

Submission to the Special Rapporteur on violence against women

April 30, 2021

Executive summary

This submission has been prepared by the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA World) as a response to the call published by the Special Rapporteur on violence against women, its causes, and consequences.

The present submission overviews the situation of gender-based violence and femicide against lesbian, bisexual, trans, and intersex [LBTI] women and its relationship with their sexual orientation, gender identity/expression, and sex characteristics [SOGIESC], as well as the factors that perpetuate this phenomenon. These include the systemic marginalization of LBTI women worldwide, the violence motivated by their SOGIESC, and the lack of State responses and measures such as laws and policies to eradicate and document femicides against LBTI women. Finally, the submission describes best practices implemented by civil society and States in different regions to document, eradicate and prevent femicide.

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Introduction

Traditionally, femicide has been defined as 'the murder of women by men motivated by hatred, contempt, pleasure or a sense of ownership of women.'¹ However, the meaning/s and implications of the term 'femicide' vary depending upon whose perspective or where it is being examined.²

The definition of 'femicide' in this submission goes beyond the [cis]male-[cis] female³ gender binary. To gain a comprehensive and holistic understanding of the state of femicides in the contemporary world, it is crucial to extend the limits of the definition of femicide to include non-heteronormative women, non-cisnormative women⁴, intersex women, indigenous women, non-white women, women with disabilities, women in sex work, and women at many other multiple intersections.

In this submission, we will conceptualize femicides from a perspective of sexual orientation, gender identity/expression, and sex characteristics [SOGIESC]. Our focus will then shift to a key issue inextricably linked to femicides - the systemic and intersectional forms of marginalization faced by lesbian, bisexual, transgender, and intersex [LBTI] women.

1. Femicides and SOGIESC

1.1. Homicidal violence against LBTI women motivated by SOGIESC

The persistent prejudices and marginalization faced by LBTI women because of their SOGIESC, combined with gender, make them vulnerable to multiple rights violations and acts of violence, including *inter alia* cases of femicide. In this regard, gender-related killings that involve sexual orientation, gender identity/expression, or sex characteristics represent another form of femicide. This type of femicide has been insufficiently documented and studied, and in many cases, such killings have been labeled only as "gender bias crimes" or "hate crimes."

Similarly, the United Nations General Assembly (2012) and the United Nations Office on Drugs and Crime (2014) have defined femicide as "the gender-related killing of women that can take

¹ The history of the term 'femicide'. Canadian Femicide Observatory for Justice and Accountability, <https://www.femicideincanada.ca/about/history>

² Corradi, C., Weil, S. and Boira, S. 2016. Femicide: a social challenge. *Current Sociology*, 64: 7, 967-974. <https://www.femicideincanada.ca/sites/default/files/2019-05/Femicide.pdf>

³ Cisgender stands for a person whose gender identity matches the sex/gender they were assigned at birth.

⁴ Heteronormativity and cisnormativity is defined as "[t]he system of norms that affect our understanding of gender and sexuality. According to the heteronorm [and cisnorm], people are either girl/woman or boy/man and nothing else. Girls/ women are expected to be feminine, and boys/men are expected to be masculine. Everyone is expected to be heterosexual [and cisgender]. Everyone is affected by the norms, regardless of whether they adhere to them or not. Adhering to or fitting within the norm provides financial, political and social benefits. Transgressing the heteronorm can result in punishment in the form of anything from silence to violence." Quote from "A World for All: Working globally with sexual orientation, gender identity, gender expression & sex characteristics. RFSL" Available on: https://www.rfsl.se/wp-content/uploads/2018/10/SOGI_eng_final_single-pages.pdf

many forms ([including] (...) killings as a result of sexual orientation or gender identity (...)), and recognize its scarce reporting and prosecuting by authorities."⁵ Moreover, the Vienna declaration on femicide (November 26, 2012) includes the killing of women and girls because of their sexual orientation and gender identity as a form of femicide.⁶

Gender-based violence is deeply integrated into social dynamics, symbolic structures, State (non)responses, and para-state bodies⁷ linked to organized crime. It is often accompanied by torture and sexual violence aiming to dominate the victim. Such violence sends a message to the victim and everyone who shares their identity, establishing dominance over territories, bodies, illegal trade markets, and communities. This relates to a "pedagogy of cruelty" in which gender-based violence is linked to a general structure of inequality⁸. Therefore, the idea of a simple linear victim-victimizer relation, as typically understood in violence against women⁹, is incomplete without other actors and circumstances considered as motivations of violence.¹⁰ For example, the murder of a migrant sex worker trans woman in a public space is meant to send a message against non-cisnormative identities and may be linked to organized crime groups; police brutality, corruption and impunity, generalized xenophobia and transphobia.

