

SYMPOSIUM ON THEORIZING TWAIL ACTIVISM

FEMINICIDIO: TWAIL IN ACTION

Paulina García-Del Moral*

Introduction

Feminicidio is a Mexican adaptation of the radical feminist concept of femicide, usually defined as the misogynous murder of women by men because they are women.¹ In this essay based on original fieldwork,² I seek to contribute to Third World Approaches to International Law (TWAIL) scholarship by providing a brief analysis of the engagement of Mexican grassroots feminist activists with international human rights law in their struggle against the systematic abduction, murder, and sexual abuse of hundreds of women and girls in Ciudad Juárez, Mexico, and the widespread impunity enveloping these crimes. As a result of this grassroots activism, these murders became known as *feminicidios*. *Feminicidio* expanded the existing concept of femicide by exposing the complicity of the state in the killing of women by sustaining the institutionalization of gender inequality.³ Indeed, activists consistently claimed that the state's tolerance for impunity perpetuates the notion that women are disposable, and violence against them is not serious. Moreover, they linked this notion to the patriarchal regime of neoliberal capitalism that supports the *maquiladora* industry in Ciudad Juárez. Activists further drew on international human rights law. They invoked the due diligence obligation⁴ to conceptualize the responsibility of the Mexican state for failing to effectively prevent, investigate, and punish the murder of women—despite evidence of a systematic pattern of gendered violence that could only be understood by taking into consideration the intersecting structural gender and class inequalities that *feminicidio* revealed.⁶

TWAIL scholarship has consistently engaged in a critique of international law and its historical role in legitimating the oppression of the Third World, taking the standpoint of third-world peoples and their struggles.

* *Honorary Fellow, Center for Research on Gender and Women, Department of Gender and Women's Studies, University of Wisconsin-Madison*
Originally published online 02 August 2016.

¹ See, e.g., *FEMICIDE: THE POLITICS OF WOMAN KILLING* (Jill Radford & Diana E.H. Russell eds., 1992).

² As part of my research, I conducted interviews with members of grassroots civil society organizations in Chihuahua City, the state capital, that were involved in the transnational mobilization against *feminicidio*.

³ See, e.g., Marcela Lagarde, *Preface: Feminist Keys for Understanding Feminicide: Theoretical, Political, and Legal Construction*, in *TERRORIZING WOMEN: FEMINICIDE IN THE AMERICAS* xi (Rosa-Linda Fregoso and Cynthia Bejarano eds., 2010); JULIA MONÁRREZ FRAGOSO, *TRAMA DE UNA INJUSTICIA: FEMINICIDIO SEXUAL SISTÉMICO EN CIUDAD JUÁREZ* (2013).

⁴ *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, Report of the International Law Commission on the work of its fifty-third session, 19 UN GAOR Suppl. No. 10, at 43, UN Doc. A/56/10 (2001), *reprinted in* [2001] 2 Y.B. Int'l L. Comm'n 26, UN Doc. A/CN.4/SER.A/2001/Add. 1.

⁶ MONÁRREZ FRAGOSO, *supra* note 3

One of its central goals, therefore, has been to push for international law's transformation into a tool of emancipation to achieve global justice.⁷ I argue that the emergence of *feminicidio* as a vocabulary of resistance illustrates how international human rights law can be an emancipatory force. Yet I suggest that *feminicidio* must be theorized as more than simply the "translation" of international human rights law to a local context.⁸ Rather, I identify its mobilization as an example of the ability of marginalized actors to insert a new and radical, yet local idea into international human rights law. In the litigation of *González and Others "Cotton Field" v. Mexico* ("Cotton Field") before the Inter-American Court of Human Rights (Inter-American Court) concerning the murder of three young women in Ciudad Juárez, this was accomplished through the due diligence obligation found in international human rights law.⁹

Furthermore, because the structural critique of gender inequality and its relation to neoliberal capitalist projects that is embedded in *feminicidio* expanded the scope of the state's obligation to act with due diligence in the context of systematic violations of women's rights, it contributes to a reimagining of international legal discourse that incorporates the complexity that mark the experiences of third-world women.¹⁰ Ultimately, *feminicidio* emphasizes the intersection of gender and class and its mutually constitutive relationship with neoliberal capitalist projects that are often legitimated through international law. At the same time, it reveals how marginalized actors can use international law as a vehicle for resistance taking into consideration the state's own role in the organization of relations of domination within third-world societies.¹²

Feminicidio and Structural Inequality in Ciudad Juárez

Ciudad Juárez and the northern Mexican state of Chihuahua, where it is located, embody the contradictions of the globalization of international law. Ciudad Juárez is an industrial city at the border of El Paso, Texas, where hundreds of women and girls have been disappeared and viciously murdered since 1993. Ciudad Juárez is also known for a pervasive climate of violence associated with drug trafficking, high rates of intranational migration, the sex industry, and the uneven development that accompanied the presence of the hundreds of *maquiladoras* (assembly plants) that flourished after the consolidation of the North American Free Trade Agreement (NAFTA) in 1994. At the same time, Chihuahua and Ciudad Juárez in particular became the cradle of a feminist movement that was capable of using international human rights law to make "visible the *feminicidios* at a global level," as Alma Gómez, an activist lawyer, told me in an interview.

