



Análisis del delito de feminicidio, desde la incidencia del sujeto activo¹ *Analysis of the crime of femicide, from the incidence of the active subject*

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RESUMEN:

Históricamente, las mujeres han sido víctimas de discriminación basada en su vulnerabilidad social y de género, lo que ha resultado en opresión, intimidación y privación de sus derechos. A pesar de numerosos tratados y leyes internacionales encaminadas a erradicar estas conductas, el feminicidio sigue siendo un problema creciente, definido como la muerte de una mujer debido a su género o identidad de género. Inicialmente, se creía que solo los hombres eran responsables de una gama de violencias contra las mujeres, incluyendo la violencia física, psicológica, económica y sexual, que a menudo terminaban en feminicidios. Sin embargo, en la era actual, donde las mujeres buscan igualdad y se promueven movimientos que defienden la diversidad de identidades, surge la pregunta de si las mujeres o personas con identidades diversas y no binarias podrían también cometer delitos de género. Este cuestionamiento desafía los prejuicios machistas al reconocer que cualquier persona, independientemente de su género, puede ser responsable de delitos contra la integridad y la vida de otras mujeres. De igual forma, se cuestiona la idea de que solo los hombres son agresores, abriendo la posibilidad de reconocer y abordar la violencia de género en todas sus formas, independientemente del género del perpetrador.

Palabras clave:

Delito, Dignidad Humana, Femicidio, Género, Mujer, Sujeto Activo.

ABSTRACT:

Historically, women have been victims of discrimination based on their social and gender vulnerability, resulting in oppression, intimidation and disenfranchisement. Despite numerous international treaties and laws aimed at eradicating these behaviors, femicide continues to be a growing problem, defined as the death of a woman due to her gender or gender identity. Initially, it was believed that only men were responsible for a range of violence against women, including physical, psychological, economic and sexual violence, often ending in femicides. However, in the current era, where women seek equality and movements that defend diversity of identities are promoted, the question arises as to whether women or people with diverse and non-binary identities could also commit gender crimes. This questioning challenges sexist prejudices by recognizing that any person, regardless of their gender, can be responsible for crimes against the integrity and lives of other women. Likewise, the idea that only men are aggressors is challenged, opening up the possibility of recognizing and addressing gender violence in all its forms, regardless of the gender of the perpetrator.

Keywords:

Active Subject, Crime, Femicide Woman, Gender, Human Dignity.

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Introduction

The Declaration of the Rights of Man and of the Citizen (1789) opened a space within society, not only affirming the intrinsic value of every human being but also laying the groundwork for a new social and political order in which liberty, equality, and fraternity became ideals to be pursued. Yet, the Universal Declaration of Human Rights (1948) stands as a landmark document in history, shaped by the catastrophic experiences of unrelenting human rights violations, and the dehumanization of individuals. This significantly influenced the drafting of legislation in many countries, to the extent that it was developed by representatives from around the world, incorporating diverse legal and cultural perspectives, and translated into over 500 languages for its implementation.

If one were to ask today, what is the significance of this document's creation? the answer would be that it served to reaffirm and exalt the condition of human beings, rooted in their very humanity. It is worth noting that the UDHR was the inspiration and paved the way for the adoption of over seventy human rights treaties, which demonstrates that, from 1948 onward, all individuals were formally and effectively recognized as rights holders, regardless of their sex, race, nationality, color, language, religion, socioeconomic status, political opinion, birth, or any other condition.

In addition to the above, the International Covenant on Civil and Political Rights (1966), by unequivocally affirming the existence of rights inherent to the human person, established a set of erga omnes parameters aimed at effectively promoting the social, economic, and cultural rights of all individuals in society.

In the matter at hand, women, although they had already been granted full rights at the international level since 1948, just as men had, a significant disadvantage persisted, enabling discrimination against them in all aspects of life for the simple fact of being women!

From the late 20th century to the present, these forms of violence, historically inflicted upon women, have not only been exposed but also denounced (Da Silva et al., 2019). Fortunately, as a consequence of these developments, in 1997, the Women's Lobby established the Observatory on Violence Against Women, bringing together approximately 33 representatives from countries across the European continent. Thus, it can be observed that, for the past 25 years, gender-based homicides of women have been systematically reported worldwide, gaining increasing recognition from international human rights bodies and even national governments.

Thus, the impact on the visibility and dissemination of this phenomenon worldwide can be divided into two phases. The first phase is at the international level, marked by the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979) and General Recommendation No. 19 of 1992, titled Violence Against Women, issued by the Committee established under the Convention to monitor progress, specifically under the Article 17 (Secretariat for Human Rights, 2020).

Similarly, the United Nations Declaration on the Elimination of Violence Against Women (1993), the adoption of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará Convention, 1994), and the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention, 2011); the latter, in particular, is considered the first supranational

instrument to establish binding standards for the prevention and eradication of violence against women by its signatory states.

In the second phase, the enactment of national laws to end such violence has become evident. In Latin America, for instance, the first country to take this step was the Republic of Costa Rica in 2007 with Law 8589 of 2004, followed by Chile with Law 20480 of 2010, El Salvador with Decree 520 of 2010, and Colombia with the adoption of Law 1761 of 2015, among many others (Ramírez et al., 2020).

Similarly, it was Spain the first country in Europe that enacted legislation of this nature, with Organic Law 1 of 2004 (Jefatura del Estado, 2004). Initially, the criminal offense specifically defining the murdering of a woman was homicide or aggravated homicide. In fact, this remains the case when the victim is a woman and her death, or attempted death, is not motivated by reasons related to her gender.

