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OVERVIEW

The Journal of International Criminal Law (*JICL*) is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and publication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;
- historical accounts that address the international, regional, and national levels; and

- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about “ecocide” is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

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Mexico's Failure to Prevent and Avoid Repetition of Femicide: Breaking the Patterns of Non-Compliance

by Willie Mack*

ABSTRACT: Although the Mexican government often espouses the highest aims and principles when it comes to gender-specific issues that affect its female population, it also tolerates the most serious form of femicide *rather than* providing women and girls with effective protection. Its failure to prevent and avoid repetition of femicide is inexcusable, though. Mexico should fulfill its international obligations, which have been delineated by declarations and conventions on human rights (international and regional), case law, constitutional provisions, ethical principles. The author argues that the Mexican government both should and can fulfill its obligations, including the ones that result from femicide rulings of the Inter-American Court of Human Rights. There is no basis, empirically or otherwise, for the reasons Mexico has presented to try to circumvent or even deny its responsibility. With a newly elected female President of the country, the author of this essay hopes to see a change of course in favor of compliance and justice for vulnerable stakeholders.

KEYWORDS: Compliance; Complicity; Femicide; Impunity; Mexico.

I. Introduction

Regarding its female population, it is hardly controversial to claim that Mexico is already in the negative spotlight. Among others, “the Inter-American Commission on Human Rights (IACHR) expressed its concern over the upsurge in violence against women, girls, and adolescents in Mexico and urged the State to step up its efforts to investigate, prosecute, punish, and provide reparation for gender-based violence”.¹ It continued that [Mexico] must also take effective measures to prevent and avoid the repetition of patterns of violence”.² However, no one should assume automatically that Mexico’s State responsibility can be either activated or sustained. To do that, Mexico must address the legitimate concerns, underlying causes, and preventive measures for *all* of its people. To the contrary, there is ample evidence to support the belief that State officials condone and even facilitate the widespread risk situations for the female social group.

DOUBLE BLIND PEER REVIEWED ARTICLE

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¹ Organization of American States, *Mexico Must Take Urgent Measures to Eradicate Violence Against Women*, (May 10, 2022), https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/097.asp.

² *Id.*

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“There comes a point where we need to stop *just* pulling people out of the river. We need to go upstream and find out why they’re falling in”.³ By analogy, the authorities need to cease merely discovering the mutilated bodies of young females in Mexico, but to 1) identify actual risks, 2) estimate their probability of turning into reality, and 3) evaluate their potential harm. In addition to assessing the risks, the authorities need to assess their risk-reduction strategies and adjust to objectively unavoidable failures. In essence, to prevent killings, the most effective measure begins with preventing or reducing potential risks.

Despite that, Mexico’s continuous lack of protection against gender-based discrimination, violence, and femicide violates legal and moral principles. Whether due to disregard of decency or ignorance of impartiality, these failures suggest impunity⁴ of legal and moral imperatives. Mexico ignores the principles of the Commission on Human Rights of the United Nations (UN) Economic and Social Council, which were submitted for the protection and promotion of human rights through action to combat impunity.⁵

Principle 1 indicates:

to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations”, Principle 2: Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through [...] systematic violations, to the perpetration of those crimes [...] the right to the truth provides a vital safeguard against the recurrence of violations.

Principle 4:

Victims and their families have the imprescriptible right to know the truth about the circumstances in violations took place [...] in the event of death or disappearance, the victims’ fate.

Paradoxically, these legal and moral violations provide the foundations to explain why Mexico should overcome its obstacles and protect and promote human rights for all of its people. In accord with these principles, this article aims to provide accurate information about Mexican femicide and how it separately and collectively, violates legal and moral maxims. To address comprehensively Mexico’s numerous diversionary tactics, effective countertactics must be recommended. For the survivors of heinous crimes and their families, post-disappearance or -discovery measures of investigation, prosecution, punishment, and reparation are key. However, for the benefit of the *intended* female victim, prevention and the avoidance of repetition of femicide is most important.

Reversing Mexico’s impunity⁶ can provide the foundations for integrity and explanations why Mexico should overcome its obstacles and protect and promote human rights for all of its people. Specifically, it has breached several principles of human rights theory (Section C), principles of Hans Kelsen’s legal theory (Section D), relevant clauses of the Mexican Constitution and protective provisions of regional and international treaties (Section E), relevant rulings of the Inter-American Court of Human Rights (Section F), and moral law (Section G). Therefore, this paper will argue that Mexico should obey its Constitution, international treaties to which it is a party, the rulings of the Inter-American Court of Human Rights, and moral principles that underpin the meta-ethical framework for human rights.

³ The quotation is often and widely attributed to Archbishop Desmond Tutu.

⁴ United Nations Special Rapporteur on Extrajudicial Executions, Report on Extrajudicial Executions, note 168 in IACtHR, *González et al. (Cotton Field) v. Mexico*, Judgment, para. 163 (Nov. 16, 2009).

⁵ UN Economic and Social Council, *Promotion and Protection of Human Rights, Impunity*, (Feb. 8, 2005), Documents.un.org/doc/undoc/gen/g05/109/00/pdf/g0510900.pdf.

⁶ *González v. México*, *supra* note 4, para. 111.

II. Mexican Femicide

Obviously, Mexico must identify femicide as a phenomenon before it can prevent it. To define and demarcate it, Mexico must recognize three comprising elements, which include gender-based discrimination, violence, and mutilation. Art. 1 of the Convention Against the Discrimination Against Women (CEDAW) defines gender-based discrimination as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms.

Furthermore, Mexico's Constitution⁷ bans discrimination. Art. 1 States that

[a]ny form of discrimination, based on ethnic or national origin, gender, age, disabilities, social status, medical conditions, religion, opinions, sexual orientation, marital status, or any other form, which violates the human dignity or seeks to annul or diminish the rights and freedoms of the people, is prohibited.

As for CEDAW, General Recommendation No. 19 establishes a correlation between discrimination and gender-based violence:

the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.⁸

Even though elements of discrimination and femicide overlap, only the most severe aspects of physical and mental harm are typically associated with femicide.⁹

Violence against women and girls (VAWG) has traditionally been viewed as a domestic and family matter and off limits to the State.¹⁰ The UN also includes non-domestic forms of violence stemming from exploitation, forced prostitution and human trafficking. These crimes are often committed across borders by organized criminal organizations.

Currently, the UN describes:

Violence against women to mean any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.¹¹

Using different arrangements, the UN Special Rapporteur classifies and divides gender-related killings into two categories: 1) active or direct and 2) passive or indirect. The active or direct category of femicides includes the following:

- Killings of women and girls as a result of domestic violence, inflicted by an intimate or domestic partner;
- Misogynist killings of women;
- Killings of women and girls in the name of "honor";
- Armed conflict-related killings of women and girls;

⁷ Constitution of Mexico, https://www.constituteproject.org/constitution/Mexico_2015.

⁸ The CEDAW Committee introduced VAWG in CEDAW through its General Recommendation No. 19 (1992), supplemented by General Recommendation No. 35 (2017), para. 53, cited in ANGELA HEFTI, CONCEPTUALIZING FEMICIDE AS A HUMAN RIGHTS VIOLATION, STATE RESPONSIBILITY UNDER INTERNATIONAL LAW (2022), at 114.

⁹ Mexico objected to using the term femicide because it claimed that femicide did not exist in domestic law or in binding instruments of the Inter-American human rights system. Later femicide was added to the penal code in 2012. See *González v. México*, *supra* note 4, para. 139.

¹⁰ HEFTI, *supra* note 8, at 62.

¹¹ UNGA, Res. 48/104, Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 18, 1979, art. 2).

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- Dowry-related killings of women and girls;
- Female infanticide and gender-biased sex selection; and
- Ethnic and indigenous identity-related killings.

Like VAWG, the first category focuses on traditional forms of violence at the domestic level. In contrast, the passive or indirect category of femicides includes death(s):

- Linked to organized crime;
- Linked to small-arms proliferation;
- Linked to human trafficking;
- Due to drug dealing;
- Linked to gang-related activities;
- From neglect, starvation, or (other) ill-treatment;
- Linked to deliberate acts or omissions by public servants or agents of the State.

Although there is no generally agreed upon definition of the concept of femicide,¹² Diana Russell has distilled the essence as “the killing of females by males because they are female”. Femicide applies to all forms of *sexist killing* that is “motivated by a sense of entitlement to or superiority over women, by pleasure or sadistic desires toward them, or by an assumption of ownership of women”.¹³ It is the most extreme expression of gender violence committed against women. Since some women might be killed by other women, the definition has evolved to “the killing of a female because she is a female”.