After NAFTA, Chihuahua represented the model of industrialization that neoliberal development policies predicted would eventually result in successful economic growth. Yet the wealth that has attended the growth

⁷ Antony Anghie and Bhupinder S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, 2 CHINESE J. OF INT'L L. 77, 79 (2003).

⁸ SALLY E. MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2006); Peggy Levitt & Sally E. Merry, *Vernacularization on the Ground: Local Use of Global Women's Rights in Peru, China, India and the United States*, 4 GLOBAL NETWORKS 441 (2009); BOAVENTURA DE SOUSA SANTOS & CÉSAR A. RODRÍGUEZ GARAVITO, *LAW AND GLOBALIZATION FROM BELOW* (2005).

⁹ *González ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, and Costs, Judgment, Inter-Am. Ct. H. R. (ser. C) No. 205 (Nov. 16, 2009).

¹⁰ Mosope Fagbongbe, *The Future of Women's Rights from a TWAIL Perspective*, 10 INT'L COMMUNITY L. REV. 401, 404 (2008); Rémi Bachand, *Critical Approaches and the Third World. Towards a Global and Radical Critique of International Law*, McGill Law School Working Paper (2010).

¹² *Id.*

of the *maquiladora* industry has hardly translated into tangible improvements to the quality of life of the inhabitants of Ciudad Juárez. As its poorest inhabitants, women have been disproportionately affected by this uneven development.¹³

Gender and class inequality further intersect in women's participation in the *maquiladoras*. Melissa Wright argues that the *maquiladora* industry produces a female Mexican subject "around a continuum of declining value" through managerial discourses that simultaneously depict Mexican women as desirable and docile workers, yet untrainable and unskilled.¹⁴ The high turnover rates that characterize this industry produce "the vision of the Mexican woman as inevitably disposable," especially after her value as a worker has been extracted.¹⁵ Moreover, Wright links the production of this disposable subject to a *macho* gender order that has been disrupted through women's participation in the labour force.¹⁶ To restore the gender order, women who step outside the boundaries of the private sphere of the home and family that is associated with appropriate feminine behaviour, whether they are *maquila* workers or not, are construed as "immoral." The alleged immorality of "public women," Wright claims, reinforces the notion of their disposability. This notion ultimately justified the deeply gendered discriminatory attitudes that local authorities and the media have used to dismiss the killing of women as something inevitable while blaming the victims for their fate.

In this context, the reformulation of the concept of femicide emerged in the work of Mexican feminist academics to capture the brutality of the sexual murders and their relationship to structural inequality and the violent symbolic processes that produced the notion that women are disposable. For example, renowned *feminicidio* scholar Julia Monárrez Fragoso argues that the victims' violated bodies and the pain that was inflicted upon them reflect the objectification of women and thus their transformation into "sexually fetishized commodities": their construction into things that can be consumed and discarded through the violent social relations that construct gender and capital.¹⁷ For Monárrez Fragoso, these violences therefore result in women's loss of citizenship. It is in this sense that Marcela Lagarde defined *feminicidio* as a "state crime," since it reflects the state's lack of capacity to "guarantee respect for women's lives or human rights [by] acting in keeping with the law."¹⁸

The abduction, sexual abuse, and subsequent murder of Claudia Ivette González, Laura Berenice Ramos Monárrez, and Esmeralda Herrera Monreal in Ciudad Juárez became emblematic of these violent processes.¹⁹ These young women were *maquiladora* workers and students. They were found in a cotton field alongside the bodies of five other women in November 2001, bearing traces of the extreme physical and sexual violence. Although these women's mothers had previously reported them as disappeared, the local authorities dismissed their claims. They were also told that their daughters were not really missing, but were instead partying with their boyfriends. In addition, irregularities plagued the investigation of the crimes, and two innocent men were even tortured to produce false evidence to inculcate them for the murders.

The cotton field murders were catalysts for the transnationalization of the struggles against *feminicidio* that had taken place locally and nationally since the mid-1990s. This process involved the collaboration of grassroots

¹³ MONÁRREZ FRAGOSO, *supra* note 3.

¹⁴ Melissa W. Wright, *The Dialectics of Still Life: Murder, Women and Maquiladoras*, 11 PUB. CULTURE 453, 469 (1999).