However, when the death or attempted killing of a woman is carried out due to her condition as a woman, many countries have opted to establish a criminal offense entirely separate from homicide. This is what is now known as “femicide” or “feminicide,” a term that has sporadic antecedents in the English language (“femicide”) dating back to the early 19th century. Yet, it began to gain broader recognition after Diana Russell used it in 1976 before the International Tribunal on Crimes Against Women, and especially after she further developed the concept through her publications in 1990 and 1992 (Albarrán, 2015). The term was introduced into Spanish in the second half of the 1990s by anthropologist Marcela Lagarde, following the translation of Russell’s concept and in the context of revelations regarding the impunity surrounding the murders of women in Ciudad Juárez, Mexico. The aim was to highlight the gravity of a widespread societal issue for which there had previously been no specific term (Cruz, 2017). Consequently, the most widely accepted definition of “feminicide” conceptualizes it as the assassination of a woman due to gender-related motives, as initially established by Russell.

Conversely, in the case of Colombia, Law 1761 of 2015 formally established feminicide as an autonomous criminal offense. Article 104A, introduced with the phrase “Whoever causes...,” defined the crime in broad terms, considering as potential perpetrators not only men but also women, including individuals of diverse and non-binary identities (Bermúdez, 2023). This, in essence, is the crux of the matter: the intent of the Colombian legislator in enacting this law was to recognize that women, like men, as well as individuals of diverse or non-binary identities, can be both perpetrators and victims of gender-based crimes.

To delve into the topic, this article will begin by conceptualizing the term “feminicide,” examining the legal scope of Law 107 of 2013, which proposed the creation of an autonomous criminal category for gender-based violence, as well as the intended objectives of its incorporation into Colombian legislation and the legal requirements that define feminicide as a specific criminal offense (Prieto, 2016).

Finally, numerical tables will be presented, covering the period from 2015 to early 2024, which will reflect not only general and specific data on feminicide but also related offenses such as domestic violence and sexual abuse or violence against women.

However, the primary objective of this analysis is to examine the crime of feminicide,

particularly from the perspective of the active subject's incidence.

Methodological framework

This research is conducted using a qualitative-descriptive approach, which enables the interpretation of data to clarify or generate new research questions (Fonseca, 2003). This approach is particularly useful in the study of complex phenomena, as it focuses on understanding individuals' experiences and perceptions. By adopting a qualitative approach, the study seeks to explore in depth the dynamics of the phenomenon under examination, facilitating the identification of patterns and the formulation of new hypotheses.

Additionally, a documentary methodology is employed, based on the analysis, critique, and comparison of data from various sources. This method is particularly suitable for understanding the phenomenon in question, as it allows for the integration of different perspectives and theoretical frameworks. The choice of a qualitative-descriptive approach, combined with a documentary methodology, is justified by the need to gain a deeper understanding of a phenomenon that cannot be fully addressed through quantitative data alone. By combining both approaches, the research aims to enhance its analytical scope and provide a more comprehensive and nuanced perspective on the subject.

Conceptualization of the Term “Femicide”

In her work *Diversidad Feminista, Femicidio: una Perspectiva Global*, Marcela Lagarde y de los Ríos builds upon the research of Diana Russell (the first person to use the term “femicide”) and Jill Radford, as presented in their book *Femicide: The Politics of Woman Killing*. Lagarde reinterprets and adapts the term “femicide” into Spanish, arguing that “femicide” could be understood merely as the feminine form of homicide, reducing it to a definition that only specifies the sex of the victims. This, she contends, is insufficient to fully capture the gravity of the crimes in question (Arenas et al., 2020).

To address this limitation, Lagarde introduces the term “feminicide,” aiming not only to describe the murders of women and girls but also to emphasize the broader social construction of these hate crimes and the systemic impunity surrounding them.

According to Lagarde, feminicide is fundamentally a crime of the state, as it reflects the state's failure to guarantee women's right to life and security (Guajardo & Cenitagoya, 2017). Thus, discussing feminicide also necessitates addressing institutional violence against victims' families and society at large. This violence is characterized by the lack of clarification of crimes, barriers to justice, and the denial of truth and reparations. Such systemic failures, she argues, are symptomatic of the absence of a true rule of law, where unchecked violence persists and murders go unpunished. For this reason, Lagarde prefers the term “feminicide” to designate these crimes as part of a broader category of crimes against humanity, encompassing murders, kidnappings, and disappearances of women and girls, which occur not only in war but also in times of peace.

Legal Scope of Law 107 of 2013, Now Law 1761 of 2015

Between 2010 and 2014, several gender equity laws were enacted, significantly impacting Colombian society, and reinforcing the fight against discrimination against women, giving rise to the creation of the Legal Commission for Women's Equity, which was established in 2011, ensuring that gender-related issues remained a long-term priority in Congress. In 2014, a law was passed to protect victims of sexual violence in the context of armed conflict. Additionally, legislation on domestic violence and child support negligence was introduced, making these offenses non-actionable; in 2012, the case of Rosa Elvira Cely, a woman who was raped, impaled, and murdered by a classmate in a Bogotá park, reignited the debate on the need to classify femicide as a distinct criminal offense.