In 2010, Mexican lawmakers added femicide to the federal criminal code.¹⁴

A. Rates of Femicides vs. Homicides

Out of approximately 190 nations, Mexico ranks the 23rd in cases of femicide in the world. With respect to cases of femicide perpetrated with firearms, Mexico ranks 10th. The UN reported the femicide rate in Mexico from 2015 to 2021.¹⁵ In recent years, the highest rates of femicide have been registered in the States of Chihuahua, Guerrero, Baja California, and State of Mexico. In the country-specific case in question, gun violence is not only associated with resolving disputes, maintaining discipline, and intimidating rivals, but has also been directed toward the government, political candidates, the media, and especially females. Consequently, “[s]ecuring

¹² By analogy, note Bert Röling, the Dutch Member of the Tokyo Tribunal, once said that “it would be a remarkable and astonishing thing; to find a generally acceptable definition of aggression”. Röling was by no means a lone voice. In view of this, one should perhaps not be too dismissive of the fact that the “thing” has finally happened in the words of the 1998 Rome Statute art. 8-*bis*. To avoid reaching misleading results, researchers debate whether it is necessary to differentiate between female homicide and feminicide. Some say that public policies must differentiate between feminicides and female homicides. While female homicide policies might require the development of public security-oriented programs, feminicides require interventions that tackle structural and ideological gender inequalities. Sonia M. Frias, *Femicide and feminicide in Mexico: Patterns and trends in Indigenous and Non-Indigenous Regions*, 18(1) FEMINIST CRIMINOLOGY 1 (2023).

¹³ In 1976, at the first International Tribunal on Crimes against Women was held in Brussels (Belgium). The tribunal was created to bring attention to violent and discriminatory acts committed against women (HEFTI, *supra* note 8, at 21).

¹⁴ Fabiola Sanchez, Fernanda Pesce, *Why Mexico Has Made Little Progress on Femicide*, PBS (Dec 27, 2022) <https://www.pbs.org/newshour/world/femicides-in-mexico-little-progress-on-longstanding-issue>

¹⁵ UN reported the number of femicides by years: 412 (2015); 607 (2016); 742 (2017); 896 (2018); 947 (2019); 949 (2020); 966 (2021). See *Femicide rate in Mexico 2021/Statistics*, STATISTA (Jan. 2022), <https://www.statista.com/statistics/979065/mexico-number-femicides/>.

weapons and reducing their circulation removes a frequent choice of weapons for domestic and gender-based violence and femicide”.¹⁶

Characteristics of female victims, Femicide vs. Homicide				
	<i>Indigenous</i>		<i>Non-indigenous</i>	
	Femicide	Female homicide	Femicide	Female homicide
<i>Marital status</i>				
Married	28.9%	20.6%	27.9%	20.2%
Cohabiting	21.8%	16.0%	15.5%	14.1%
Divorced/Separated	2.8%	2.1%	4.0%	4.0%
Single	25.7%	38.2%	28.3%	39.0%
Widow	8.7%	7.6%	8.5%	4.4%
Under 12 years old	7.8%	5.6%	8.0%	4.4%
Unknown	4.3%	9.9%	4.8%	13.9%
Average age	38.7 years old	33.9 years old	37.7 years old	31.9 years old

Table 1 also indicates that the percentages of killings differ very little between indigenous and non-indigenous females in Mexico. Femicides outrank homicides for both groups.¹⁷

The number of homicides (includes male and female) and the homicide rate grew substantially beginning in 2007 during the administration of President Felipe Calderón, just as it stayed at elevated levels through ensuing Mexican administrations. Estimates of Mexico’s disappeared or missing victims – numbering more than 73,000 since 2007 as reported by the Mexican government in mid-2020 – have generated domestic and international concern,¹⁸ if not corrective actions.

According to the UN Special Rapporteur on Violence against Women, the highest rate of femicides is associated with the

persistent penetration of a sexist culture in which institutionalized gender inequality serves as the basis for gender discrimination and helps legitimize the subordination of women and the differential treatment in terms of access to justice.¹⁹

In the Inter-American context, art. 8(h) of the Belém do Pará Convention directs States to gather statistics and perform research “relating to the causes,²⁰ consequences, and frequency

¹⁶ UN Office for Disarmament Affairs, *Gender and Small Arms Control*, <https://disarmament.unoda.org/gender-and-small-arms-control/>.

¹⁷ FRÍAS, *supra* note 12, at 13.

¹⁸ Mary Beth Sheridan, *Mexico’s Plague of Disappearances Continues to Worsen*, WASHINGTON POST (July 14, 2020); “Mexican Gov’t Unveils Plan to Search for Missing People”, AGENCIA EFE (English Edition) (Feb. 4, 2019).

¹⁹ CAMILO BERNAL SARMIENTO *ET AL.*, LATIN AMERICAN MODEL PROTOCOL FOR THE INVESTIGATION OF GENDER-RELATED KILLINGS OF WOMEN (2014), at 14.

²⁰ The following list by Toledo Vázquez’s (2009) reviews the diverse reasons feminicide. provides thirteen types of feminicides: a) intimate feminicide; b) nonintimate feminicide, which is the death of a woman by either an unknown person or someone known by the victim that does not have an intimate relationship with her (e.g., a neighbor); c) child feminicide, the death of a girl under 14 years of age committed by a male in the context of a relationship of power, responsibility, or trust; d) family feminicide, which the death of a woman in the context of an adoption, consanguinity, or affinity; e) feminicide by connection, which is when the death of a woman occurs in the same place where a male kills or attempts to kill another female friend, mother, daughter, etc.; f) sexual systemic feminicide, associated with the death of women previously kidnapped, tortured, and/or raped—it is disorganized if the woman is killed in a certain period of time and organized if the perpetrators act in a network of sexual feminicides; g) feminicide associated with sexual exploitation and prostitution; (h) Feminicide associated

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of violence against women”.²¹ Shadow reports of NGOs provide an alternative account of Mexico's human rights compliance, which makes everyone aware of the widespread women's rights violations. These reports include a number of factors to be considered.

1. Types of Victims²²

Subjectively, the Mexican police and prosecutors often accused female victims of alleged low moral standards and provocative modes of dress.²³ Objectively, reports indicate that the ages of victims were between 15 and 25, that they worked in low qualified and income jobs. Many were young, underprivileged, migrant or indigenous women, who usually were employed in the *maquila* (sewing) industry. Occasionally, affluent students and government employees also fell victim.²⁴

Many sources maintain that Mexico experienced roughly 150,000 murders related to organized crime out of more than 288,000 intentional homicides.²⁵ These 150,000 likely organized-crime-related killings do not include the 73,000 considered to be missing or disappeared over the last 14 years as reported by the (then) current government under President López Obrador.²⁶ As regards the link to organized crime, it is noteworthy that V.M. Varun States “[t]ransnational crime violates core human rights with a *jus cogens* status, and hence the offence of *transnational crime* is a *jus cogens* crime”.²⁷ On his interpretation, it is the coupling of the human rights-based approach and the application of State responsibility that can secure the eradication of crimes that reach the highest level of internationally applicable norms (peremptory norms of general international law, *i.e.* the *jus cogens*).

2. Contributing Factors

with female trafficking and sexual exploitation; i) transphobic feminicide, associated with deaths linked to the victim's transgender or transsexual identity; j) lesbophobic feminicide, which is the death of a woman due to her sexual orientation, rejection, or hatred; k) racist feminicide, associated with the death of a woman due to her phenotype or hatred of her racial/ethnic origin; and l) feminicide linked to genital mutilation, which is the death of a girl or woman due to genital mutilation (see FRÍAS, *supra* note 11, at 6).

²¹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará Convention), adopted Jun. 9, 1994, entered into force May 3, 1995, art. 8(h). Cited in HEFTI, *supra* note 8, at 287.

²² FRÍAS, *supra* note 13.

²³ González v. México, *supra* note 4, paras. 153-154.

²⁴ Lagarde y de los Rios *supra* note 39, at xviii cited in HEFTI, *supra* note 8, at 16.

²⁵ ORGANIZED CRIME AND VIOLENCE IN MEXICO: 2021 SPECIAL REPORT ORGANIZED CRIME (LAURA Y. CALDERÓN *et al.* eds., 2021), <https://justiceinmexico.org/wp-content/uploads/2021/10/OCVM-21.pdf>.

²⁶ “In Mexico, the disappearances are blamed on a wider variety of culprits: organized crime gangs, police, the military or some combination of the three”, quoted in Mary Beth Sheridan, *Mexico's Plague of Disappearances Continues to Worsen*, WASHINGTON POST (July 14, 2020); ID., *Mexican Gov't Unveils Plan to Search for Missing People*, AGENCIA EFE (Feb. 4, 2019), both cited in JUNE S. BEITTEL. CONG. RESEARCH SERV., R41576, MEXICO ORGANIZED CRIME AND DRUG TRAFFICKING ORGANIZATIONS (2020), at 18.