A comprehensive understanding of the term 'femicide' would allow the creation of effective institutional measures and help develop social and cultural conditions to prevent and eradicate femicide in all its forms. Yet, femicide perpetrated against LGBTI women, sex workers, and indigenous women is still overlooked. States and general society perceive them as crimes of lesser gravity. For this reason, civil society organizations around the globe have emphasized the importance of collecting disaggregated SOGIESC information of homicidal violence to formulate public policies based on actual needs and not stereotypes, and to avoid revictimizing people by denying/ignoring their SOGIESC. Indeed, the updated CEDAW General Recommendation on gender-based violence against women refers explicitly to LGBTI.

⁵ Weil S., Corradi C., Naudi, M. (2018) Femicide Across Europe. Theory, Research and Prevention <https://library.oapen.org/bitstream/id/c936115d-c9f6-4cd8-86c0-1efe8e0f42ab/9781447347163.pdf>

⁶ See https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/E-CN15-2013-NGO1/E-CN15-2013-NGO1_E.pdf

⁷ On this note, TGEU has compiled cases in which private security forces have violated trans women showing how the security groups may be contributing to the phenomenon of gender-based violence.

⁸ Rita Laura Segato. "La guerra contra las mujeres". Colección Mapas 45. Madrid. Traficantes de Sueños, 2016. 188 págs. ISBN 13: 978-84-945978-5-5.

⁹ Gago, Verónica (2018). *Is there a war "on" the body of women?: Finance, territory, and violence*. Viewpoint Magazine: <https://viewpointmag.com/2018/03/07/war-body-women-finance-territory-violence/>

¹⁰ Gago, Verónica (2018). *Is there a war "on" the body of women?: Finance, territory, and violence*. Viewpoint Magazine: <https://viewpointmag.com/2018/03/07/war-body-women-finance-territory-violence/>

1.2. Lack of data and registry of violence based on SOGIESC / LGR¹¹ of trans women

The lack of official statistics on violence against LGBTI women is an exclusionary gesture that aims to eliminate violence due to prejudice from the social panorama, assimilating it into the rest of violence types, downplaying its systemic nature and the significance of its discriminatory motives.¹² Without a SOGIESC-sensitive approach, any measures related to gender-based violence do not reach, or even revictimize, LGBTI women. Due to SOGIESC-based stigmatization, LGBTI women are blamed for being victims of the crimes committed against them, minimizing their severity.

Transphobia is among the main barriers to collect statistics on femicide against transgender women. Frequently, when a transgender woman is the victim of femicide, the case remains uninvestigated since the authorities responsible tend not to use their real and chosen names but rather their birth name, leading to obstacles for identification.¹³ This often creates an inability to understand violence faced by trans women as one motivated by gender and/or gender identity. Violence committed to a trans woman by their cis male partner may be understood as 'male-on-male' violence. The lack of legal gender recognition often limits trans women from accessing gender-sensitive measures of prevention and reparation of violence committed to them.

In many States, trans women's killings are not labeled as femicides since terms such as 'transfemicide' do not exist in their legal frameworks, or gender identity and expression are not included in the term 'femicide.' Laws that have an essentialist view on women (highlighting biological characteristics) might conceal types of gender-based violence suffered by trans women whose identities are frequently denied based on biological characteristics.

According to researchers¹⁴, there are several reasons to use the term 'transfemicide' as the most suitable for identifying, registering, and quantifying crimes perpetrated against transgender women:

- To consider transgender women as a differentiated group helps to recognize the specificity of their gender identities and expressions and attend to the particularities of the crimes perpetrated against them.
- It recognizes these crimes as an extreme expression of gender violence and, in consequence, broadens the notion of gender violence, expanding its spectrum of modalities and victims.

¹¹ LGR stands for Legal Gender Recognition. "We define legal gender recognition as laws, policies or administrative procedures and processes which set out how trans and gender diverse people can change their sex/gender marker and names on official identity documents." (ILGA-World, 2019).