On September 26, 2013, the Rosa Elvira Cely Law (No. 107 of 2013) was introduced in Congress by the Legal Commission for Women's Equity, led by Senator Gloria Inés Ramírez Ríos, alongside four other senators and three members of the House of Representatives, which aimed "to classify femicide as an autonomous criminal offense to strengthen the legal framework guaranteeing women's right to a life free of violence," aligning with the principles established in Law 1257 of 2008.

The initiative sought not only to shift paradigms regarding women's rights within the Colombian legal system but also to create comprehensive support mechanisms, whereupon would ensure effective access to justice for victims, providing them with protection and institutional commitment to their needs, reinforcing their right to live free from violence.

According to data provided by Corporación Sisma Mujer, and as established by the National Reference Center on Violence of the Institute of Legal Medicine and Forensic Sciences, at the time the bill was introduced, a woman in Colombia was murdered by her partner or former partner every six days, both in private and public settings (Medicina Legal y Ciencias Forenses, 2014).

Acts of violence against women were not isolated occurrences within society; rather, they constituted a systematic pattern of conduct, initially perpetrated by men to intimidate, control, and subordinate women. It is therefore essential to underscore that women have been the primary victims of such manifestations of patriarchal power.

This legislative initiative focused on the normative gaps in Law 599 of 2000 regarding the classification of gender-based crimes. The objective was to establish femicide in Colombia as an autonomous offense, entirely distinct from Homicide under Article 103 of the Criminal Code, and to ensure that its penalty was equivalent to that of Aggravated Homicide under Article 104 of Law 599 of 2000. The aim was to achieve decisive and effective legal action against these cases, which, at the time, had alarmed the country and placed Colombia at the highest rate of femicide commission in South America and the second highest in Latin America, after Mexico. Additionally, Colombia had the highest global rates of acid attacks against women—acts driven by deeply discriminatory preconceptions, stereotypes, and identity assignments (Reyes et al., 2023).

The legislative journey of Bill 107 of 2013 was arduous. It began on October 23, 2013, with the presentation of the first debate before the First Committee of the Senate (Gazette 857/2013) and ultimately concluded on July 6, 2015, when Law 1761 of 2015 was enacted.

However, it is important to note that its approval entailed substantial modifications, the most significant of which was removing a key provision from the original bill: creating a specialized unit within the Prosecutor’s Office to investigate gender-based crimes.

The crime of femicide was incorporated into the Colombian legal framework as an autonomous criminal offense, distinct from homicide, wherein the legally protected interest is the life of women. This offense is considered multi-offensive, as it infringes upon a broader set of fundamental rights, including human dignity, equality, non-discrimination, and the free development of personality (Carpizo, 2011). The active subject is undetermined, referring to any human person without a specific required condition; however, the passive subject is defined, as the crime necessarily demands a particular sexual or gender condition: being a woman. Moreover, the mere occurrence of the death of a female individual is sufficient to constitute the crime, which also accommodates both direct and indirect perpetration, as well as participation and attempted commission in all its forms.

The conduct in question consists of causing the death of a woman due to her gender or for reasons related to her gender identity. Consequently, the defining verb of the offense is “to kill a woman.” However, as highlighted in the explanatory memorandum, this crime is distinguished from homicide by its subjective element. Specifically, the act must necessarily be motivated “by her condition as a woman or for reasons related to her gender identity,” a motive that is part of the legal definition (qualified intent). Furthermore, the offense requires the presence of concurrent elements or prior circumstances that allow for the inference of this motive. Although this law does not explicitly categorize different types of femicide, it is important to note that this crime does not manifest in a singular context. For this reason, in 2014, the United Nations proposed a classification of femicide types to facilitate the identification of potential perpetrators and the contextual factors surrounding these crimes (UN Women, 2014).

Table 1. Categories of Femicide Types Proposed by the United Nations and Agreed Upon with Delegates from the Cited Nations

Nº	Categories	Definitions
1	Intimate	The killing of a woman by a man with whom the victim had or previously had an intimate relationship.
2	Non-intimate	The killing of a woman by an unknown man.
3	Infanticide	The killing of a girl under the age of 14 by a man within the context of a relationship of responsibility.
4	Familial	The killing of a woman within the context of a kinship relationship between the victim and the perpetrator.
5	By connection	The killing of a woman by a man in the same location where he kills or attempts to kill another woman.
6	Systematic sexual femicide	The killing of a woman who has been previously abducted and tortured.
7	Femicide related to prostitution or stigmatized occupations	The killing of a woman engaged in prostitution and/or another stigmatized occupation (such as strippers, waitresses, masseuses, or dancers) by one or more men.
8	Trafficking-related	The killing of a woman occurring in the context of human trafficking.
9	Transphobic femicide	The killing of a transgender or transsexual woman by one or more perpetrators due to her transsexual identity and gender expression.
10	Lesbophobic femicide	The killing of a lesbian woman by one or more perpetrators due to her sexual orientation, motivated by hatred or rejection.
11	Racist femicide	The killing of a woman motivated by hatred or rejection of her