²⁷ V.M. Varun, *Human Rights-Based Approach to Combat Transnational Crime*, 2 EUCRIM 154 (2020), at 154-156. Note that Varun supports an argument in favor of State responsibility with a reference to art. 1 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). Note that Varun refers to the jurisprudence of the International Court of Justice (ICJ) whereby a *jus cogens* crime can be prosecuted and punished by any State because “offenders are the common enemies of mankind and all nations have equal interest in their apprehension and prosecution”. See *Id.*, at 156.

Mexican authorities indicated that the murders were due to a change in the family roles, as a result of women working, which led to family conflicts. For them, the roles changed, but the patriarchal attitudes and mentalities remained the same.²⁸

3. Types of Victimiziers

Not much is known with certainty, but it is assumed that the victimizers include intimate partners, family members, and strangers. Transnational organized criminals (TOC) utilize violence and corruption as parallel and intertwining means to achieve unlawful goals. Despite U.S. policies to combat TOC's violent methods of maximizing profits, drug cartels continue to utilize small arms, which kill Mexicans by the hundreds of thousands yearly:

Nine Major Drug Trafficking Organizations		
Drug Traffickers	Origin	Original Specialty
Sinaloa	Early 2000s	Drug smuggling, corrupt public officials
Los Zetas		Organized violence
Tijuana Arellano Felix Organization	1989	Drug smuggling
Juárez Vicente Carrillo Fuentes Organization	1980s	Marijuana, cocaine smuggling, violence
Beltrán Leyva	2008	Cocaine smuggling, extortion, executions
Gulf	1920s	Heroin, methamphetamine, extortion
La Familia Michoacana	1980s	Synthetics, kidnapping, extortion
The Knights Templar	2011	Methamphetamine, cocaine, marijuana, vigilante
Cartel Jalisco Nuevo Generación	2011	Cocaine, methamphetamine, killers of los Zetas

See a recent research finding for Table 2 data on Transnational Organized Crime.²⁹

4. Accessible Weapons

A study by the National Institute of Women about femicide in Mexico points out that one of the main concerns is the increase of the use of firearms to commit homicide against women in the country, which doubled between the years 2004 and 2010. Furthermore, the study underlines that killings of women with firearms have been perpetrated both in the home as in public spaces. The study concludes that women are at higher risk if their families and communities are armed.³⁰

The data provided in Table 3 suggests that femicides are perpetrated by different means and are more likely to entail extreme cruelty and suffering for the victim.

²⁸ González v. México, *supra* note 4, para. 129.

²⁹ CONG. RESEARCH SERV., *supra* note 26.

³⁰ WILPF, *The Impact of Germany's Arms Transfers on Women Germany's Extraterritorial Obligations under CEDAW* (2017), at 9, https://wilpf.org/wp-content/uploads/2017/02/CEDAW-Shadow-Report-on-Germany_20170130.pdf.

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Means to Commit Femicide and Female Homicide				
Weapons	<i>Indigenous</i>		<i>Non-indigenous</i>	
	Femicide	Female homicide	Femicide	Female homicide
Firearm	26.9%	36.8%	31.2%	48.0%
Knife, machete	21.6%	16.7%	22.3%	11.7%
Physical force	5.0%	2.1%	4.8%	1.5%
Suffocated/ drown	14.5%	14.9%	20.2%	15.9%
Other	32.1%	29.5%	21.5%	23.0%

Table 3: Means to Commit Femicide and Female Homicide in Indigenous and Non-Indigenous Municipalities (2001-2017).³¹ The table also indicates that for both groups, the use of firearms outnumbers other means of killings. Furthermore, the female homicides by a firearm far outnumber other groups.

5. External Complicity

In this instance, external complicity refers to a foreign nation working with or contributing to a wrongful act, such as femicide.

We now know that foreign countries-especially affluent and powerful ones-can and usually do exert real causal impact on domestic societies nearby, and at times even across the globe [...] If our actions over here on this side of the world can violate the human rights of people on the other side, the integrative understanding tells us that we should bear duties correlative to such rights.³²

The accessibility and availability of arms can facilitate or exacerbate violence against women, not only in situations of armed conflict but also in non-conflict situations, such as in countries that experience high rates of firearm-related deaths, including femicides, as well as high levels of impunity and insecurity. The Human Rights Council has adopted resolutions that recognize the link between the arms trade and gender-based violence.³³

As a context to Mexico's femicide, Izumi Nakamitsu, High Representative for Disarmament Affairs, said that small arms – such as rifles, pistols, and light machine guns – contributed to some 200,000 deaths every year from 2010 to 2015. He added that small arms continue to facilitate a vast spectrum of actions constituting human rights violations, including the killing and maiming of children, rape, and other forms of sexual and gender-based violence, and that the gender dimension has not been sufficiently integrated into policies regulating small arms and light weapons.³⁴

To secure consistency in practice, public leaders should remedy weaknesses in the control or regulation that could help to combat the proliferation of the misuse of small arms. Mexico is not doing what it has agreed to do. Mexico approved the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.³⁵ In addition, the UN Protocol Against the Illicit Manufacture of and

³¹ FRÍAS, *supra* note 12, at 14.

³² BRIAN OREND, HUMAN RIGHTS: CONCEPT AND CONTEXT (2002), at 137.

³³ WILPF, *supra* note 30, at 2.

³⁴ United Nations, *Security Council Meeting Coverage SC/14098 Spread of 1 Billion Small Arms, Light Weapons Remains Major Threat Worldwide, High Representative for Disarmament Affairs Tells Security Council* (Feb. 5, 2020).

³⁵ Organization of American States, *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials*, Mexico signed on 19 May 1998 and ratified on 1 June 1998; the United States neither signed nor ratified it.

Trafficking in Firearms, Their Parts, and Components and Ammunition (2001)³⁶ is a potentially useful tool against violence. The U.S. has expressed concerns about the effectiveness, cost, and interference with the constitutional rights of U.S. citizens to bear arms – in both instances. Researchers should investigate these concerns, together with suppliers or importers of small arms, and related patterns of ratification of small arms treaties.

Well-meaning observers may recommend that dissident groups should disarm themselves or destroy their small arms. However, they overlook the fear that groups may have in disarming themselves in the presence of their enemies. In addition, many suspect that small arms policies conceal their true aim, which is to displace people from land to make it available for the extraction of resources for the benefit of foreign corporations. Given such fears and suspicions, they are not likely to comply with such recommendations.

In sum, casualties and causes of violence are reported differently by the Mexican government and Mexican media outlets that track the violence.³⁷ Yet, the alarm has grown about continuous reports of extreme violence and the discovery of mass graves around the country.³⁸ Such empirical evidence provides a chilling context for the seriousness of the nature and scope of femicide.

III. Human Rights Theory

In general, although diagnosing cases and contexts differently, experts seek to prevent the violent death of women in an effective manner. Using a variety of approaches, they analyze the origins of femicide in:

1. A feminist approach, which confronts patriarchal domination at the same time as it investigates the killing of women;
2. A sociological approach, which focuses on the examination of the features special to the killing of women that make it a phenomenon, *per se*;
3. A criminological approach, which distinguishes femicide as a unique sector in “homicide” studies;
4. A human rights approach, which extends femicide beyond the lethal and into extreme forms of violence against women; and
5. A decolonial approach, which examines instances of femicide in the context of colonial domination, including so-called “honour crimes”.³⁹

It is a regrettable axiom that “[a]n unknown right is not exercised”.⁴⁰ Therefore, this section addresses the human rights of female individuals and corresponding responsibilities of governmental authorities to publish and protect those same rights.

³⁶ Organization of American States, *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials*, Mexico signed on 31 December 2001 and ratified on 10 April 2003; the United States neither signed nor ratified it.

³⁷ The Mexican news organizations *Reforma* and *Milenio* both keep a tally of “narco-executions”. For instance, in 2014, *Reforma* reported 6,400 such killings, the lowest it has reported since 2008, whereas *Milenio* reported 7,993 organized-crime-related murders. Kimberly Heinle, Octavio Rodríguez Ferreira, and David A. Shirk, *Drug Violence in Mexico: Data and Analysis Through 2015*, University of San Diego, (April 2016).

³⁸ Andrea Navarro, *Drug Cartels Muscle into Town Packed with Americans*, BLOOMBERG (Dec. 4, 2019); Id., *Mexico: 50 Bodies Among Remains at Farm Outside Guadalajara*, AP (Dec. 15, 2019).

³⁹ Consuelo Corradi *et al.*, *Theories of Femicide and Their Significance for Social Research*, 64(7) CURRENT SOCIOLOGY 975 (2016), at 979.

⁴⁰ Juliana G. Quintanilla, José Martínez Cruz, *Opinión| 16 años de la Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*, SEMMÉXICO (Feb. 10, 2023).