¹² See Colombia Diversa (2018) Informe de derechos humanos de personas LGBT en Colombia 2018

¹³ Hernández, Daniela, "Femicide in the Americas" (2018). NACCS Annual Conference Proceedings. 8. <https://scholarworks.sjsu.edu/naccs/2018/Proceedings/8>

¹⁴ Toledo, P. (2009) Femicidio. Consultoría para la Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos: <http://bibliotecasibe.ecosur.mx/sibe/book/000021560>

- It is inscribed in the feminist analyzes that focus on the State's role concerning impunity for these crimes. It also points out the State's responsibility regarding the development of public policies to eradicate them.¹⁵

2. Systemic Marginalization of LGBTI women

Same-sex sexual relations between consenting adults are criminalized legally and in practice in 67 UN Member States, including over 40 countries that criminalize such relations between women; penalties include death penalty and imprisonment¹⁶. Many countries also criminalize sex work and certain forms of gender expression that disproportionately affect trans women, impoverished sex workers. This criminalization and its consequences, extensively documented, often condemn women to society's margins, which means insecure neighborhoods, proximity to organized crime and illicit economies, lack of services and law enforcement, etc.

The criminalization of LGBTI identities contributes to impunity, making it impossible to engage in meaningful law-making to prevent and punish LGBTI femicides. This limbo promotes police brutality and torture, socially legitimizing violence and discrimination.

3. Statistics (2018-2021)

Global

The *Trans Murder Monitoring* (TMM) research project revealed a total of 331 cases of reported killings of trans and gender-diverse people between October 1, 2018, and September 30, 2019. Most of the murders occurred in Brazil (130), Mexico (63), and the United States (30). According to data recollecting by TMM, homicidal violence targeted against trans and gender-diverse people often intersect with racism, xenophobia, and discrimination towards livelihoods such as sex work. Victims of this type of violence are mostly sex workers (61%), and, in the case of the USA, the majority of trans people reported murdered are trans women of color and/or Native American (90%). In France, Italy, Portugal, and Spain, 65% of the reported murder victims were migrant trans women.¹⁷

Latin America and the Caribbean [LAC]

¹⁵ Radi, B. & Sardá-Chandiramani, A. (2016) Travesticide / transfemicide: Coordinates to think crimes against travestis and trans women in Argentina. Blas Radi y Alejandra Sardá-Chandiramani. <https://www.aacademica.org/blas.radi/15>

¹⁶ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (Geneva: ILGA World, 2020).

¹⁷ Information retrieved from TGEU website <https://tgeu.org/tmm-update-tdor-2019/> and the Trans Murder Monitoring <https://transrespect.org/en/map/trans-murder-monitoring/>

The first specialized database of homicides of LGBTI people at the regional level created by "SinViolencia LGBTI," registered a total of 99 femicides in the LAC region in 2020. The majority of femicide victims were trans women (81), followed by cis lesbian women (17), and one (1) cis bisexual woman. SinViolencia pointed out that during the COVID-19 pandemic, risks of violence, particularly against trans women, increased due to systemic social marginalization and impoverishment. Many of them had to skip lockdowns and go to the streets to ensure their livelihood.¹⁸

According to the 2019-2020 regional report of *RedLacTrans*, gender-based violence and transfemicides in the region have increased exponentially during COVID-19, due to restrictions such as mandatory isolation and curfews. The transfemicide of Karla Valentina Camarena del Castillo, coordinator of the Mexican network of trans women [shot on the streets of Guanajuato on March 29, 2020], constitutes a clear example of the increased vulnerability of trans women due to COVID-19 measures.¹⁹

Other factors that have contributed to the increase of transfemicides in the LAC region include violent groups, criminal gangs and forced migration, particularly in Central America²⁰ Consequently, RedLacTrans urged governments to implement preventive measures against SOGIESC-motivated gender-based violence. One of Mundosur's (MLF, Mapa Latinoamericano de Femicidios) recommendations was to incorporate the population of transgender women victimized because of their identity or gender-based violence into the femicide registries in Latin America.²¹

Mexico

The *National Observatory of Hate Crimes against LGBT people* stated that although femicide has achieved legal recognition, hate crimes against LGBT persons (including femicide against LBT women) not only lack special parameters but are hardly registered and therefore not investigated or sanctioned. Furthermore, transgender women were the primary victims of hate crimes in 2019 and 2020. Cis lesbian and bisexual women have been murdered because of their sexual orientation. However, due to deficiencies in the investigations, SOGI have not yet been considered as possible aggravating factors. Hence, considering transphobia, lesbophobia, homophobia, and the gender perspective in the analysis and treatment of these cases is crucial.²²

Colombia

¹⁸ Information gathered in direct consultation with the Regional Network SinViolencia LGBTI

¹⁹ CEDOLSTAC (Centro de Documentación y Situación Trans en América Latina y el Caribe) ¡Paren de Matarnos! Informe Regional 2019-2020. <http://attta.org.ar/paren-de-matarnos-informe-regional-2019-2020-cedostalac/>