Analysis of Ruling C-297/2016

The unconstitutionality claim filed by citizen Juan Sebastián Bautista Pulido was directed against paragraph e) of Article 2 (partial) of Law 1761 of 2015, arguing that it violated the principle of legality and the right to due process, as enshrined in Articles 1 and 29 of the Constitution. Essentially, the claimant contended that the challenged provision defined a criminal offense in such a way that, for an act to be classified as femicide, the accused merely needed to cause the death of a woman, without any additional element beyond what was already stipulated. Thus, the claimant argued that the provision in question constituted an open-ended criminal offense, which is prohibited by the Constitution, as it failed to establish unequivocally and clearly that the perpetrator's motivation aligned with the subjective element of committing the crime "on the grounds of gender". Similarly, he asserted that the principle of legality required that a criminal offense not be ambiguous, yet the challenged provision presented multiple and confusing factual scenarios for determining the offense, apparently relying on prior incidents indicative of gender-based violence (Garcés, 2024). Lastly, it was argued that the provision under review contravened the principles of criminal procedural law and misled the administration of justice, since it made the criminal conviction conditional and failed to ensure that the judge could reach a state of full certainty regarding the subjective element in the perpetrator's conduct. The Constitutional Court held that, prior to determining the legal issue raised by the complaint, it was necessary to establish the scope of the contested provision, given that it lent itself to multiple plausible interpretations. The first interpretation, advanced by the complainant, posited that the circumstances detailed in subparagraph (e) of Article 2 of Law 1761 of 2015 (namely, background, indications, or threats of any form of violence) were distinct from the act of killing a woman by reason of her gender or for being a woman. "In other words, for the charge of femicide to be brought, it would suffice to establish the existence of such circumstances and the fact of causing the woman's death.

However, this interpretation effectively eliminated the motive element of the crime of femicide, which is expressly enshrined in the act of killing a woman by reason of her being a woman or on the basis of her gender identity. Such an interpretation would allow for a reading that diverges from the very text of the provision, which clearly establishes that the offense is constituted when a woman is killed "by reason of her being a woman or on the basis of her gender identity, or when any of the following circumstances are present or precede the act (...)." What stands out in this line of reasoning is the inclusion of the disjunctive conjunction "or" in the provision, suggesting that the core verb "to kill a woman" may be associated with three distinct hypotheses that would give rise to the crime of femicide: killing her for being a woman; killing her on the basis of her gender identity; and killing her under circumstances where the elements outlined in the provision, including the challenged subparagraph (e)—are present or precede the act. This could lead to an interpretive contradiction, insofar as it would exclude the subjective element of the conduct that typifies this criminal offense. The second interpretation, yet, preserves the intention of the legislator. Under this reading, the circumstance described would operate as a descriptive element of the criminal offense or as contextual information potentially indicative of the intent to murder a woman by reason of her gender or gender identity, without it being a necessary condition for establishing the subjective element. Only this interpretation upholds the teleological intent of the provision, as the motive remains embedded in the characterization of the conduct.

For this reason, the background or indications of any form of gender-based violence or threat, as referenced in the challenged subparagraph (e), must be understood as complementary to the act of killing a woman by reason of her being a woman or on the basis of her gender identity.

The Court laid down that the legal issue to be resolved was whether the determination of background or indications of violence or threats in various social spheres against the murdered woman, without the requirement of a specific qualification, gave rise to indeterminacy regarding the subjective element of the criminal offense, thereby rendering it an open-ended provision and, consequently, in violation of the principle of legality and the right to due process (Constitutional Court, 2016). In order to provide a substantive response to the issue at hand, the Court examined the constitutional framework governing the principle of legality, the requirement of specificity in criminal provisions, the right to due process, open and blanket criminal offenses, the right of women to live free from violence, the corresponding duties of the State, and the classification of femicide within its broader context.

Although it is true that, among the principles discussed, the Court addressed both the objective and subjective elements of the criminal offense of femicide, stating that, concerning the perpetrator, the wording “whoever causes the death of a woman” did not require the subject to meet any specific conditions or qualifications, it did not elaborate further, nor did it conduct an in-depth analysis of the active subject of the offense (Osorio, 2022). It is noteworthy that, in the section entitled “The Right of women to live free from violence and the corresponding obligations of the State,” the Court, in referring to perpetrators, exclusively alluded to the historically subordinate position of women in relation to men, their service-oriented role vis-à-vis men, and the discrimination they have faced at the hands of the male gender. At no point did the Court consider the possibility of highlighting gender-based violence perpetrated by women or by individuals with diverse or non-binary gender identities.

Analysis of Ruling C-539/2016

The constitutional claim filed by citizens Juan Pablo Acosta Navas, John Fredy Ríos Agudelo, and Luis Felipe Villa García was directed against Articles 104A (in part) and 104B, subparagraphs (a) and (g) (in part) of Law 599 of 2000, as amended by Articles 2 and 3, subparagraphs (a) and (g) of Law 1761 of 2015.

As per the petitioners, the expression “by reason of her being a woman,” as set forth in Article 104A of the Criminal Code, contravened Article 29 of the Constitution and Article 9 of the American Convention on Human Rights, both of which enshrine the principle of strict legality in criminal law, as they argued that the expression was ambiguous and failed to clearly, unequivocally, and expressly establish the circumstances under which the motivation for committing the offense of femicide could be deemed present. They contended that the provision was indeterminate, as it was impossible to identify when the alleged motive had occurred, given that such a motive pertains exclusively to the perpetrator’s personal sphere. As a result, the “assessment” of the conduct would be left to the subjective interpretation of the judge (Constitutional Court, 2016). Moreover, the provision did not offer any criteria to distinguish whether the perpetrator had ended the

life of the victim “by reason of her being a woman,” or whether the case instead fell under the category of simple homicide, as penalized under Article 103 of the Criminal Code. In fact, the petitioners asserted that the criminal trial was not the appropriate forum to refute the claim that the active subject had caused the woman’s death “by reason of her being a woman,” and that no scientific or empirical method existed to ascertain such a motivation, since it belonged to the aggressor’s internal domain. They emphasized that, in a criminal law system based on the act rather than the author, as adopted by the Colombian legal system, it is impermissible to penalize an individual for what they think, but only for what they do. In any case, if the legal interest sought to be protected is the right to life, such interest was already safeguarded under the criminal provision for homicide, Article 103 of the Criminal Code, and subsequently under Article 26 of Law 1257 of 2008, which added paragraph 11 with wording nearly identical to the contested provision, as an aggravating circumstance in cases of simple homicide.