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Rights of individuals or groups refer to both positive and negative rights. Positive rights provide the right holder with a claim against Mexico. Examples include the right to life, liberty, personal integrity, etc. In contrast, by limiting the actions of other people or governments toward or against the right holder, a negative right restrains them. Such treaties refer to the right to non-discrimination, freedom from arbitrary arrest, violence, or torture. Recognition of positive and negative rights and claims by Mexico would be a meaningful step toward satisfying its State responsibility of ensuring that its people can enjoy their human rights.

State responsibility, according to the Office of the UN High Commissioner for Human Rights, includes:

- The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.
- The obligation to protect requires States to protect individuals and groups against human rights abuses.
- The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.

Policy analysis based on this tripartite understanding of a duty bearer's responsibilities is commonly known as a "human rights-based approach" (HRBA).⁴¹ While Mexico emphasizes the fact that the issues of femicide are complex, these same issues are nevertheless comprehensible. Even if Mexico were to rely only on its domestic law, compelling reasons in favor of compliance can be identified.

IV. Kelsen's Pure Theory of Law

Kelsen advocated in his *Reine Rechtslehre* that "[t]he legal order is not of legal norms of equal rank but a pyramid structure of different layers of legal norms". The Mexican legal system illustrates the structure of the Kelsen Pyramid⁴² in art. 133 of its Constitution:

The laws of the Congress of the Union that emanate from it and all the Treaties that are in accordance with it, entered into and that are entered into by the President of the Republic, with the approval of the Senate, shall be the Supreme Law of all the Union. The judges of each State shall abide by said Constitution, laws, and treaties, despite the provisions to the contrary that may exist in the constitutions or laws of the States (*estados*).

Typically, once Mexico expresses consent to a treaty, it is bound to that treaty according to international law.⁴³ Originally, art. 133 had established the supremacy of the Constitution. In 2011, human rights that derive from treaties started to share the same hierarchical position as

⁴¹ *Human Rights Advocacy and the History of International Human Rights Standards*, <https://humanrightshistory.umich.edu/accountability/obligationr-of-governments/>.

⁴² The Pyramid of Kelsen is a graphic representation of the legal system by means of a pyramid segmented into various strata or levels. It represents a vertical relationship between the different legal norms, as understood by the Austrian jurist and philosopher Hans Kelsen (1881-1973), from the positivist doctrine. This normative pyramid arises from the idea that every legal norm obtains its value from a superior norm in the hierarchy, according to three different hierarchical levels in which Kelsen divided its pyramid; at the top of the pyramid, sits the National Constitution, or the basic legal text from which emanates all other laws and provisions.

⁴³ UN Vienna Convention on the Law of Treaties, signed on May 23, 1969 and entered into force on January 27, 1980, art. 26, establishes the principle of *pacta sunt servanda*, which is a fundamental principle of international law that requires States to honor their agreements and obligations. The Latin phrase translates to "agreements must be kept".

the human rights that derive from the Constitution.⁴⁴ A modified art. I, now contrasted to art. 133, created an apparent ambiguity between their interpretations by the Mexican Supreme Court.⁴⁵ Art. I becomes a “coordination article”,⁴⁶ while art. 133 remains a “subordination article”. To many, the interpretation⁴⁷ appeared to maintain constitutional supremacy regardless of what art. I States about the human rights that derive from international treaties. Based on an alleged constitutional ambiguity, would Mexico’s rulers, perhaps, conspire to avoid compliance thereby avoid fulfilling its State responsibility?

As sources of international law, all treaties are considered equivalent in the sense that they are all “binding”.⁴⁸ But should Mexico’s compliance vary by sources of international law? Without a theory of compliance, it is impossible to consider the circumstances under which violations take place or to develop strategies to improve the compliance pull of a treaty. The absence of an explanation for why States obey international law in some instances and not in others threatens to undermine the very foundations of international law.⁴⁹ The absence of a coherent theory may explain why most conventional international law scholarship does not ask why there is compliance but rather simply assumes as much.⁵⁰

The decision to honor or breach a promise made to another State imposes costs and benefits upon the promising country and its decision-makers. The model assumes that decision-makers behave in such a way as to maximize the payoffs that result from their actions.⁵¹

If the payoffs serve the interest of the decision-makers without serving the common good, experts like M. Cherif Bassiouni conclude that *realpolitik* or power politics are driving forces behind the outcomes.

Concerning a nation’s treatment of its own citizens, David Moore argues that respecting human rights impose immediate cost-restraints on governments, thereby narrowing the scope of their opportunities. Immoral governments tend to enjoy unrestrained action; ethical governments accept restrained action. Mexico acts as if the concept of international law (*ius inter gentes*) only governs relations between nations and not between governments and their citizens. It ignores provisions of the Constitution, which indicates that it is obliged to “promote, respect, protect, and guarantee human rights” and that it should prohibit any form of discrimination.

According to an assumed compliance theory, there are two theoretically equal possibilities: monism⁵² with the supremacy of international law and monism with the

⁴⁴ Antonio Olguín-Torres, *The Challenge of Creating a Concept of Sustainable Development as Human Right in the Mexican Constitution According to International Law*, 28(2) SOUTHWESTERN JOURNAL OF INTERNATIONAL LAW 747 (2023), at 750.

⁴⁵ *Id.*

⁴⁶ *Id.*, at 756.

⁴⁷ H.L.A. HART, *THE CONCEPT OF LAW* (2nd ed., 1994), at 141: “Nay whoever hath an absolute authority to interpret any written or spoken laws it is he who is the lawgiver to all intents and purposes and not the person who first wrote or spake them”.

⁴⁸ Vienna Convention on the Law of Treaties, art. 18.

⁴⁹ ANDREW T. GUZMAN, *A COMPLIANCE BASED THEORY OF INTERNATIONAL LAW* (2002). See ABRAM CHAYES, ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995), at 3.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² In monism, a single legal system, international law is supreme over domestic law. Mexican authorities are bound by both international and domestic law, and private parties can rely on international law in domestic courts. Monism is opposed to dualism, which is the theory that international and domestic law are separate systems.

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supremacy of the constitution. Compliance is defined as “the degree to which States adjust their behavior to the provisions contained in the international agreements they have entered into”.⁵³

Louis Henkin States that “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time”. The Managerial Model contends that compliance with international law within treaty regimes, such as the one placing countries under the jurisdiction of the IACHR.

[T]he fundamental instrument for maintaining compliance with treaties at an acceptable level is an iterative process of discourse among the parties, the treaty organization, and the wider public.⁵⁴

Other possible causes cited for treaty compliance include the need to maintain one’s status within a highly interrelated and interdependent community of States, fairness of the international rules themselves,⁵⁵ threat of sanctions, self-interest, and prudence.⁵⁶

In summary, compliance exists because States are concerned with both the reputational implications and the direct sanctions of violating the law. The model explains not only why nations comply, but also why and when they violate international law.⁵⁷ In contrast, Moore posits that none of the mentioned approaches offers a comprehensive description of compliance with international law in general or human rights in particular.⁵⁸ International law is largely determined by the actions of approximately 192 States.

Primary Sources of International Law	
Treaties between States*	International conventions are treaties signed between two or more nations that act as an international agreement.
Customary practice of States*	Oldest and the original source of International Law
General principles of law recognized by civilized nations*	
Judicial decisions*	Decisions of International Courts and Tribunals
Writings of “the most highly qualified publicists”*	Views of renowned jurists
Decisions or determinations of the Organs of International Institutions	
Other secondary sources	

Table 4: *Listed in the Statute of the International Court of Justice [ICJ], art. 38 Decisions or Determinations of the organs of International Institutions or International Organizations.

⁵³ Carmela Lutmar and Cristiane L. Carneiro, *Compliance in International Relations*, OXFORD RESEARCH ENCYCLOPEDIA OF POLITICS, (25 June 2018). Başak Etkin, *The Cynic’s Guide to Compliance: A Constructivist Theory of the Contestation Threshold in Human Rights*, <https://www.erudit.org/en/journals/rqdi/2021-rqdi06201/1079428ar/>.

⁵⁴ CHAYES & CHAYES, *supra* note 49.

⁵⁵ THOMAS FRANCK, *FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS* (1995).

⁵⁶ This view holds that the State’s obligation to keep promises is a prudential decision, not a moral decision. The decision to keep a promise turns on its effect on the good of the State. JACK L GOLDSMITH, ERIC A POSNER, *THE LIMITS OF INTERNATIONAL LAW* (2005), at 191, <https://www.afri-ct.org/wp-content/uploads/2020/09/09-International-Law-and-Moral-Obligation.pdf>.

⁵⁷ See e.g., CHAYES & CHAYES, *supra* note 49.

⁵⁸ In his view, the Chayes’s managerial model assumes “a tendency to comply rather than explaining compliance”. *Id.*, at 80-81.

V. Mexico's Constitution and International Treaties

Mexico demonstrates a monist perspective of law. According to art. 1 of the country's Constitution, it holds:

In the United Mexican States, all individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State, as well as to the guarantees for the protection of these rights. Such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself.