²⁰ Ibid

²¹ MundoSur. Femicidios en América Latina en Contextos de Pandemia. Segundo Informe: Mapa Latinoamericano de Femicidios (MLF) <https://mundosur.org/informes/>

²² Observatorio Nacional de Crímenes de Odio contra las Personas LGBT en México. Informe 2020 <http://www.fundacionarcoiris.org.mx/wp-content/uploads/2020/07/Informe-Observatorio-2020.pdf>

According to the Government, the number of homicides decreased 4% in 2020 compared to 2019 as an indirect consequence of the COVID-19 restrictions. However, homicidal violence against LBT women persisted with alarming numbers: 27 transgender women and 12 lesbian femicides, including three human rights defenders, were registered by the NGO *Colombia Diversa*. These numbers show how prejudice towards the victims' SOGI plays a major role in the emergence of femicide cases.²³

Honduras

Similarly, the lethal violence against LBT women continued to take place during the pandemic in 2020, with a total of 11 violent deaths (three lesbians and eight trans women). As evidenced by the *Cattrachas Observatory*, although violent deaths of LGBTI persons decreased slightly due to confinement.²⁴

Puerto Rico

The number of reports of the disappearance of women and girls (including LBT women) has increased during 2020. However, even if these are potential cases of femicide, they remain unsolved, especially in the case of trans women and sex workers who are missing, as these populations are highly vulnerable and revictimized by the police and rarely file complaints. The numbers of homicidal violence against trans women, counted and considered as transfemicides by the observatory of gender equality, showed an increase of 200% during 2020 compared to 2019. This escalation can be attributed to the COVID-19 context, which among other affectations, has generated a delay in the judiciary process of aggressors for gender-based violence crimes.²⁵

4. Good Practice examples (2018-2021)

In July 2018, the *Interamerican Human Rights Commission* recognized the advances of the Argentinian courts to recognize the murder of Diana Sacayán, a transgender social activist, as a transfemicide aggravated by hatred of the victim's gender identity. This was the first time in the region when a court has recognized the legal concept of transfemicide.²⁶

²³ See *Así Van las Cosas*. (2020) Balance Preliminar de la Violencia contra las Personas LGBT en 2020. <https://colombiadiversa.org/c-diversa/wp-content/uploads/2021/03/Asi-van-las-cosas.pdf>

²⁴ CATTRACHAS (2021), Informe Sobre Muertes Violentas de personas LGTTBI Cattrachas 2009-2020. <https://cattrachas.org/index.php/es/descargas?start=3>

²⁵ Observatorio de Equidad de Género. Puerto Rico (2020) Puerto Rico: Femicidios Enero-Noviembre 2020. Reporte para la Relatoría Especial de Naciones Unidas sobre la Violencia Contra las Mujeres. <https://observatoriopr.org/violencia-de-g%C3%A9nero-1>

²⁶ Information retrieved from https://www.oas.org/en/iachr/media_center/PReleases/2018/160.asp

In 2019, the *Human Rights Commission of Mexico City* recommended the Attorney's General Office labeling for the first time a case of femicide as a transfemicide for the murder of Paola Buenrostro²⁷.

There have also been advances regarding the compilation of statistics on homicidal violence against LGBT people (including femicides against LB women and transfemicides) with the *creation of the regional network "Sin Violencia LGBTI,"* an observatory made by NGOs of eleven²⁸ different countries in the LAC region.²⁹

5. Recommendations

1. To recognize the killings of LGBTI women as a form of aggravated femicide in law and practice, understanding femicide as a term that includes a vast range of diversity that is not limited exclusively to [cis] women.
2. To apply this broad understanding of femicides to States legal frameworks, strategies, and programs created to prevent and eradicate these crimes at a national and local level.
3. To incorporate the population of LGBTI women into the national and regional femicide registries and statistics.
4. Provide training to law enforcement and judiciary on recognizing and investigating femicide against LGBTI women, implementing a SOGIESC perspective within their parameters and practices.

²⁷ For more information see https://cdhcm.org.mx/wp-content/uploads/2019/06/Reco_022019.pdf and <https://www.zonadocs.mx/2020/01/16/transfeminicidio-otra-cara-de-la-violencia-contra-la-mujer/>

²⁸ Bolivia, Brasil, Colombia, El Salvador, Guatemala, Honduras, Nicaragua, México, Paraguay, Perú y República Dominicana.

²⁹ For more information see <https://sinviolencia.lgbt/>