With regard to the other provisions challenged, the petitioners argued that they infringed the principle of non bis in idem. Their central contention was that subparagraphs (a) and (g) (in part) of Article 104B of the Criminal Code, when compared to Article 2, subparagraph (c) of Law 1761 of 2015, satisfied the threefold identity test used to establish a violation arising from the penalization of conduct already sanctioned: identity of object, identity of cause, and identity of persons, as previously established in constitutional jurisprudence. Upon reviewing the arguments presented by the intervening parties, the Constitutional Court identified the legal issues to be resolved as follows: whether the classification of femicide in cases where the woman has been isolated or deprived of her freedom of movement, regardless of the duration of such deprivation prior to her death, constitutes a means of placing the victim in a state of defenselessness or inferiority, or of taking advantage of such a situation, and whether, as an aggravating circumstance, this results in double punishment in violation of the non bis in idem principle. To address this, the Court undertook an analysis of the meaning and scope of the expression “by reason of her being a woman” within the broader context of the offense of femicide, and of the alleged infringement such a formulation may pose to the principle of strict legality in criminal law.

Subsequently, the chamber reiterated its jurisprudence concerning the principles of typicity and the prohibition of double incrimination, understood as limits to the legislature’s authority to define criminal offenses. It also contextualized the cultural conditions underlying violence and the various forms of violence against women, as previously addressed in constitutional doctrine, as well as the defining characteristics of the crime of femicide, adopting a gender-based approach. Simultaneously, it recalled relevant international human rights instruments and constitutional jurisprudence pertaining to the prevention and punishment of this form of aggression (Benavides, 2015).

As can be observed, in the absence of a declaration of unconstitutionality, the Court refrained from engaging in a substantive examination of the implications concerning the active subject of this criminal offense. The matter is alluded to only briefly in the discussion of the characteristics of femicide; however, in providing context, the Court once again referred to the male sex or gender as the presumed and exclusive potential perpetrator of femicide, characterized by a position of superiority and, consequently, by the exercise of discrimination over the life and integrity of women (Jiménez, 2011).

Femicide in Figures – Colombia

What follows are numerical tables presenting both general and specific data provided by the Office of the Attorney General of the Nation, obtained pursuant to Article 23 of the Constitution. These data reflect statistics concerning the crime of femicide in Colombia, covering the period from 2015 through February 2024, including the number of proceedings, victims, and suspects associated with this criminal offense.

Case Count

Table 2. Case Count

		<i>STATUS</i>
<i>ACTIVE</i>	2564	
<i>INACTIVE</i>	2099	
<i>TOTAL</i>	4663	

Source: Own elaboration, Data from Open Data Platform [16]

Victims

Table 3. Victims

<i>NNA</i>	
<i>NO</i>	4889
<i>YES</i>	463

Source: Own elaboration, Data from Open Data Platform

Completed

Table 4. Completed

<i>COMPLETED</i>	
<i>NO</i>	3481
<i>YES</i>	1871
<i>TOTAL</i>	5352

Source: Own elaboration, Data from Open Data Platform [16]

Department

Table 5. Department

<i>DEPARTMENT</i>	
AMAZONAS	4
ANTIOQUIA	583
ARAUCA	47
ARCHIPIÉLAGO SAN ANDRÉS, PROVIDENCIA Y STA CATALINA	9
ATLÁNTICO	159
BOGOTÁ, D. C.	1159

BOLÍVAR	167
BOYACÁ	90
CALDAS	77
CAQUETÁ	51
CASANARE	107
CAUCA	193
CESAR	114
CHOCÓ	67
CÓRDOBA	88
CUNDINAMARCA	181
GUAINÍA	2
GUAVIARE	23
HUILA	87
LA GUAJIRA	39
MAGDALENA	193
META	144
NARIÑO	137
NORTE DE SANTANDER	87
PUTUMAYO	77
QUINDÍO	59
RISARALDA	79
SANTANDER	218
SUCRE	58
TOLIMA	266
VALLE DEL CAUCA	781
VAUPÉS	4
VICHADA	2
TOTAL	5352

Source: Own elaboration, Data from Open Data Platform

Sex Table 6. Sex

FEMALE	165
MALE	4789
NO DATA	72
TOTAL	5026

Source: Own elaboration, Data from Open Data Platform

Suspects Table 7. Suspects

LGBTIQ+	
NO	4978
YES	48
TOTAL	5026

Source: Own elaboration, Data from Open Data Platform

Indigenous Table 8. Indigenous

INDIGENOUS	
NO	5008
YES	18
TOTAL	5026

Source: Own elaboration, Data from Open Data Platform [16]

Afro-Descendants Table 9. Afro-Descendants

NO	4992
YES	34
TOTAL	5026

Source: Own elaboration, Data from Open Data Platform [16]

From the above information, the following conclusions may be drawn:

1. Of the total number of cases brought before the Office of the Attorney General of the Nation for the offense of femicide or attempted femicide in Colombia, only 54.97% remain active, indicating that slightly less than half are currently inactive.