Hence, human rights are not only guaranteed by the Constitution but are also by international instruments signed by the President.⁵⁹ Human rights (national and international) are on the same hierarchical level in the legal system. They complement each other. This is in accord with Kelsen's theory, that "analysis of international law has shown that most of its norms are incomplete norms which receive their completion from the norms of national law".

No universal treaty exists which exclusively deals with VAWG, let alone femicide.⁶⁰ However, treaties are very important in the Mexican legal system because they represent a form by which Mexico participates in the international community. It negotiates and signs treaties with other countries, and of course, is obligated by those international instruments which establish additional human rights as a way to expand those rights that already are in the Constitution.

When a State enters a treaty, it also binds a large number of people to policies to which they do not consent: for example, people who are not yet born, people who have not yet immigrated, and people who do not yet participate in the existing political system.

Under pertinent international and regional treaties, Mexico recognizes positive rights to life, liberty, and security, and negative rights, freedom from bias/discrimination, violence, and femicide. It is redundant to mention that although its responsibility to satisfy international obligations has been delineated by numerous declarations and conventions of human rights, these rights have not been fully enforceable. As a correction, it is argued that Mexico 1) recognizes the universal nature of the application of the provisions; 2) ensures both positive and negative human rights; 3) adheres to the treaty provisions; and 4) complies with those obligations listed therein. Pertinent aspects of 1) to 4) are further detailed below.

A. Universal nature of provisions

As a primary duty-bearer, Mexico is obligated to protect all of its people against discrimination, violence, and femicide and to protect human rights to life, liberty, and security.

While female victims are being subjected unfairly to discrimination, violence, or femicide, they are treated, *as if* they were inferiors to the rest of humankind.⁶¹ Mexico's recognition of the universal nature of the internationally applicable provisions and the potential claims cited therein is a first step in satisfying its responsibility to ensure that all Mexicans can enjoy their human rights.

⁵⁹ Constitution of Mexico, *supra* note 7.

⁶⁰ HEFTL, *supra* note 8, at 109.

⁶¹ Dr. Martin Luther King's Letter from Birmingham "It gives the segregator a false sense of superiority and the segregated a false sense of inferiority". https://www.csuchico.edu/iege/_assets/documents/susi-letter-from-birmingham-jail.pdf.

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A similar error or defect resulting from human rights instruments envision men as the (main) bearers of human rights.⁶² They usually fail to specify rights that would ensure women against specific types of violence that are characteristic of human rights violations against women and girls – e.g., dowry-deaths, slow deaths, domestic violence, forced marriage, sexual slavery, and rape. These acts of violence can also constitute acts of femicide.⁶³

Potential claims cited within human rights treaties refer to both positive and negative rights.

Concerning the subjects or holders of such rights, treaties refer to “every human being”, “all children”, “everyone”, “migrant workers and members of their families”, “women and girls with disabilities”, and/or “every woman”. Addressing the universal nature of the provisions, in part, the American Convention on Human Rights (ACHR)⁶⁴ clarifies that “person” means every human being and that “[e]very person has the right to have *his* life respected”.⁶⁵ Concerning the subjects or holders of negative rights, they are circumscribed in terms of “[n]o one” as in “[n]o one shall be arbitrarily deprived of his life”.

B. Positive and negative rights

Recognition of positive and negative rights and claims by Mexico is a second step toward satisfying its responsibility to ensure that its people can enjoy their human rights. Mexico is expected to ratify treaties that enable its people to enjoy a life in which their rights are respected and protected. For example, The American Convention on Human Rights specified a negative right, which restrains others from engaging in biased behavior.⁶⁶ According to art. 24: “Right to Equal Protection, all persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law”.

Linking violence to discrimination, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁶⁷ identified “hatred that constitutes incitement to discrimination”. Also, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women⁶⁸ specified in art. 6 that “[t]he right of every woman to be free from violence includes, among others [...] The right of

⁶² DANIELA NADJI, *INTERNATIONAL CRIMINAL LAW AND SEXUAL VIOLENCE AGAINST WOMEN: THE INTERPRETATION OF GENDER IN THE CONTEMPORARY INTERNATIONAL CRIMINAL TRIAL* (2018), at 35, cited in HEFTI, *supra* note 8, at 107.

⁶³ *Id.*, at 108.

⁶⁴ Organization of American States, American Convention on Human Rights, signed on November 22, 1969 and entered into force on July 18, 1978.

⁶⁵ Author emphasis to highlight the exclusive aspect of treaty language (*cf.* his life): “This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. 1. States Parties recognize that every child has the inherent right to *life*”; UN Convention on the Rights of the Child (1989), art. 4: “The right to *life* of migrant workers and members of their families shall be protected by law”; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), art. 6.

⁶⁶ In 1979, the Convention on the Elimination of Discrimination Against Women marked the first international step toward recognizing women’s right to equal protection before the law. Article 2 of CEDAW requires States to take a clear stand on discrimination against women and communicate their opposition to discrimination to the international community.

⁶⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *supra* note 65.

⁶⁸ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, *supra* note 21.

women to be free from all forms of discrimination”. Art. 2 of the Convention on the Rights of the Child expresses no tolerance for discrimination against children.⁶⁹

It was not until 1992 that violence directly against women and girls was recognized by CEDAW as a violation of human rights.⁷⁰ In 1993, the UN Declaration on the Elimination of Violence Against Women became significant because it made violence against women an international issue and no longer subordinate to claims about relativism. It prohibits not only State violence against women, but also private violence, including

battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence or violence related to exploitation.

These private acts had previously been regarded, in some quarters, as acceptable or beyond the realm of the law as it concerns enforcement. Their prohibition placed individual rights to physical integrity above claims of cultural rights.

C. Adherence to Treaty Provisions

States have duties that correspond to the positive and negative rights of people. Specifically, Mexico’s fulfillment of preventive duties is a third step to satisfying its protective responsibility. By ensuring benefits, services, or treatments, States recognize and fulfill their duties to provide the right holder with a legitimate claim against them. In general, treaty provisions usually cite “any State”, “States”, or “State parties”. Conversely, a State’s negative duty restrains the actions of people or governments toward or against any right holder.

Regarding violence against women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women specifies preventive duties on behalf of the State.⁷¹

Originally seen as a restrictive private issue, CEDAW’s achieved recognition of State responsibility for acts committed by non-State actors, such as rape, forced marriage, femicide, listed in the treaty text itself.⁷² CEDAW illustrates a paradigm shift, which recognizes that preventive duties are as essential as States’ traditional negative obligations.⁷³

A State’s duty to protect rights consists of three components: 1) to respect, 2) to prevent, and 3) to guarantee. Concerning the duty to respect human rights, the American Convention on Human Rights specifies in art. 1:

Obligation to Respect Rights 1. The *States Parties* to this Convention *undertake to respect* the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition⁷⁴.

⁶⁹ The Convention on the Rights of the Child, *supra* note 65.

⁷⁰ BETH SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS, (2009), at 207, cited in HEFTI, *supra* note 8, at 109.

⁷¹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, *supra* note 68.

⁷² HEFTI, *supra* note 8, at 111.

⁷³ *Id.*, at 117.

⁷⁴ American Convention on Human Rights, *supra* note 63.

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Regarding the duty to prevent violations of human rights, the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities indicates that:

The *State parties* [...] 1. *Cooperate* with one another in helping to prevent and eliminate discrimination against persons with disabilities; [...] shall create effective communication [...] to eliminate discrimination against persons with disabilities.⁷⁵

Addressing the common failure to specify rights that would ensure women against specific types of violence, art. 6(1) of the Convention on the Rights of Persons with Disabilities⁷⁶ indicates that:

States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

Also, concerning violence, the International Convention on the Elimination of All Forms of Racial Discrimination contains arts. 4 and 5(b) whereby:

State parties shall declare an offence punishable by law [...] all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin. [...] The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution⁷⁷.

Regarding violent inducements and State obligations, the American Convention on Human Rights⁷⁸ cites:

Any [...] national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be *considered as offenses* punishable by law.

Art. 19(1) of the Convention of the Rights of the Child⁷⁹ indicates that:

States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Further, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families expressly prohibits under art. 13:

For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Art. 16 of the Convention on the Rights of Persons with Disabilities, which addresses freedom from exploitation, violence and abuse enumerates:

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities 2. to prevent all forms of exploitation, violence and abuse [...] shall ensure that protection services are age-, gender- and disability-sensitive 3. shall ensure that all facilities and programmes [...] are effectively monitored by independent authorities.

⁷⁵ Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, signed on June 8, 1999 and entered into force on September 14, 2001.

⁷⁶ *Id.*

⁷⁷ International Convention on the Elimination of All Forms of Racial Discrimination, signed on December 21, 1965 and entered into force on January 4, 1969.

