this measure is allowed for domestic violence. Femicide implies pre-trial preventive detention and can bring a sentence of 30 years, while domestic violence does not admit pretrial detention and the conviction is around three years (Defense attorney interviewed 1, 2021). On the other hand, local feminist organizations have considered prosecution for attempted femicide an important achievement. A feminist leader said: “The prosecution office specialized on femicide is doing a good job because it is bringing to trial cases classified as attempted femicide that were previously classified as injuries or some other crime” (NGO leader interviewed, 2021).

Regarding pretrial preventive detention, some experts have stated that the requirements that a prosecutor must present to impose this measure on a defendant are fewer in the accusatory criminal system than in the mixed inquisitorial system.³⁶ A private defense attorney expressed: “The new criminal system is less respectful of the rights of the defendant than the previous system in relation to crimes in which pretrial preventive detention is permitted” (Defense attorney interviewed 1, 2021).

³⁶ CENTRO PRODH, *supra* note 21 at 178.

In this respect, a prosecutor considered that when he asks for pretrial detention for femicide defendants, he submits enough evidence about the defendant's responsibility. However, he said that this measure should be more respectful of rights: "It would be good not to allow pretrial preventive detention for homicides [and femicide]. Instead, judges should analyze the necessity of caution based on parameters to determine when pretrial detention should be applied in specific cases" (Prosecutor interviewed F4, 2021).

In short, femicide and attempted femicide criminalization has implied the implementation of policies and practices that could violate defendants' rights, such as: pretrial preventive detention, promoting attempted femicide as classification instead of domestic violence, changes in the woman's testimony, and disrespect for women's desires regarding their criminal process. This prosecutors' performance has occurred in a context marked by complaints from feminist organizations, mass media, and political actors about the efficiency of femicide prosecution. Consequently, the prosecution of femicidal violence in Nuevo León seeks efficiency, but it could disrespect the rights of victims and defendants. However, it has been justified because it protects women's rights.

VIII. Conclusion

The article aimed to ask how have the discourses and policies promoted by a sector of Mexican feminism have influenced the legal consciousness and performance of prosecutors who investigate violence against women in local contexts. In order to answer this question, I analyzed the impact of punitive feminist discourses and the "iron-fist" policies on discourses and practices of prosecutors in charge of investigating and prosecuting femicidal violence in the state of Nuevo León, México, from 2009 to 2021.

This work argued that feminist punitive discourses are ambiguous because they seek to guarantee and protect women's rights, but also to strengthen the State's punitive power and embrace a dichotomous gender perspective that disrespects human rights. This ambiguity has carried over into the federal and local procedural regulations and policies. Consequently, prosecutors play the role of mediators between demands for efficiency and protection of women's rights that have been developed by feminist groups, mass media and political discourses, on one side, and daily cases of femicidal violence, on the other.

Since 2016, prosecutors have tried to avoid normalized violence and discrimination against women, to protect the dignity of women and to prevent femicidal violence. However, prosecutors have maintained some punitive practices that perpetuate the violence against human rights perpetrated by prosecutors before 2016. These practices are linked to a dichotomous and essentialist gender perspective.

The representation and practices of prosecutors since 2016 have certain trends. First, prosecutors consider women who report violence as passive vic-

tims who need to be protected by the State. Therefore, they change women's testimony of violence to sustain that those women suffer attempted femicide while transgressing the women's wishes regarding the criminal process. Second, the pretrial detention (arraigo) in the first period was substituted by pretrial preventive detention (prisión preventiva oficiosa) in the second. The last measure was promoted against femicide defendants by feminist organizations at the national level, but this disrespects the presumption of innocence and other defendants' rights. Third, prosecutors classify facts that could be considered domestic violence as attempted femicide, arguing that they want to prevent a femicide and overall to evade any responsibility for this crime. Nevertheless, this measure puts at risk the accused's rights and access to justice.

Future research could explore new topics regarding the prosecution of gender violence, such as: the effects of prosecutorial behavior on lives of women who suffer violence, women's expectations about criminal justice, and their own ideals of justice, prosecutors' and victims' representations of gender, race, age and social class, and their effects on the criminal process and on human rights. It is also very important to compare feminist punitive discourses and other feminist positions related to gender-based violence linked to other types of social inequalities, and to analyze their alternative perspectives of justice, their repertoires of action and their impact on women's lives.

IX. References

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