2. Of the 5,352 victims of the offense of femicide or attempted femicide in Colombia, the most affected population has been adult women, accounting for 91.35% of cases. A smaller proportion, 8.65%, corresponds to minor victims (NNA).

3. Of the 5,352 total victims of femicide-related crimes in Colombia, 34.96%, that is, 1,871 individuals, were fatal victims.

4. The departments with the highest incidence of femicide-related violence during this period were Valle del Cauca, with 781 victims (14.59%), and Antioquia, with 583 victims (10.89%). Although Bogotá D.C. is not classified as a department, it appears in the data as the city with the highest number of victims, 1,159, representing 21.66% of the total.

Of the 5,026 individuals identified as suspects in cases of femicide or attempted femicide in Colombia, 95.29% (4,789) are male, 3.28% (165) are female, and 1.43%, corresponding to 72 individuals, lack recorded data regarding their sex.

1. Of the individuals identified as suspects in cases of femicide or attempted femicide in Colombia, 0.96%, that is, 48 aggressors, belong to or self-identify as members of the LGBTIQ+ population.

2. Of the 5,026 suspects in cases of femicide or attempted femicide in Colombia, 18 individuals belong to Indigenous communities, and 34 to Afro-descendant communities.

Men Are Not the Only Perpetrators of Femicide

Gender-based violence has historically been conceptualized as a phenomenon that predominantly affects women, wherein men are regarded as the sole active subjects of the offense. However, this reductionist perspective fails to account for the complexity of the phenomenon and the possibility that other actors, including both men and women, may be involved in situations of violence. It is important to underscore that gender-based violence is not confined to a single dynamic between men and women. Statistical data indicate that men may also be victims of violence, often within contexts in which traditional gender norms are at play (Ramírez et al., 2020). It is therefore essential to acknowledge that the active subject of violence may vary and that the phenomenon manifests in diverse forms and contexts, necessitating a reassessment of existing theoretical frameworks.

Multiple academic perspectives have approached gender-based violence through different lenses, including feminist theory, which examines power relations and inequality, and theories of masculinity, which explore the influence of social expectations on the behavior of both men and women. These theories posit that gender roles are social constructs capable of perpetuating violence, thus opening the space for critical reflection on the active participation of all genders in both the perpetuation of and exposure to violence (Poggi, 2018).

On the other hand, the struggle for marriage equality has contributed to a broader recognition of individual rights, challenging traditional gender norms (Molina & Carillo, 2018). In various countries, constitutional rulings have advanced equality before the law, which also entails a transformation in the perception of roles within interpersonal relationships. This legal progress may influence how gender-based violence is conceptualized, expanding the legal framework to encompass a wider range of relational dynamics.

It is worth underscoring that acknowledging the possibility that the active subject of gender-based violence may not be exclusively male carries significant legal implications (Jaramillo & Canaval, 2020). Legal frameworks must evolve to reflect this reality, thereby allowing for both men and women to be recognized as either victims or perpetrators, depending on the specific context. This necessitates a revision of criminal codes as well as appropriate training for judicial system actors. los códigos penales y una capacitación adecuada para los operadores del sistema judicial.

From a sociocultural perspective, it is imperative to question how gender norms and expectations shape behavior. Education and awareness-raising are essential tools in eradicating stereotypes that sustain the notion that only men can be aggressors (García, 2012). This cultural shift is vital for the prevention of violence and the promotion of more equitable and healthy relationships.

Individuals convicted and charged with the crime of femicide as of September 11 2023

Table 10. Individuals convicted and charged with the crime of femicide as of September 11 2023

Género	Condenado	Sindicado	Total general
Femenino	3	4	7
Masculino	981	381	1362
Total general	984	385	136

Source: List of individuals convicted and charged with femicide in the year 2023. [17]

The present table contains data provided by the Ministry of Justice and Law, obtained pursuant to Article 23 of the Constitution. It reflects the number of women convicted and charged who, as of 11 September 2023, were deprived of liberty in national-level correctional facilities (ERON) under the authority of the National Penitentiary and Prison Institute (INPEC). It is important to clarify, however, that this information does not include individuals deprived of liberty who were being held in police stations or Immediate Reaction Units (URI) as of that date.

Sexual, Domestic, and Intimate Partner Violence in Figures – Colombia

The following numerical tables present both general and specific data provided by the National Institute of Legal Medicine and Forensic Sciences, obtained pursuant to Article 23 of the Constitution, which reflect statistics concerning the sex of the alleged perpetrator in cases of sexual violence, domestic violence, and intimate partner violence in Colombia, with a focus on women as victims, covering the period from 2015 through February 2024.

Table 11. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE – SEX OF THE ALLEGED PERPETRATOR	
Male	16.874
Female	843
Information not available	1.159
TOTAL	18.876

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences [18].

2015

Table 12. Domestic Violence Sex of the Alleged Perpetrator

DOMESTIC VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
a) Minor (<18 years old)	6.952
Male	4.267
Female	2.334
Information not available	351
b) Legal age (>18 years old))	50.325
Male	45.752
Female	4.125
Information not available	448
c) Information not available	7
Female	1
Information not available	6
TOTAL	57.284

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

2016

Table 13. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	17.395
Female	860
Information not available	2
TOTAL	18.257

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 14. Domestic Violence Sex of the Alleged Perpetrator

DOMESTIC VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	53.038
Female	6.232
Information not available	101
TOTAL	59.371

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

2017

Table 15. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	19.495
Female	924
TOTAL	20.419

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences.