¹⁵ *Id.*

¹⁶ Elsewhere, I have also examined the gendered and racialized colonial dimension underlying this *macho* gender order. See Paulina García-Del Moral, *Representation as a Technology of Violence. On the Representation of the Murders and Disappearances of Aboriginal Women in Canada and Women in Ciudad Juárez*, 36 CANADIAN J. LATIN AMERICAN & CARIBBEAN STUD. 33 (2011).

¹⁷ Julia Monárrez Fragoso, *The victims of Ciudad Juárez Femicide: Sexually Fetishized Commodities*, in TERRORIZING WOMEN: FEMINICIDE IN THE AMERICAS 59 (Rosa-Linda Fregoso & Cynthia Bejarano eds., 2010).

¹⁸ Lagarde, *supra* note 3, at xxiii.

¹⁹ See MONÁRREZ FRAGOSO, *supra* note 3.

feminist organizations, including groups formed by relatives of the murdered women, with national and international NGOs and networks specialized in transnational human rights advocacy and supranational litigation.²⁰ The judgment of the Inter-American Court in “*Cotton Field*” represents a culmination of their joint efforts. The Inter-American Court ruled that the Mexican state had breached its international legal obligations under the American Convention on Human Rights²¹ and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention Belém Do Pará),²² since it had failed to act with due diligence to respond to these crimes in the context of a documented systematic pattern of violations of women’s rights. In other words, the Inter-American Court found that the Mexican state had not carried out an effective investigation into the disappearances of the three young women in order to prevent their subsequent sexual abuse and murder although Mexican authorities were aware of the systematic pattern of gendered violence in this city. The Mexican state further failed to carry out an effective investigation into the crimes that would lead to the prosecution of the perpetrators. The Inter-American Court thus declared that violence against women in this context constituted a form of gender discrimination. Importantly, it recognized (in part) the efforts of the representatives and activists to frame the murders of the three young women as *feminicidio*.²³

Feminicidio Meets Due Diligence: Beyond the Global-to-Local Translation of International Human Rights Law

TWAIL scholarship in general has emphasized that international human rights law has the potential to be a tool of emancipation. However, there is also a prevalent notion that due to their lack of professional skills and knowledge to mobilize international human rights law, the formal process of supranational litigation proves inaccessible to grassroots groups in the Third World. Potentially more problematic than the inaccessibility of international courts is that the language of international human rights law has been construed as the only legitimate discourse to frame resistance.²⁴ As such, some have argued, the use of this legal discourse effaces the alternative languages and “extra-institutional spaces” in and through which third-world resistance takes place. In turn, others have claimed that the human rights legal tradition tends to produce narrow solutions to problems that fail to incorporate analyses of structural inequalities that are constitutive of the oppression of third-world peoples. In sum, a formal engagement with international human rights law could silence the oppressed and/or result in the delegitimation and distortion of their experiences and interpretations of harm.

The idea that international human rights law can operate “from below” has emerged to resolve the contradiction between its emancipatory and alienating potential, as well as the elitism of the formal supranational litigation process. For international human rights law to operate thus and pave the way for a “subaltern cosmopolitan politics and legality,” it needs to be first “translated” and adapted to local cultures.²⁵ In other words,

²⁰ Paulina García-Del Moral, *Transforming Feminicidio: Framing, Institutionalization, and Social Change*, CURRENT SOC. (Dec. 23, 2015).

²¹ *American Convention on Human Rights*, Nov. 21, 1969, 1144 UNTS 143.

²² *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, Mar. 5, 1995, 33 ILM 1534.

²³ See *González (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, and Costs, Judgment, Inter-Am. Ct. H. R. (ser. C) No. 205, paras. 137-145 (Nov. 16, 2009). It is important to note that the English version of the judgment inaccurately translates *feminicidio* as femicide.

²⁴ BALAKRISHNAN RAJAGOPAL, *INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENT, AND THIRD WORLD RESISTANCE* (2003); David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. 101; David Kennedy, *The International Human Rights Regime: Still Part of the Problem?*, in EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS 19 (Rob Dickinson et.al. eds., 2012).

²⁵ See SOUSA SANTOS & RODRÍGUEZ GARAVITO, *supra* note 8.

international human rights law must go through the process of becoming locally appropriated and adopted and hence “vernacularized.”²⁶

In their work on vernacularization and women’s human rights, Peggy Levitt and Sally E. Merry²⁷ have explained that this process entails the unpacking of the discursive elements that represent ideas about gender equality and selfhood codified in the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and their subsequent reframing to fit the local context.²⁸ Since they have the ability to move from the global to the local, vernacularizers, or translators, play a central role in drawing on local idioms, symbols and narratives to frame the global norms embedded in international human rights law and facilitate their adoption. The goal of vernacularization is ultimately to shape domestic understandings of women’s rights to challenge gender inequality.