⁷⁸ American Convention on Human Rights, *supra* note 63.

⁷⁹ The Convention on the Rights of the Child, *supra* note 65, art. 19.

Finally, the Inter-American Convention on the Forced Disappearance of Persons provides:

The States Parties to this Convention undertake: Article I, a. Not to practice, permit, or tolerate the forced disappearance of persons, even in States of emergency or suspension of individual guarantees; Article II [...] forced disappearance is considered to be the act of depriving a person or persons of his or their freedom⁸⁰.

For the first time, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women calls for the establishment of mechanisms for protecting and defending women's rights as essential to combating the phenomenon of violence against women's physical, sexual, and psychological integrity, whether in the public or the private sphere, and for asserting those rights within society.⁸¹

Without ambiguity, the human rights approach stresses that the prime responsibility and duty of Mexico is to respect, promote, and protect human rights and fundamental freedoms, which include life, liberty, and personal security.⁸² The provisions of the Mexican Constitution and the signed international treaties, being the Supreme Law indivisibly, compel Mexico to comply with the provisions of human rights and fundamental freedoms fully and thereby, fulfill its State obligations.

The Constitution and international treaties demonstrate that Mexico's obligations consist of preventive and negative duties, which affect everyone (State and non-State actors, children and adults, *etc.*), with aim of eradicating discrimination, violence, femicide and their inducements. Their provisions, being the Supreme Law indivisibly, compel Mexico to comply with and protect human rights and fundamental freedoms fully and thereby, fulfill its State obligations.

VI. Criteria of State Responsibility of Prevention by the Inter-American Court of Human Rights

The Court, in almost every case, orders the State to investigate, prosecute and punish the individuals responsible for human rights violations. These orders seldom find fulfillment. In most cases, impunity reigns⁸³, and the State power structure lacks the means or the will (*cf. realpolitik*) to bring the perpetrators of human rights violations to justice.

In reaction, a State may perceive unwarranted Court jurisdiction and interpretations, current withdrawal of support from previously ratified treaties, or it may not believe in monism, that is, that violations of human rights belong properly to the international sphere as well as to

⁸⁰ Inter-American Convention on the Forced Disappearance of Persons, signed on June 9, 1994 and entered into force on March 28, 1996.

⁸¹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, *supra* note 67.

⁸² OHCHR, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UNGA Res. (July 9, 1998), <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>.

⁸³ An “almost total” impunity reigns in Mexico when it comes to violent crimes, THE YUCATAN TIMES (Oct. 13, 2021), <https://www.theyucatantimes.com/2021/10/an-almost-total-impunity-reigns-in-mexico-when-it-comes-to-violent-crimes/>.

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its domestic province. In *González et al.*, Mexico contested the Court's jurisdiction and interpretations,⁸⁴ witness testimony, and assessment of evidence.⁸⁵

Mexico alleged that the Court did not have jurisdiction to "determine violations" of the Belém do Pará Convention. It claimed that the general rule regarding jurisdiction of the IACHR for treaties other than the American Convention on Human Rights is that each Inter-American treaty requires a specific declaration granting jurisdiction to the Court.⁸⁶ In disagreement, the Court expressly decided that it has contentious jurisdiction to examine violations of the Belém do Pará Convention.

In general, even if a State recognizes the Inter-American Court of Human Rights as a legitimate source of international law, it may disagree with the Court's interpretation of a given treaty. Specifically, Mexico may not agree with the relevant international Court's interpretations of key concepts: 1) duty to prevent human rights violations; 2) elements of crimes; 3) characteristics of at-risk victims to be protected; 4) State actions and inactions before and immediately after reported disappearances; 5) types of victimizers that the State is accountable for; and 6) an appropriate relationship to be held between any State and the Court. However, The IACtHR indicated that Mexico has an obligation to comply with human rights treaties.⁸⁷

In the *Cottonfield* case,⁸⁸ the slain three women were between 17 and 20 years old. Shortly after they vanished, their mothers reported their disappearances to the police. Mexico denied that it had committed any violation of the rights of life, humane treatment, or personal liberty.⁸⁹ To the contrary, the Court held that Mexico had failed to protect the three women from violence, thereby violating the victims' right to life (art. 4(1) ACHR), their right to personal integrity and personal liberty (arts. 5(1)(2), and 7 ACHR), their right to judicial protection and due process (arts. 8 and 25 ACHR), the rights of the child (art. 19 ACHR), and its duty to investigate VAWG (art. 7(b)(c) Belém do Pará Convention).

The *Cottonfield* case introduced, and for the first time ever, the notion of *femicide* to the language of the Court. The Commission and the representatives had held that the issue of gender was the common denominator of the violence in Ciudad Juárez. They alleged that the violence suffered by the victims constituted femicide, that is, an extreme form of VAW *merely because* of their gender in a society that subordinates them.

To determine State responsibility for non-State actor violence, the Court applied the *Osman* test. Under the *Osman* test, States' responsibility is only engaged if:

The authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might

⁸⁴ *González et al.*, *supra* note 4, at paras. 31-39; 44, 66, 87-107.

⁸⁵ *Id.*, at paras. 87-107.

⁸⁶ The Court argued that the (overall) purpose of the provision confirmed its jurisdiction. See Juana I. Acosta López, *The Cottonfield Case: Gender Perspective and Feminist theories in the Inter-American Court of Human rights Jurisprudence*, 21 INTERNATIONAL LAW, REVISTA COLOMBIANA DE DERECHO INTERNACIONAL 17 (2012).

⁸⁷ Mexico indicated that, although "the object and purpose of the Convention of Belém do Pará is the total elimination of violence against women", "this ultimate purpose should not be mistaken for [...] the judicialization of the system of rights and obligations that regulates the instrument". *González et al.*, *supra* note 4, at para. 60.

⁸⁸ The IACtHR found that the three women had been subjected to gender-based violence under Article 1, Belém do Pará Convention and the CEDAW Committee's General Recommendation No. 19. Mexico had admitted that a culture of discrimination existed, which led to the perception that crimes against women were insignificant and therefore did not require specific immediate action. In this climate of widespread violence, by their own admission, the Mexican authorities stereotyped the victims, which ultimately prevented the police from doing their job and help search for the missing women. HEFTI, *supra* note 8, at 196; *González et al.*, *supra* note 5.

⁸⁹ *Id.*, at para. 111.

have been expected to avoid that risk. The *Osman* test has been upheld and endorsed by international human rights bodies, including the African Commission, the CEDAW Committee, and the IACtHR – also in cases concerning femicide.⁹⁰

Its trailblazing effect is indisputable. In its current interpretation, the *Osman* test does not weigh the specific ways violence targets women and girls. The reported awareness of domestic authorities does not fit the reality of the harm caused by femicide. Women and girls often do not know that they are in imminent danger of being abducted and cannot alert the authorities for the same reason. The Court fails to consider that vulnerable stakeholders who belong to the targeted group composed of women and girls in Mexico are inherently at risk of violence, simply by virtue of being who they are.

The Court supplemented the obligation of appropriate knowledge with an enhanced due diligence obligation. This means that States must investigate violence against women and girls without delay, an obligation arising from art. 7(b) Belém do Pará Convention (the obligation to eradicate violence against women).⁹¹ The Court has developed specific investigative standards in femicide cases.⁹²

Perhaps in a failed attempt to avoid State responsibility, Mexico denied that a gender-based pattern of violence existed.⁹³ Conversely, the Court found that the violations were especially addressed against women. This conclusion was drawn from the following elements: the existence of a gender-related pattern of violence, the characteristics of the victims, and the *modus operandi* of the crimes.⁹⁴

The Court observed that several pieces of evidence pointed toward discriminatory attitudes by the authorities.⁹⁵ Observing this context of gender discrimination⁹⁶ and inequality allowed the Court to shape the international responsibility of Mexico, relying not on State action (considering that the Court did not find evidence of agents participating in the crimes) but rather on the lack of prevention of the disappearances and murders in the context of a gender-related pattern of violence.

The Court confirmed in the *Cottonfield* case that the status as a child “requires special protection that must be understood as an additional right that complements all the other rights that the Convention provides”, and that “the State must pay special attention to the needs and rights of the alleged victims owing to *their condition as girls who, as women, belong to a vulnerable group*”.

Nevertheless, focusing on the interconnection between their young age and gender in this case, the Court has noted that children might face multiple discrimination. It did so by recalling the independent expert for the UN study on violence against children who held that “[v]iolence against children takes a variety of forms and is influenced by a wide range of factors, from the

⁹⁰ HEFTI, *supra* note 8, at 277.

⁹¹ Organization of American States. Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, *supra* note 68.

⁹² In particular: 1) the obligation to investigate these cases with a gender perspective; 2) to refrain from stereotyping women and girls. An investigation with a gender perspective (essentially the woman question) asks how violence targets women and girls specifically (HEFTI, *supra* note 8, at 175).