Table 16. Domestic Violence Sex of the Alleged Perpetrator

DOMESTIC VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	52.930
Female	6.588
Information not available	121
TOTAL	59.639

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences.

2018

Table 17. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED	
PERPETRATOR	
Male	21.404
Female	905
TOTAL	22.309

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 18. Domestic Violence Sex of the Alleged Perpetrator

DOMESTIC VIOLENCE SEX OF THE ALLEGED	
PERPETRATOR	
Male	52.837
Female	6.827
Information not available	98
TOTAL	59.762

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

2019

Table 19. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED	
PERPETRATOR	
Male	21.712
Female	811
TOTAL	22.523

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 20. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	52.172
Female	6.679
Information not available	80
TOTAL	58.931

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

2020

Table 21. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	14.972
Female	498
TOTAL	15.470

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 22. Domestic Violence Sex of the Alleged Perpetrator

DOMESTIC VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	6.587
Female	3.350
TOTAL	9.937

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

2021

Table 23. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	19.008
Female	232
Information not available	553
TOTAL	19.793

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 24. Domestic Violence Sex of the Alleged Perpetrator

DOMESTIC VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	7.170
Female	3.500
Information not available	46
TOTAL	10.716

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 25. Intimate Partner Violence, Sex of the Alleged Perpetrator

INTIMATE PARTNER VIOLENCE, SEX OF THE ALLEGED PERPETRATOR	
Male	30.016
Female	395
Information not available	25
TOTAL	30.436

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 26. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	22.066
Female	259
Information not available	721
TOTAL	23.046

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 27. Domestic Violence Sex of the Alleged Perpetrator

DOMESTIC VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	7.823
Female	4.188
Information not available	210
TOTAL	12.221

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 28. Intimate Partner Violence, Sex of the Alleged Perpetrator

INTIMATE PARTNER VIOLENCE, SEX OF THE ALLEGED PERPETRATOR	
Male	35.873
Female	437
Information not available	27
TOTAL	36.337

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

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Table 29. Sexual Violence Sex of the Alleged Perpetrator

<i>SEXUAL VIOLENCE SEX OF THE ALLEGED PERPETRATOR</i>	
Male	19.860
Female	599
Not applicable	-
Information not available	315
TOTAL	20.774

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 30. Domestic Violence Sex of the Alleged Perpetrator

<i>DOMESTIC VIOLENCE SEX OF THE ALLEGED PERPETRATOR</i>	
Male	7.679
Female	4.604
Not applicable	-
Information not available	196
TOTAL	12.479

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

Table 31. Intimate Partner Violence, Sex of the Alleged Perpetrator

INTIMATE PARTNER VIOLENCE, SEX OF THE ALLEGED PERPETRATOR	
Male	36.336
Female	364
Not applicable	-
Information not available	68
TOTAL	36.768

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences. [18]

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Table 32. Sexual Violence Sex of the Alleged Perpetrator

SEXUAL VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	2.704
Female	96
Not applicable	-
Information not available	23
TOTAL	2.823

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences.

Table 33. Domestic Violence Sex of the Alleged Perpetrator

DOMESTIC VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	2.157
Female	1.285
Not applicable	
Information not available	59
TOTAL	1936

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences.

Table 34. Intimate Partner Violence, Sex of the Alleged Perpetrator

INTIMATE PARTNER VIOLENCE SEX OF THE ALLEGED PERPETRATOR	
Male	5.252
Female	65
Not applicable	-
Information not available	13
TOTAL	5.330

Note: Compiled by the author based on data from the Observatory on Violence, National Institute of Legal Medicine and Forensic Sciences.

From the foregoing, it may be observed that although the participation of women as perpetrators of sexual, domestic, and intimate partner violence against their peers does not occur in the same proportion as that of men, in fact, their involvement in most cases is less than 2%, there is evidence that, since 2015, women, both minors and adults, have committed acts of gender-based violence constituting the crime of femicide, specifically in cases of domestic violence.

For this reason, from the outset of this study, it was proposed that women, as well as individuals of diverse and non-binary gender identities, can also perpetrate gender-based crimes. In this regard, the legislature was not mistaken; it was a wise decision not to specify the perpetrator in the legal definition of the crime of femicide, thereby allowing any human being to be held accountable under this law.

The current debate centers on the language used in Articles 104A (paragraph A), 7 (paragraph D), and 8 of Law 1761 of 2015, specifically the expressions “...to be the perpetrator...” (Art. 104A, para. A), “...against him or those responsible...” (Art. 7, para. D), and “...the identification of the person or persons responsible...” (Art. 8), which appear to condition the active subject of this criminal offence by employing language of a discriminatory nature, which refer to women and individuals of diverse gender identities using terminology that is exclusively masculine and not gender-neutral, thereby infringing upon the Preamble of the 1991 Constitution (human dignity), Article 4 of the Constitution (supremacy of constitutional norms) as well as the Constitutional Bloc as set forth in Article 93 of the National Constitution (human rights and international law/prevalence within the domestic legal system) Furthermore, they contravene Article 1 of the Universal Declaration of Human Rights (equality); the American Convention on Human Rights; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999) of the United Nations; the Convention on the Elimination of All Forms of Discrimination against Women (1979) of the United Nations [7]; General Recommendation No. 19 of 1992 of the United Nations, entitled “Violence against Women”; as well as the United Nations Declaration on the Elimination of Violence against Women (1993) [8]; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará, 1994); the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2011); and the Charter of the United Nations.