At first glance, it might seem like the framework of vernacularization fits exactly what took place in Ciudad Juárez. For example, the language of gender discrimination embedded in CEDAW permeated the demands that grassroots activists made against the Mexican state. Yet this framework falls short when it comes to explaining the formal engagement of these activists with the international human rights law system, not to mention their adoption of the concept of *feminicidio* as a frame to conceptualize the responsibility of the Mexican state for these crimes.²⁹ Firstly, it continues to assume that only elites can mobilize international human rights law. To wit, Levitt and Merry argue that there is a “separation between human rights as ideas for social movements and as law” and it is only the former that is somewhat accessible to local activists.³⁰ They also imply that the categories of lawyer and activist are mutually exclusive. Second, the accessibility of the international human rights law system continues to be limited, since Levitt and Merry equate vernacularizers with domestic or transnational political elites.³¹ Consequently, they claim that women at the grassroots do not often become translators nor develop as strong a commitment to human rights as elites, so that their participation in transnational, as opposed to local, advocacy is tangential at best.³² In sum, what may seem like vernacularization in the case of Ciudad Juárez is, in fact, a misrecognition that results from an understanding of grassroots actors as incapable of becoming vernacularizers and/or formally engaging with international law.

Empirical investigation of the experiences of women’s grassroots struggle against *feminicidio* in Ciudad Juárez and Chihuahua more generally challenges these claims and further complicates the assumptions regarding the alienating potential of international human rights law and the formal supranational litigation process. My interviews with grassroots feminist activists show that despite their lack of expertise in international human rights law, these women actively sought out opportunities to gain this knowledge by becoming involved in the process of documenting the systematic irregularities that permeated the crime investigations through their collaboration with specialized NGOs like Amnesty International or the Argentine Forensic Anthropology Team (EAAF). For example, Norma Ledesma, whose daughter Paloma Escobar Ledesma was murdered in Chihuahua City in a similar manner to the cotton field victims, created her own organization as a means to obtain access to justice.³³ In fact, it was she who demanded that the EAAF visit Mexico to perform investigations that would later prove instrumental to showing that the Mexican state had failed to act with due diligence in the case of her

²⁶ Levitt & Merry, *supra* note 8, at 441.

²⁷ *Id.*

²⁸ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 UNTS 13.

²⁹ See García-Del Moral, *supra* note 20, for an explanation of the transformation of *feminicidio* from an academic concept into a frame as well as its criminalization in Mexican law.

³⁰ Levitt & Merry, *supra* note 8, at 459-460.

³¹ *Id.*

³² MERRY, *supra* note 8, at 134, 215.

³³ Paloma Angélica Escobar Ledezma v. Mexico, Case 12.551, Inter-Am. Comm’n H.R., Report No. 51/13 (July 12, 2013).

daughter as well as in “*Cotton Field*.” It is important to emphasize here that this was also a learning process for domestic lawyers like Alma Gómez, and that women like her were simultaneously involved in grassroots activism. Alma later founded the Center for Women’s Human Rights. Ultimately, grassroots women like Norma and Alma and the mothers of other *feminicidio* victims did become translators—and not only from the international to the local, as they also participated in transnational advocacy and viewed supranational litigation as an important strategy of activism.

Although grassroots activists arguably adopted the language of gender discrimination as part of this process, they did not simply adapt the due diligence obligation to their local context. Rather, they first appropriated the concept of *feminicidio* from Mexican feminist academics and transformed it into a frame, and were then able to merge due diligence with the structural critique of gender and class inequality anchored in *feminicidio*. The result was to expand the scope of the state’s duties to prevent, effectively investigate, and punish violence against women in the context of systematic patterns of rights violations resulting from these very inequalities. More importantly, the Inter-American Court recognized the murders of the cotton field victims as *feminicidio*, although it stated that it could not make a generalized pronouncement regarding all the murders of women in Ciudad Juárez. Despite this qualification, the “*Cotton Field*” judgment paved the way for the criminalization of *feminicidio* in Mexican law.

Conclusion

In this essay, I presented an analysis of *feminicidio* and Mexican grassroots activism against it in Ciudad Juárez as a contribution to TWAIL scholarship. My empirical research highlights the need to view these women’s engagement with international human rights law in terms that are more nuanced than “from below” and “from above,” or than vernacularization. Their adoption of *feminicidio* to capture the intersectional and structural dimensions of the oppression of women in Mexico and their introduction of this radical concept into international human rights law through the obligation of due diligence are testimony both to their agency and to their ability to extend of the boundaries of international law.