⁹³ González *et al.*, *supra* note 4 at para. 132.

⁹⁴ *Id.*

⁹⁵ The Court indicated that the comments made by officials that the victims had gone off with a boyfriend or that they led a disreputable life and selected questions regarding the sexual preferences of the victims constitute stereotyping (para. 208). Gender stereotyping refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women.

⁹⁶ Mexico admitted that a culture of discrimination contributed to the murders. González *et al.*, *supra* note 4, at para. 152.

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personal characteristics of the victim and perpetrator to their cultural and physical environments". It further argued, "economic development, social status, age, sex and gender are among the many factors associated with the risk of lethal violence". Victimization of "second class citizens" (if not lower) is as brutal as the victims are vulnerable.

It is also noteworthy that the *López Soto* case provides the basis for analyzing State responsibility for private acts in the Inter-American system.⁹⁷ In 2001, the female victim had been sexually enslaved by a private actor for three months. Immediately after her disappearance, her sister reported Linda's absence. Claiming that the victim and her aggressor were partners, the authorities did not file the complaint. Suffering psychological and physical injuries during her captivity, the victim was sexually abused and seriously assaulted. Fourteen surgeries and fifteen years later, her case was presented to the Inter-American Court of Human Rights.

Venezuela argued that it did not incur responsibility for sexual violence and rape during her captivity. To the contrary, the IACtHR held that Ms. López Soto had been sexually enslaved, under art. 6(1) ACHR, which stipulates that "[n]o one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms".⁹⁸ The Court also applied the Osman test to determine State responsibility for non-State actor violence.⁹⁹

Applying the Osman test, the Court Stated that, even though she was raped and sexually enslaved by a private individual, Venezuela incurred responsibility for its inaction because it "knew or ought to have known" about the serious risk. The Court argued that, under art. 1 of the American Convention on Human Rights, States have a duty to ensure that every person can freely exercise their rights under their jurisdiction, *i.e.*, to create the conditions for individuals to be protected from human rights abuses. The *Velásquez Rodríguez* case abandons the idea that the State should not intervene in individuals' freedom, shifting to the premise that States also have a guarantor function, that they have a duty to protect people from human rights violations. This requires that States address human rights abuses committed by non-State actors such as:

An illegal act which violates human rights, and which is initially not directly imputable to a State [...] can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the [ACHR].¹⁰⁰

The Court Stated that "the State has a legal duty to take reasonable steps to prevent human rights violations and to identify the culprits and punish them. The Court established that the preventive duty must include "legal, political, administrative and cultural" measures.

In summary, The Inter-American Court of Human Rights (IACtHR) classifies femicide cases as involving the right to life (art. 4 ACHR), the right to personal integrity and liberty (arts. 5 and 7 ACHR), the right to judicial protection and due process (arts. 8(1) and 25(1) ACHR), and the duty to prevent violence under art. 7 Belém do Pará Convention. The IACtHR has also begun to classify the violence in non-State actor femicide as torture.¹⁰¹

The Court embraced and valued the partial acknowledgment of responsibility of the State of Mexico but rejected the State's arguments regarding its lack of responsibility on the other

⁹⁷ Ms. López Soto's right to integrity, liberty, dignity, autonomy, and private life were at "real or immediate risk", and Venezuela failed to take reasonable measures to mitigate that risk. Art. 2 of the Belém do Pará Convention lists abductions as a form of violence (HEFTI, *supra* note 8, at 213-214).

⁹⁸ HEFTI, *supra* note 8, at 210.

⁹⁹ HEFTI, *supra* note 8, at 169.

¹⁰⁰ Velásquez Rodríguez v. Honduras (n1), para. 172, cited in HEFTI, *supra* note 8, at 275.

¹⁰¹ *Id.*, at 241-242.

claims, even though there was no evidence of the State's direct participation in any of the three murders.

The decision of the IACtHR reveals several gender-sensitive approaches; the Court:

- Declared the international responsibility of the State for failing to prevent the disappearances and murders in a gender-based pattern of violence;
- Discussed the concept of *femicide* in the case;
- Ordered reparations explicitly designed according to a gender perspective.

Thus, when an international Court declares that a State is responsible not only for the acts of its agents but also for the lack of prevention of crimes. In the relevant case of gender-based crimes, it created an entirely new range of obligations for the States that are not obvious from the text of international treaties.

This outcome implies that States will need to re-structure their public policies to avoid international responsibility. This theory is also relevant for the prevention of domestic violence, which is traditionally viewed as a private and not a public concern, considering that States might be internationally responsible for the lack of prevention of this type of violence.

It is useful to explore possible reasons why Mexico currently fails to comply. Its failure to comply may be due to a passive-aggressive backlash for perceived unwarranted Court interpretations. For example, Mexico may believe that, unsupported by previously ratified texts, the Court has expanded interpretations of key concepts: 1) duty to prevent human rights violations; 2) elements of crimes; 3) characteristics of at-risk victims to be protected; 4) State actions and inactions before and immediately after reported disappearances; 5) types of victimizers that the State is accountable for; 6) an appropriate relationship to be held between any State and the Court; and 7) a point of view that violations of human rights belong properly to the international sphere as well as to the domestic province.

In this instance, Mexico could learn from France. *E.g.*, it is noteworthy that:

In September 2019, France's Prime Minister, Edouard Philippe, formally recognized that France has a femicide problem, thereby signaling the State's awareness that women and girls are at great risk of being harmed or killed.¹⁰² Does that mean that France bears international responsibility for the hundreds of women who are killed under its jurisdiction? The Osman test's response to this question is that States which take adequate preventive measures to address the risk, can no longer be blamed and relinquish their international responsibility for femicide.¹⁰³

The existence of a pattern of widespread violence against the female social group, evidenced by reports and statistics, should suffice to prove States' knowledge about systematic or widespread violence against the female group. As experts are aware, isolated or sporadic violations of internationally recognized human rights do not amount to crimes against humanity, whereas the commission of the latter requires a systematic or widespread attack against a civilian population. Furthermore, the risk of femicide ought to be considered real and immediate, since acts of femicide are continuous (and can materialize at any time).¹⁰⁴ This is especially so where States have contributed to the risk by failing to punish perpetrators, thereby creating a widespread context of violence against women and girls. Once the risk exists, States

¹⁰² *France Announces Anti-femicide Measures as 100th killing Recorded*, BBC (Sept. 3, 2019), <https://www.bbc.com/news/world-europe-49571327>.

¹⁰³ ECtHR, *Osman v. UK* (n1), Application No. 23452/94, Judgment (Oct. 28, 1998), para. 116, cited in HEFTI, *supra* note 8, at 118.

¹⁰⁴ ECtHR, *Kurt v. Austria*, Application No. 62903/15, Grand Chamber, Judgment (June 15, 2021), para. 175, cited in HEFTI, *supra* note 8, at 270.

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must take urgent legislative, policy, and budgetary measures to stop the violent practices endangering women and girls.¹⁰⁵

Despite Mexico's ratification of treaties protecting human rights, it ignores these provisions. One may well ask then, why did it ratify the human rights treaties in the first place? One possible reason is argued by Kathryn Sikkink who wrote that human rights policies originally have often been embraced by the less powerful to try to restrain the more powerful. They assume that they are more likely to succeed when they also have allies within powerful States. "Protection of national sovereignty and the personal rights of individuals impelled the founding Latino delegates".¹⁰⁶ On one hand, supporting doctrines of sovereign equality and non-intervention, they sought a means to avoid interventions by more powerful countries.¹⁰⁷ They saw international law as one of the "weapons of the weak" to counterbalance U.S. power.¹⁰⁸ and to "eliminate the misuse of diplomatic protection of citizens abroad".¹⁰⁹ On the other hand, these Latin American diplomats were motivated by enlightenment ideas of human rights.

Nevertheless, according to the Court's jurisprudence, it is evident that a State cannot be held responsible for every human rights violation committed between private individuals within its jurisdiction. Indeed, a State's obligation of guarantee under the Convention does not imply its unlimited responsibility for any act or deed of private individuals, because its obligation to adopt measures of prevention and protection for private individuals in their relations with each other is conditional on its awareness of a situation of real and imminent danger for a specific individual or group of individuals and the reasonable possibility of preventing or avoiding that danger. In other words, even though the juridical consequence of an act or omission of a private individual is the violation of certain human rights of another private individual, this cannot be attributed automatically to the State, because the specific circumstances of the case and the discharge of such an obligation to guarantee must be taken into account. In effect, there are two crucial moments in which the obligation of prevention must be examined. The first is prior to the disappearance of the victims and the second is before the discovery of their bodies.