It is evident that, although the legislature did not explicitly define the active subject of the criminal offence of femicide, it nevertheless employed differential language when referring to the perpetrator. A detailed reading of the aforementioned expressions reveals that they refer exclusively and unequivocally to men. In a legal system such as ours, one that upholds fair coexistence, dignity, and non-discriminatory treatment, exclusive or exclusionary language is not permissible.

The use of masculine expressions or language to refer to women or to any other human being not only undermines their integrity, but also reflects a patriarchal mindset and constitutes a setback in the struggle of women, as well as individuals with diverse and non-binary gender identities, to attain active and visible participation in society.

The Constitutional Court itself, in its rulings C-297/2016 and C-539/2016, when addressing the issue of historical discrimination against women, referred solely to men as perpetrators. While it is true that the Court acknowledged the absence of an explicitly defined active subject in the legal provision, it made no reference whatsoever to women or to individuals with diverse and non-binary gender identities as potential perpetrators of gender-based crimes.

It is worth recalling that, in decision C-804/2006, the Court emphasized the importance of legislating through inclusive language, in keeping with the constitutional mandate whereby “The State shall promote the conditions necessary for equality to be real and effective and shall adopt measures in favor of discriminated or marginalized groups.” Accordingly, the Colombian constitutional framework as a whole is designed to recognize and uphold the dignity of women as persons and citizens, deserving of the same respect and consideration as men.

This assertion is consistent with what the Constitutional Court itself has stated on previous occasions, namely that “the legislature is under the obligation to employ legal language that does not express or even allow for interpretations contrary to the principles, values, and rights enshrined in the 1991 Political Constitution” (C-1235/2005). This underscores the importance of language and the way in which we express ourselves, as it reflects the worldview and understanding we hold of reality.

The situation of invisibility, subordination, and discrimination to which, for many years, not only women but also individuals with diverse and non-binary gender identities have been subjected continues to be perpetuated today through legal language, thereby reinforcing a patriarchal culture that has historically been embedded and continues to be embedded, in both legal discourse and legal culture (Rodríguez & Rivera, 2020). For this reason, it is imperative that the Constitutional Court, through a substantive review, issue a ruling of Conditional Constitutionality with regard to the aforementioned expressions, as they contravene the Colombian Constitution and the international treaties ratified by Colombia in this area. Such a decision would reflect an understanding that women and individuals with diverse and non-binary gender identities can also perpetrate gender-based crimes. In doing so, it would ensure that the language of the law is inclusive and would mark a genuine step forward in the fight against gender-based violence, while guaranteeing fair and dignified treatment for all individuals.

Conclusions

Gender-based violence is a multifaceted phenomenon that transcends the traditional narrative which defines men as the sole perpetrators and women as the sole victims. This reductionist view not only diminishes the experiences of women who may be victims of violence, but also neglects the lived realities of individuals with diverse gender identities. Recognizing that the active subject in gender-based violence may vary depending on social, cultural, and personal contexts is therefore essential to addressing the issue effectively. This calls for a review and adaptation of existing theories and legislation to ensure they reflect this diversity and provide appropriate and equitable responses.

Although the criminal offence of femicide does not explicitly define the active subject,

the language employed in the law tends to perpetuate the notion that men are the only aggressors. Such language, by its exclusionary nature, constitutes not only a legal concern, but also reinforces patriarchal structures that hinder the recognition and protection of all gender identities within the legal framework. A shift toward more inclusive and representative language is not only necessary, but urgent, as it may contribute to transforming perceptions and attitudes concerning gender-based violence.

It is important to highlight the critical role of inclusive language in legislation, as it is essential for accurately reflecting the social reality of gender-based violence. Moreover, the Constitutional Court has emphasized, in multiple rulings, the need to employ language that respects and affirms the dignity of all individuals, regardless of gender. The failure to incorporate this consideration results in the perpetuation of norms that discriminate and hinder progress toward a more equitable society. This highlights the urgent need for a deliberate effort to ensure that laws are accessible and comprehensible to all, thereby fostering a sense of belonging and justice.

From a sociocultural perspective, education and awareness-raising play a fundamental role in dismantling gender stereotypes that perpetuate the belief that only men can be aggressors. It is imperative to implement training programmes not only for justice system actors but also for society at large. These programmes should incorporate approaches that promote more equitable and healthy relationships, while educating the public about the diversity of gender identities and the power dynamics present in interpersonal relationships.

Only through sustainable cultural change can a meaningful reduction in gender-based violence be achieved.

Moreover, the collection and analysis of data on gender-based violence must become more inclusive, encompassing not only women but all individuals affected by such violence. This approach would yield a more comprehensive understanding of the scope and nature of the issue, thereby enabling the formulation of more effective policies tailored to current realities. Furthermore, the inclusion of diverse identities in collected data will allow legislators and policymakers to design more precise and effective responses.

It is equally essential to acknowledge the possibility that both men and women can be responsible for acts of gender-based violence. This calls for a thorough review of existing legal frameworks and the adaptation of policies to reflect this reality. The fight for marriage equality and the recognition of the rights of individuals with diverse gender identities represent significant strides toward a more inclusive and representative legal framework.

The challenge lies in ensuring that legal reforms are not only adopted but are also effectively implemented and upheld in practice. Achieving this requires a long-term commitment from all sectors of society, including the State, civil society, and educational institutions. Collaboration among these actors is essential to foster real and lasting change in how gender-based violence is addressed within society.

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