The criteria of State responsibility as determined by the IACtHR determine the degree of dissent, disinterest, and deference to sources of international law. States do not transition smoothly from contesting to complying with the jurisdiction or interpretations of the IACtHR. The Court acts as an external force to prod Mexico from complacency to compliance with international norms. Through its decisions, the Court has signaled that women and girls are in need of special protection from discrimination, violence, and femicide. It has determined what must happen during the small window of time before and after any disappearances. It has clarified what it means by Mexico's knowledge, assurance, and prevention.

Yet, the law does not suffice. As an instrument, it assumes an abstract entity, "the State". A correlation between legal and moral obligations is necessary.

¹⁰⁵ HEFTI, *supra* note 8, at 270.

¹⁰⁶ KATHRYN SIKKINK, LATIN AMERICA'S PROTAGONIST ROLE IN HUMAN RIGHTS (2015), at 211 <https://sur.conectas.org/en/latin-americas-protagonist-role-human-rights/>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

VII. Moral Obligations

Moral obligations are intended, not for bricks and mortar or an inanimate, impersonal concept (State), but for living, breathing State officials. The expectation is that once an official addressed is reminded of the moral principles at stake, he may be led by guilt or shame to respect it and make amends.¹¹⁰ Others, who are entrenched in a tolerance for harm need to be identified, disemployed, and replaced by new leaders with moral leadership.

Scholars debate whether a State or only individuals can have moral obligations to comply with international law. The international law system is based on the conviction that there must be a moral obligation to obey its rules, though this may be overridden in exceptional cases.¹¹¹ In this instance, the rules refer to the Mexican Constitution, international treaties, and the relevant judgments of the IACtHR. The rules, deemed essential for the survival of Mexico, include those forbidding or at least restricting the free use of violence against women and girls.¹¹²

For many experts, international law purports to bind States, not individuals. Although individuals sometimes have obligations under international law, these obligations are derived from the actions of States. But if we grant international law the power to bind States – and we henceforth make this assumption – we still must ask why individuals and governments should feel obligated to cause the State to comply with its legal obligations.¹¹³

Several observers and commentators perceive international law to be in a dilemma.

On the one hand, if international law takes the State as the primary obligation-bearing agent, then it can have no direct moral force for the individuals or groups who control the State. On the other hand, if international law takes the individual or non-State group as the primary moral agent, then it can claim the agent's loyalty, but it must give up its claim to regulate the relationships between States.¹¹⁴

Yet others believe that States should:

Comply with the treaty only if compliance is the right thing to do. International law has no moral authority. International law scholars tend to confuse two separate ideas: (1) a moral obligation on the part of States to promote the good of all individuals in the world, and (2) a moral obligation to comply with international law. The two are not the same; they are in tension as long as governments focus their efforts on helping their own citizens.¹¹⁵

H.L.A. Hart indicated that in all communities, there is a partial overlap in content between legal and moral obligations. The requirements of legal rules are more specific and hedge round with more detailed exceptions than their moral counterparts.¹¹⁶ Morality is seen as the ultimate standard by which human actions (legislative and otherwise) are evaluated.¹¹⁷ In accord, Dr. Martin Luther King wrote: "One has not only a legal but a moral responsibility to obey just laws".¹¹⁸ Justice, which constitutes one segment of morality, is primarily concerned with treatment of classes of individuals.¹¹⁹ The rules jointly address the unjustifiable death of girls and women from neglect, starvation and or other ill-treatment.

¹¹⁰ HART, *THE CONCEPT OF LAW*, *supra* note 47, at 227.

¹¹¹ *Id.*

¹¹² *Id.*, at 172.

¹¹³ GOLDSMITH & POSNER, *supra* note 56, at 189.

¹¹⁴ *Id.*, at 188.

¹¹⁵ *Id.*, at 197.

¹¹⁶ HART, *supra* note 47, at 171.

¹¹⁷ *Id.*, at 227.

¹¹⁸ KING, *supra* note, at 61.

¹¹⁹ HART, *supra* note 48, at 167.

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These rules collectively intrude upon the patriarchal prerogatives, misogynistic aversions, and strong passions of victimizers. Old customs and traditions, which once widely held the status of moral rules, enjoy that scope no longer.¹²⁰

Does it matter whether States have a moral obligation to obey international law? Hart denied that it matters whether States have a moral obligation to obey international law or feel bound by such a conviction; all that matters is that States have a reason to comply with international law. States do what they do; they might violate a moral obligation even if they have it, or they might comply with international law even if they do not have a moral obligation to comply with it.¹²¹

The most common explanation for why States have a moral obligation to comply with international law is that they have consented to it.¹²² Other hypotheses include “the capacity to do good”, prudence, and self-interest. The following five principles¹²³ can also guide the compliance of Mexico, according to an ethics study whereby:

- The first is the Principle of Recognition of Value, which applies to all human beings or individuals simply because they belong to the human species or simply because they are members of “the human family”. Accordingly, Mexico would be expected to secure women from all forms of violence and harassment, including verbal, physical, sexual, or psychological.
- The second is the Principle of Consideration which focuses on the consideration of the motivations, needs, and status of vulnerable people, including women and girls. As needed, Mexico would be expected to provide women and girl friendly health facilities.
- The third is the Principle of Decent Treatment, which means that women and girls will be treated with dignity and respect. Consequently, rather than blaming females for male-initiated violence or deeming them to be inferior, Mexico would implement a standardized system of decent treatment, which includes safe and affordable housing, safe schools and workplaces, physical and mental health services, and safe access and egress from each of them.
- The fourth is the Principle of Respect and Dignity. As a consequence, Mexico would be expected to treat all females, regardless of citizenship or any other contingency, in a respectful way in words and in action.
- The fifth is the Principle of Avoidance of Harm, which will shield women’s and girls’ exposure to words or deeds that tend to abuse, misuse, or harm them. Hence, Mexico would be expected to issue timely and regular “pervert alerts”, and other related notices to families and schools.

In sum, women and girls possess human rights unconditionally that are not based on any alleged special qualifications, such as citizenship or legal entitlement.¹²⁴ Neither should their rights be denied because of their age or apparel. Conforming to moral principles, Mexico is expected to enforce all female rights. This expectation contradicts the current harm caused by the tolerance of discriminatory and systemic violence, the intentional taking of female life, and Mexico’s ineffective preventive practices.

¹²⁰ *Id.*, at 175.

¹²¹ GOLDSMITH & POSNER, *supra* note 56, at 201.

¹²² *Id.*, at 190.

¹²³ The five ethical principles were synthesized by Dr. Anja Matwijkiw in Anja Matwijkiw, Willie Mack, *Making Sense of the Right to Truth in Educational Ethics: Toward a Theory and Practice that Protect the Fundamental Interests of Adolescent Students*, 2 INTERCULTURAL HUMAN RIGHTS LAW REVIEW 329 (2007), at 355-360.

¹²⁴ AMARTYA SEN, *ELEMENTS OF A THEORY OF HUMAN RIGHTS* (2004), at 316.

Mexican State officials have a moral responsibility to comply with the Constitution, international treaties, and judgments of the IACtHR that protect the rights of women and girls. Their provisions constitute just laws. Therefore, based on the moral principles of justice, value, consideration, decent treatment, respect, dignity, and the avoidance of harm, Mexico has a moral obligation to obey these just laws.

Even as individual rights and State responsibilities (duties) have positive and negative aspects, so has compliance. Concerning a negative relationship between law and morality, one often reads about Dr. Martin Luther King's rationale for advocating the noncompliance of *unjust* laws, which would include Jim Crow or Nazi era discrimination and persecution laws. Yet, concerning a positive relationship between law and morality, experts seldom explore rationales for advocating compliance with *just* laws that otherwise compel compliance. In this instance, by utilizing morally substantive principles, compliance at the national and international levels is not currently advocated. A predictable criticism of introducing principles from cynics and skeptics will be that it is an innovation which States have not agreed to, let alone signed or ratified. By specifying moral principles that complement any common law or statutory law that protects women and girls, it is not unreasonable to seek to increase compliance with those higher norms that extend beyond the law.

VIII. Concluding Remarks

The Mexican government can and should stop its evasive strategies and its tacit tolerance of femicide, which has been facilitated by small gun proliferation. The human rights approach stresses Mexico's duty to respect, promote, and protect human rights and fundamental freedoms, which include life, liberty, and personal security.¹²⁵ The Mexican Constitution and the signed international treaties, being the Supreme Law indivisibly, compel Mexico to comply with their provisions and thereby, fulfill its State obligations. Declarations and conventions of human rights (international and regional), regional judicial case law, and moral principles require Mexico to prevent femicide. Mexico's continuous lack of protection of women against gender-based discrimination, violence, and femicide violates legal and moral principles alike, has no reasonable justification, and must cease immediately. With a newly elected female President of the nation, the author of this essay hopes to see improvement in terms of compliance and justice for vulnerable stakeholders.

¹²⁵ OHCHR, *supra* note 82. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Dec. 9, 1998).